30.08.2023
Ct. 654
D/L 4 & 5
ab/kb

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 150 of 2023
With
CAN 4 of 2023

Shriram General Insurance Co. Ltd.
-Vs-
Mita Dutta & Anr.

With

COT 26 of 2018

Mita Dutta
-Vs-
Shriram General Insurance Co. Ltd. & Anr.

Mr. Rajesh Singh
... for the appellant-Insurance Company

Mr. Amit Ranjan Roy
... for the respondent No. 1 -claimant

This appeal is preferred against the judgment and award dated 19th August, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Nadia at Krishnanagar in MAC Case No. 204 of 2014 granting compensation of Rs. 6,08,561/- together with interest @ 9% per annum from the date of filing of the claim application in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

Mr. Amit Ranjan Roy, learned advocate for the respondent no. 1-claimant submits that the claimant has filed an application being *CAN 4 of 2023* for amendment of the cause title of the memorandum of appeal as well as the cross objection to the extent that her name should be recorded as "*Mita Dutta Malakar*" instead and place of "*Mita Dutta*". He seeks for necessary amendment.

Mr. Rajesh Singh, learned advocate for the appellant-insurance company does not raise any objection.

It is found from the documents annexed to the application, namely, Aadhaar Card and PAN Card of the respondent no. 1 that her name is '*Mita Dutta Malakar'*.

In view of the above, let the name of the respondent no. 1 in the cause title of memorandum of appeal and in the cross-objection be incorporated as "*Mita Dutta Malakar*" in place of *"Mita Dutta*".

Department concerned is directed to make necessary corrections/incorporations as aforesaid in the cause title of memorandum of appeal as well as in cross-objection.

The application being ***CAN 4 of 2023*** stands disposed of.

The brief fact of the case is that on 7^{th} July, 2013 at about 1.45 p.m, while the victim was returning to her home by her car at that time the offending vehicle bearing registration no. WB-41/4004 (Lorry) dashed the said car, as a result of which the victim sustained injuries on her person. Due to the said injuries, the victim sustained disablement. On account of injuries sustained and subsequent disablement, the claimant-injured filed application for compensation of Rs. 7,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimant in order to establish her case examined eight witnesses including herself and produced documents, which have been marked as **Exhibits 1** to **12** respectively.

The appellant-insurance did not adduce any evidence.

By order dated 30th January, 2023, service of notice of appeal upon the respondent no. 2, owner of the offending vehicle has been dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the claimant-injured, the learned Tribunal granted compensation of Rs. 6,08,561/- together with interest @ 9% per annum from the date of filing of the claim application in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award, the insurance company has preferred the present appeal.

Challenging the impugned judgment and award of the learned Tribunal, the claimant has also preferred a cross objection being COT 26 of 2018.

Both the appeal and the cross objection are taken up together for consideration and disposal.

Mr. Rajesh Singh, learned advocate for the appellant-insurance company submits that the victim after the said accident joined her service as a school teacher and as such, there was no such loss of earnings. He further submits that the learned Tribunal erred in granting interest on compensation amount @ 9% per annum which needs to be scaled down bearing in mind the prevalent banking rate of interest. In the light of his aforesaid submissions, he prays for modification of the impugned judgment and award of the learned Tribunal.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Amit Ranjan Roy, learned advocate for the respondent no. 1-claimant submits that the assessment towards the loss of earnings made by the learned Tribunal is correct and does not call for interference. He further submits that the learned Tribunal granted a meagre sum of Rs.2,000/- towards pain and sufferings and failed to consider that due to injuries sustained in the said accident, the victim had to undergo several operative measures. In view of such submissions, he prays for enhancement of the compensation amount.

Having heard the learned advocates for respective parties, following issues have fallen for consideration. *Firstly*, whether the learned tribunal erred in determining the loss of earnings at 10%; *secondly*, whether the learned tribunal erred in granting Rs.2,000/- only towards pain and sufferings and *lastly,* whether the Learned Tribunal erred in granting interest @ 9% per annum on the compensation amount.

With regard to the first issue relating to loss of earnings, it is found that the learned tribunal has assessed the loss of earnings at 10% of the annual income of the victim. The claimant examined Dr. Anjan Sengupta as P.W.-7, who was a member of the Medical Board which assessed the disability and he proved the disability certificate marked as **Exhibit 9**. P.W.-7 deposed that on examination, the Board found 70% disablement as the victim suffered fracture of both ulna along with inter cerebral haemorrhage. However, P.W.7 deposed that the victim did not have any physical implication of the haemorrhage on her cerebral action or physical limbs. Further the disability certificate shows partial disablement. It is not in dispute that after the accident the victim resumed her services in the school. P.W.1 Smt. Mita Dutta (injured) in her evidence in chief stated that due to the said accident she did not suffer any loss of income as she is still working in the same institution.

Learned Tribunal taking into consideration the condition of the victim when she appeared before Court as well as evidence on record came to this finding that her disability is of 10%. It is trite law that percentage of disablement is not always the percentage of loss of earnings. In the backdrop, the loss of earnings assessed at 10% of the annual income of the victim by the Learned Tribunal dos not call for interference.

So far as pain and sufferings is concerned, it is found that the Learned Tribunal has granted a sum of Rs.2,000/- towards pain and sufferings. It is not in dispute that the victim for treatment of her injuries had to be hospitalised and operated medically. The discharge certificate of the Divine Nursing Home Pvt. Ltd. shows that the victim sustained fractures injuries and had to be operated for distal medial tibial plate fixation. Such being the position, I am inclined to grant Rs.50,000/- towards pain and sufferings.

Coming to the last issue relating to the interest on the compensation amount, it is found that the Learned Tribunal has granted interest @ 9% per annum on the compensation amount. However, bearing in mind the prevailing banking rate of interest, the compensation shall carry interest @ 6% per annum from the date of filing of claim application till payment.

Other factors have not been challenged in this appeal.

Bearing in mind the aforesaid, calculation of compensation is made hereunder.

Calculation of Compensation

Monthly income	Rs.20,697/-
Annual income (Rs.20,697/- x 12)	Rs.2,48,364/-
Loss of income: 10% of the annual income	Rs.24,836/-
Multiplier 13 (Rs.24,836/- x 13)	Rs.3,22,868/-
Add: Medical Expenses	Rs.2,33,688/-
Add: Pain and suffering	Rs.50,000/-
Add: Future medical expenses	Rs.50,000/-
Total	Rs.6,56,556/-

Thus the claimant is entitled to compensation of Rs.6,56,561/- together with interest @ 6% per annum from the date of filing of the claim application till payment.

It is informed that the Insurance Company has deposited a sum of Rs.7,41,986/- vide OD Challan no. 1096 dated 28th July, 2017 and has also deposited an amount of Rs.25,000/- vide OD Challan no. 3260 dated 7th March, 2017. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and the interest thereon.

Appellant-insurance company is directed to deposit the balance amount of compensation, if any, together with interest @ 6% per annum from the date of filing of the claim application till payment by way of cheque before the learned Registrar General, High Court, Calcutta.

The respondent no.1-claimant is directed to deposit *ad valorem* court fees on the amount of compensation, if not already paid.

Upon deposit of balance amount of compensation, if any, and the interest as indicated above, the learned Registrar General, High Court, Calcutta shall release the aforesaid amount of compensation and interest in favour of the respondent no.1-claimant upon satisfaction of her identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observations, the present appeal and the cross objection stand disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

All connected applications, if any, are also disposed of.

Interim order, if any, stands vacated.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all necessary legal formalities.

(**Bivas Pattanayak, J**.)