04.07.2023
Ct. 654
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 669 of 2021

Sourav Saha
-Vs-
National Insurance Co. Ltd. & Anr.

Mr. Muktakesh Das
... for the appellant-claimant

Mr. Saibalendu Bhowmik
... for the respondent No. 1 –insurance company

This appeal is preferred against the judgment and award dated 11th February, 2020 passed by the learned Judge, Motor Accident Claims Tribunal, 4th Court, Nadia at Krishnagar in MAC Case No. 570 of 2009 granting compensation of Rs. 4,08,200/- together with interest in favour of the claimant-injured under Section 166 of the Motor Vehicles Act, 1988.

As per the report of the Additional Stamp reporter dated 19.04.2021, the appeal is preferred within the statutory period of limitation in view of the order passed by the Hon'ble Supreme Court in *Suo Motu Writ (C) No. 3 of 2020* dated 23.03.2020 and 08.03.2021 respectively.

Accordingly, the appeal is formally admitted and registered.

Lower court records have already been received and upon examination found to be complete and in order.

With the consent of the learned advocates for the respective parties, preparation of informal paper books is dispensed with.

Since the respondent no. 2 did not contest the claim application, service of notice of appeal upon the said respondent is dispensed with.

The brief fact of the case is that on 31st December, 2008 at about 3.00 p.m. while the victim was proceeding towards Krishnagar from Bethuadahari through NH-3 by motorcycle bearing registration no. WB-52G/2209 as a pillion rider and when he reached near the saw mill at village Singhati, the offending vehicle bearing registration no. WB-52A/6278 (Tata Indica) in a rash and negligent manner dashed the motorcycle from behind, as a result of which the victim fell down on the road and sustained injuries on his two legs and other parts of the body. The victim was medically treated at different hospitals and his right leg was amputated. On account of injuries sustained by the victim and subsequent disablement, the victim filed application for compensation of Rs. 5,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

The appellant-claimant in order to establish his case examined four witnesses including himself and produced documents, which have been marked as **Exhibits 1** to **10** respectively.

The respondent no. 1-insurance company did not adduce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimant, the learned Tribunal granted compensation of Rs. 4,08,200/- together with interest from the date of filing of the claim application, i.e. 23.12.2009 to 02.12.2011 and from 09.04.2019 till the date of judgment 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 appellant-claimant has preferred the present appeal.

Mr. Muktakesh Das, learned advocate for the appellant-claimant submits that the learned Tribunal erred in adopting multiplier 16 instead of 18. He further submits that the claimant is entitled to future prospect of 40% of the annual income, which has not been taken into account by the learned Tribunal. Futhermore he submits that the claimant is entitled to non-pecuniary damages under pain and sufferings since he had to undergo amputation of his right leg. Moreover, he submits that the learned Tribunal without any reasonable ground allowed interest for certain period but not to the extent of the entire period of pendency of the application till payment and thus calls for modification. In the light of the aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellant-claimant, Mr. Saibalendu Bhowmik, learned advocate for the respondent no.1-insurance company concedes that the multiplier should be 18. So far as the future prospect is concerned, he submits that the decision of the Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** should be followed. With regard to compensation under pain and sufferings, he leaves the matter to the discretion of the Court. As regards interest granted by the learned Tribunal, he indicates that the learned Tribunal has reasonably considered the negligence of the claimant in pursuing the claim application resulting in delay in disposal of the application and thereby granted interest from the date of application till the issues were framed and thereafter granted interest from the date when the claimant produced witnesses before the Tribunal. The intervening period being adjourned at the instance of the claimant has been rightly left out by the learned Tribunal.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the multiplier should be

18 instead of 16; *secondly*, whether the future prospect of 40% of the annual income of the claimant-injured should be taken into consideration; *thirdly* whether the claimant is entitled to non-pecuniary damages under the head of pain and sufferings and *lastly*, whether the claimant is entitled to interest from the date of filing of the claim application till payment.

With regard to the first issue relating to multiplier, it is found that the learned Tribunal has adopted multiplier 16. However, following the observations of the Hon'ble Supreme Court made in ***Sarla Verma and others versus Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298*** since at the time of accident, the victim was more than 18 years old, the multiplier should be 18 instead of 16.

So far as the future prospect is concerned, since at the time of accident the victim was aged more than 18 years, hence an amount equivalent to 40% of the annual income of the victim should be taken into consideration towards future prospect.

With regard to the issue relating to non-pecuniary damages under the head of pain and sufferings, it is found that the learned Tribunal has granted Rs. 5,000/-. However, bearing in mind that the victim had undergone amputation of his right leg, I am inclined to grant Rs. 50,000/- towards non-pecuniary damages under the head of pain and sufferings.

The last issue relates to interest on compensation amount. Mr. Das, learned advocate for the claimant has strenuously argued that the interest on compensation should be allowed from the date of the claim application till realization of the amount. *Per contra*, Mr. Bhowmik, learned advocate for the respondent no. 1-insurance company has argued that due to laches on the part of the claimant, there was delay in disposal of the claim application and taking note of the same, the learned Tribunal has rightly granted interest for part period. Upon going through the lower court records, it is found that issues were framed on 02.12.2011 but adjournment was sought for on several dates by the claimant and ultimately on 01.10.2013 one witness was examined on behalf of the claimant. Thereafter on several dates adjournment was sought for on behalf of the claimant and ultimately, on 04.12.2018 the learned Tribunal directed the claimant to show cause as to why the claim case shall not be dismissed for default. The claimant filed show cause on 09.04.2019 and thereafter witnesses were examined on different dates. The learned Tribunal taking note of the aforesaid aspect has granted interest from the date of filing of the claim application, i.e. 23.12.2009 to 02.12.2011 and from 09.04.2019 till passing of the award. Bearing in mind the aforesaid, the period indicated by the learned Tribunal entitling interest does not call for any interference.

The other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Monthly income	Rs. 3,000/-
Annual income (Rs.3,000/- x 12)	Rs. 36,000/-
Add: Future prospect @ 40% of the total income	Rs. 14,400/-
	Rs. 50,400/-
70% loss of income due to disablement of 70%	Rs. 35,280/-
Multiplier 18 (Rs. 35,280/- x 18)	Rs. 6,35,040/-
Add: Pain and sufferings	Rs. 50,000/-
Total amount	Rs. 6,85,040/-

Thus, the total compensation comes to Rs.6,85,040/-. It is informed that the claimant has already received the compensation amount of Rs.4,08,200/- together with interest in terms of the order of the learned Tribunal. Accordingly, the appellant-claimant is entitled to balance amount of compensation of Rs.2,76,840/- together with interest @ 6% per annum from the date of filing of the claim application i.e. 23.12.2009 to 02.12.2011 and from 09.04.2019 till the date of payment.

The respondent no.1-insurance company is directed to deposit the balance amount of compensation together with interest as indicated above by way of a cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

The appellant-claimant is directed to deposit *ad valorem* court fees on the balance amount of compensation assessed, if not already paid.

Upon deposit of the balance amount of compensation and the interest, the learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of the appellant-claimant upon satisfaction of his identity and payment of *ad valorem* court fees, if not already paid.

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

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the Lower Court Records be sent to the learned Tribunal in accordance with rules.

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

(**Bivas Pattanayak, J**.)