24.02.2023
SL No.11
Court No. 654
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 3616 of 2016
IA No.: CAN/1/2017 (Old No.:CAN/5564/2017)

Sk. Tupai

versus

The National Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
...for the appellant-claimant.

Mr. Rajesh Singh
....for the respondent-Insurance Co.

This appeal is preferred against the judgment and award dated 16th January, 2016 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Tamluk, Purba Medinipur in M.A.C. Case no. 183 of 2013 granting compensation of Rs.1,70,000/- in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 21st July, 2012 at about 4 PM while the victim-injured, a 9 years old student, was standing beside the Nandigram-Chandipur Road at Nandigram College More near Chaina Sporting Club, at that time the offending vehicle bearing registration no. WB-29/4051 (Trekker) coming from Chandipur side at a very high speed and in a rash and negligent manner dashed the victim with great force as a result of which the victim sustained grievous injuries all over his body especially on his right leg. The victim was treated at various medical institutions and he suffered disablement on his right leg to the extent of 80%. On account of such injuries, medical treatment and consequent disablement the victim through his natural guardian father filed application for compensation of Rs.2,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish his case examined three witnesses and produced documents which have been marked as **Exhibits 1 to 7/1** respectively.

Respondent no.1-insurance company did not produce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimant, the learned tribunal granted compensation of Rs.1,70,000/- together with interest 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 passed by the learned tribunal, the claimant has preferred the present appeal.

By order dated 7th February, 2023 service of notice of appeal upon respondent no.2-owner of the offending vehicle has been dispensed with since he did not contest the claim application before the learned tribunal.

Mr Amit Ranjan Roy, learned advocate for appellant-claimant submits that in the said accident the minor victim sustained 80% disablement, however the learned tribunal erred in granting a lump sum compensation without applying multiplier method for computing the compensation amount. He further submits that for the sake of calculation of compensation a multiplier of 15 is to be adopted and he further asserts that an income of Rs. 3,000/- per month should be considered in the case of minor victim. Moreover, he submits that the percentage of disablement should be considered to be the extent of loss of future earnings. So far as non-pecuniary damages are concerned, he leaves the matter to the discretion of the court. In light of his above submissions he prays for enhancement of the compensation amount.

Mr Rajesh Singh, learned advocate for respondent no.1-insurance company submits that as per the evidence on record and the observation of the learned tribunal the disablement though of 80% but the same is curable which should be taken into account at the time of granting compensation. He further draws the attention of the court to the fact that as per evidence of the father of the victim he has already received an amount of Rs. 40,000/- from the owner of the offending vehicle which also needs to be taken into account for assessment of compensation.

Having heard the learned advocates for the respective parties, it is found that the claimant has precisely raised the following grounds, *firstly,* that the multiplier method is to be applied for computation of compensation; *secondly*, income of the victim should be considered at Rs.3,000/- per month; *thirdly,* the percentage of disablement should be the extent of loss of future earnings; *fourthly,* the learned tribunal erred in granting meager sum towards non-pecuniary damages and *lastly,* the claimant is entitled to future prospect of 40% of annual income of the victim.

With regard to the first issue as to whether the multiplier method should be applied, it is found that the learned tribunal has computed the compensation under the heads of pain and sufferings, medical expenses and other incidental charges and future medical expenses and granted a lump sum amount in favour of the claimant. From the patient discharge record **(Exhibit 6)** the victim sustained Open Gustilo IIIB tibia fracture on right and had to be operated. PW3 Dr Alok Datta who proved the discharge certificate deposed that the victim underwent Orthopedic Surgery at the hospital on 22.07.2012 for fixing fractured bone along with soft tissues (Plastic coverage) to ensure thorough survivability. PW-2, Dr Haradhan Barman, Chairman of the Medical Board which issued disability certificate, stated in his evidence before the court that on examination of the victim the board found 80% physical disability and he proved the disability certificate **(Exhibit-5).** The disability certificate shows that the victim sustained disablement of 80%. Considering the medical evidence showing extent of injuries of the victim as indicated above and the 80% disablement as revealing from the disability certificate, I am of the view that multiplier method is to be applied for computation of compensation amount. Admittedly, the victim at the time of accident was 9 years old. Therefore following the Second Schedule of the Act the multiplier to be adopted for calculation of compensation should be 15.

With regard to the income of the minor-victim, Mr Roy, learned advocate for appellant-claimant strenuously argued that an amount of Rs.3,000/- per month should be considered as income for assessment of compensation. Be that as it may, in my view an amount of Rs. 2,500/- be appropriate to take into account as the monthly income of the minor victim for computation of compensation amount.

As far as the loss of future earnings is concerned, considering the extent of injury that the victim sustained Open Gustilo IIIB tibia fracture on right and he underwent Orthopedic Surgery at the hospital for fixing fractured bone along with soft tissues (Plastic coverage) to ensure thorough survivability and ultimately resulted in 80% disability I am of the view that the percentage of future loss of earnings should be 80%.

So far as the non-pecuniary damages are concerned bearing in mind the extent of injury and the operative measures undergone by the minor victim an amount of Rs. 80,000/- shall be appropriate in the facts and circumstances of the case.

With regard to future prospect, since the victim was a minor at the time of accident an amount equalling to 40% of the annual income be taken into account towards future prospect.

Mr Singh, learned advocate for respondent-insurance company tried to impress upon the court that the amount of Rs. 40,000/- paid to the victim by the owner of the offending vehicle should be adjusted and taken into account in granting compensation. However, I am not inclined to take such amount into consideration since from the evidence of PW1, father of the minor victim, it is appearing that on humanitarian ground the owner of the offending vehicle during his visit to the house of the victim gave an amount of Rs. 40,000/-.

The other factors and findings of the learned tribunal have not been challenged in the present appeal. Keeping in mind the aforesaid factors the calculation of compensation is made hereunder:

Calculation of compensation

Monthly Income……………………………Rs.2,500/-

Annual Income..(Rs.2,500/- X 12)…….Rs. 30,000/-

Add: 40% of total Income
towards future prospect.....................Rs.12,000/-
Annual loss of Income........................Rs.42,000/-
Loss of future earnings of 80%...........Rs. 33,600/-
Adopting multiplier 15 (Rs.33,600/- X 15)...Rs.5,04,000/-
Non pecuniary Expenses..................Rs.80,000/-
Medical & Future medical Expenses Rs.1,40,000/-
Total Compensation.........Rs.7,24,000/-

Thus, the total compensation comes to Rs. Rs.7,24,000/-.Admittedly, the claimant has received an amount of Rs. 1,70,000/- together with interest as granted by the learned tribunal. Accordingly the claimant is entitled to balance amount of Rs. 5,54,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 20.12.2012) till deposit.

Respondent no.1-insurance company is directed to deposit the balance amount of compensation of Rs.5,54,000/-together with interest before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

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

Mr Roy, learned advocate for appellant-claimant submits that the minor claimant has already attained majority.

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

With the aforesaid observation, the appeal stands disposed of. The impugned judgment and award stands modified to the above extent. No order is to cost.

All connected applications if any, stands disposed of.

Interim order if any stands vacated.

Let a copy of this order along with lower court records be forwarded to the learned tribunal for information.

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

(Bivas Pattanayak, J.)