IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

11.12.2023
SL No.8
Court No. 551
Ali

F.M.A. 2022 of 2018
(FMAT 465 of 2018)

Manirajjaman @ Milan Mallick
Vs.
The NICL & Anr.

Mr. Jayanta Banerjee,
Mr. Sandip Bandhopadhyay,
Ms. R.B. Roy,
Mr. Argha Bhattacharya
……for the appellant-claimant.

Mr. Samim Ahammed,
Mr. Aniruddha Singh
……..for the respondent No. 1-insurance Co.

The instant appeal has been preferred against the judgment and award dated 20th March, 2018 passed by the learned Judge, Motor Accident Claims Tribunal, Katwa, Purba Bardhaman in MAC Case No. 75 of 2009 under Section 166 of the M.V. Act.

The brief facts of the case is that the present appellant being claimant preferred an application before the learned tribunal for getting compensation on the ground that the claimant has sustained severe injuries in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company. By such accident his right leg was amputated and he became permanent jobless.

The claim case was contested by the insurance company and after hearing the parties and receiving the evidences the learned tribunal has awarded a sum of Rs. 9,97,600/- in favour of the claimant.

The claimant has preferred the instant appeal for enhancement of the award. The learned advocate for the claimant submits that the learned tribunal has erroneously assessed the compensation in this case.

The appellant was a military person but after the accident he lost his right leg over the knee and because of such injuries he lost his job.

The learned tribunal while assessing the compensation has calculated the functional disability to be 80% by virtue of the disability certificate issued by the Government Hospital but has deducted 50% towards the salary component on the ground that the appellant is a Central Government employee and he is receiving the pension not less than 50% of his salary. He further argued that the deduction of 50% towards the pension allowed in favour of the appellant will not applicable in this case. He submits that due to such accident the appellant became jobless and due to the terms and conditions of the service he is receiving the pension. He would have received the pension after the retirement also. So, the sudden exigency i.e. the accident which made jobless to the victim appellant cannot be equated with the pension. In support of his contention, he cited two decisions passed in **Vimal Kanwar and Ors. and Helen C Rebello (Mrs) and Others.** He further argued that the Hon'ble Supreme Court has specifically held that the provident fund, pension, insurance, cash, bank balance, share, etc. cannot be termed as a pecuniary advantage in considering the claim under the Motor Vehicles Act.

The second point raised by the learned advocate for the appellant that the learned tribunal has deducted 25% towards the contributory negligence on the part of the appellant. He pointed out that the page three of the impugned judgment wherein the learned tribunal has held that the accident happened due to the rash and negligent driving of the driver of the offending vehicle but at the time of assessing the compensation he deducted 25% towards the contributory negligence. There are no evidences on record to prove that the victim while driving the motor cycle was negligent. He further argued that the insurance company has not produced any single evidence to prove the negligence on the part of the appellant. So on that score, the deduction towards the contributory negligence is not proper and maintainable.

Learned advocate for the appellant however submits that the applicable multiplier of this case would be 16 according to the observation of the Hon'ble Supreme Court passed in **Sarala Verma,** instead of 17 as adopted by the tribunal.

Learned advocate appearing on behalf of the insurance company tried to refute the contention of the appellant and pointed out that the claim petition wherein it has been stated in paragraph 23 that the appellant was himself riding the motor cycle from Katwa to Howrah Station alongwith two other pillion riders. He also pointed out the cross examination of the OPW-1 i.e. the present appellant, wherein he admits that there are two pillion riders. On that score, he argued that the learned tribunal has observed the fact that the victim being a military man has himself violated the law by carrying two persons as a pillion rider of the motor cycle. According to the Rules of Motor Vehicles, a Motor Cycle can be plied alongwith one of pillion rider. In this case the appellant has carried two pillion riders, consequently, he may have lost his balance and contributed the accident. He further argued that the learned tribunal may have not specifically observed in the body of the judgment but at the time of calculation of the compensation, he has observed that the victim was negligent in driving the Motor cycle and deducted 25% towards the contributory negligence. According to the learned advocate for the insurance company, the observation of the learned tribunal is quite justified.

Heard the learned advocates on the point of contributory negligence. Perused the claim application wherein it has been mentioned that the appellant was driving the Motor Cycle with pillion riders. The evidence of PW-1 also suggests that there are two pillion riders. However, police paper i.e. the FIR and charge-sheet was quite silent about the negligence on the part of the present appellant in riding the Motor Cycle. In the charge-sheet the truck i.e. (WML-2210) the driver of the truck was arrayed as sole responsible for the accident. The driver was made accused in this case who faced the trial. The evidences before the learned tribunal is actually silent regarding the contributory negligence except the fact that there are two pillion riders. The presence of two pillion riders does not ipso facto proof the negligence of an accident. The violation of a Rule of Motor Vehicles Act by the victim himself does not clearly show the contributory negligence on his part. So, in my view, the learned tribunal has assessed the contributory negligence on the part of the victim without any evidence and without basis. Thus in this case the deduction towards contributory negligence is not correct.

In considering the deduction of 50% towards the pension received by the victim as a Central Government employee is appears to me also not correct. In view of the observation of Hon'ble Supreme Court in **Vimal Kanwar** as well as **Helen C Rebello (Mrs)** it appears that the pension or any benefit receiving from the employer is not come under the purview of the claim under the Motor Vehicles Act.

In **Raj Kumar Vs. Ajay Kumar** the Hon'ble Supreme Court has directed the tribunal to find out the actual functional disability of a victim in an injury case. In this case, the present claimant was a military man who lost his leg. Due to such accident he actually lost his service so the entire service period has been put a cut by such accident. So considering the same, I think it necessary that the observation of the learned tribunal regarding the 50% deduction towards the pension of Central Government is not correct. The receiving of pension during the other job or during his unemployment in the service may also appear after he got a superannuation from the service. So, in my view, this deduction of 50% is also not justified. Accordingly, the award passed by the learned tribunal need be modified.

The just and proper compensation of this case assessed as hereunder:-

Calculation of compensation

1. Monthly Income be assessed as........Rs.16,000/-

3. Annual Income (Rs.16,000 X 12).....Rs.1,92,000/-
3. Add: Future Prospects.....................Rs. 96,000/-
Rs. 2,88,000/-
6. Less: deduction 20%.........................Rs. 57,600/-
Disability 80% Rs. 2,30,400/-

5. Multiplier 16 X 16
Rs. 36,86,400/-

5. Add: Pain & Suffering........ ....Rs.1,00,000/-
Rs.37,86,400/-
Less: Tribunal award amount......... Rs. 9,97,600/-
Enhance award........... Rs. 27,88,800/-

After calculation the award comes to Rs. 36,86,400/-. The tribunal already awarded a sum of Rs.9,97,800/-. The balance award comes to Rs. 27,88,800/-. The insurance company is directed to pay the compensation alongwith interest @ 6% per annum from the date of filing of the claim application within six weeks from the date of passing of this order through the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimant is at liberty to receive the same according to the prevalent Rules subject to ascertainment of payment of requisite court fees.

The instant FMA 2022 of 2018 (FMAT 465 of 2018) is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)