

10.02.2023

Ct. no.237

Sl. No.30

ss

F.M.A. 1324 of 2013

Happy Roy

Vs.

Oriental Insurance Co. Ltd. & anr.

Mr. Jayanta Kumar Mandal

... for the appellant-claimant

Ms. Gopa Das Mukherjee

... for the respondent no.1-Insurance Co.

This is an appeal directed against the judgement and award passed by the learned Judge, Motor Accident Claims Tribunal-cum-Additional District Judge, 8th Court, Alipore in connection with Motor Accident Claims Case No.168 of 2005 under Section 163A of the Motor Vehicles Act, 1988 whereby the learned Judge awarded a sum of Rs.1,12,000/-, that is, 25% of the total assessed amount of Rs.4,08,000/- in terms of disability.

The claim petition under Section 163A of the Motor Vehicles Act was filed on account of injury sustained by one Happy Roy aged about 23 years having income of Rs.3,000/- p.m., in a motor accident by involvement of one lorry being No.WGA-3450 on 1.1.2005 at about 12.30 hours on Tollygunge Circular Road in front of premises No.36/1, Tollygunge

Circular Road. Accordingly, the injured/claimant claimed compensation to the tune of Rs.3,00,000/-.

The owner of the lorry did not contest the claim petition. The insurer, that is, the Oriental Insurance Company Limited contested the claim petition by filing written statement denying all material averments made in the claim petition contending inter alia that the claimant is not entitled to any compensation.

To prove the case of the claimants, two witnesses were examined, namely, the claimant himself as P.W.1, who corroborated the entire contents of the claim petition. He specifically stated in his evidence that the accident took place by the involvement of one lorry bearing No.WGA-3450 on 1.1.2005 at about 12.30 hours on Tollygunge Circular Road. After the accident he was taken to Bangur Hospital where he was admitted till 25th January, 2005. He sustained injury on knee joint of left leg. In course of his evidence copy of F.I.R, charge-sheet, insurance policy, handicapped certificate, discharge certificate etc. were admitted in evidence as exhibits 1 to 8.

One Dr. Pranab Kumar Mandal was examined as P.W.2 who examined the claimant on 7.12.2007 and consulted all the treatment papers

including discharge certificate and issued disablement certificate (exhibit 8). P.W.2 introduced himself as retired Professor, Head of the Department of Orthopaedic, Calcutta National Medical College & Hospital. He was cross-examined and nothing substantial was revealed to disregard his evidence regarding issuance of disability certificate after examining the injured, Happy Roy.

Learned Judge of the Tribunal, analyzing the evidence, relied on the disability certificate and awarded compensation on the basis of notional income at Rs.2,000/-.

In course of argument, learned Advocate Mr. Jayanta Kumar Mandal, appearing on behalf of the appellant/claimant has submitted that the learned Tribunal took the income of the victim at Rs.2,000/- p.m. though the claim petition was filed for the injury sustained by the claimant on 1.1.2005.

Mr. Mondal has submitted that notional income of Rs.3,000/- should have been applied in computing compensation.

Ms. Gopa Das Mukherjee, learned Advocate appearing on behalf of the respondent-Insurance Company has submitted that the accident took place in the year 2005 and learned Tribunal assigned

sufficient reason to take monthly income of the victim at Rs.2,000/-.

Considering the entire evidence on record it appears that the claimant has stated in his evidence that at the relevant point of time he was looking after construction work of a developer and used to get salary of Rs.3,000/- p.m. He stated that he used to supervise the construction work at the relevant point of time. From his cross-examination, I do not find any single question denying the evidence of work or service of the claimant. From the cross-examination as well as from the other materials on record it is found that at the relevant point of time claimant was driving a motor-cycle.

In the aforesaid view of the matter, I, by no stretch of imagination, can come to a conclusion that the claimant was an unskilled labour at the relevant point of time.

Accordingly, I am of the opinion that notional income should be taken as Rs.3,000/- p.m. to compute compensation.

Accordingly, I assess the compensation as follows:

Annual Income be assessed as	
(Rs.3000 X 12)	Rs.36,000/-
Multiplier '17' (Rs.36,000/- X 17)	Rs.6,12,000/-
Disability – 25% of Rs.6,12,000	Rs.1,53,000/-
Add : Medical Expenses	Rs.5,000/-
Add : Pain & suffering	<u>Rs.5,000/-</u>
	Rs.1,63,000/-
Awarded amount of Tribunal Already paid	(-) <u>Rs.1,12,000/-</u>
Enhanced amount :	Rs.51,000/-

Therefore, the claimant is entitled to compensation to the tune of Rs.1,63,000/- and out of which claimant has received Rs.1,12,000/-. Therefore, the claimant is entitled to balance amount of Rs.51,000/- along with interest at the rate of 6% p.a. from the date of filing of the claim petition (10.05.2005) till the date of deposit of the amount by the Insurance Company.

The Insurance Company is directed to deposit Rs.51,000/- along with interest at the rate of 6% p.a. from the date of filing of the claim petition till the date of deposit of the same before the office of the learned Registrar General, within six weeks from date.

The learned Registrar General is requested to disburse the amount deposited by the Insurance Company to the claimant with proper identification and proof.

The claimant is entitled to withdraw the amount along with all accrued interest from the office of the learned Registrar General.

With the aforesaid observations, the appeal being F.M.A. 1324 of 2013 stands disposed of.

All pending applications, if there be any, stand disposed of as well.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)