

13.10.2023
Ct. 654
D/L 165
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 468 of 2021

With

CAN 2 of 2017 (Old No. CAN 1284 of 2017)
CAN 3 of 2017 (Old No. 8704 of 2017)

Sanjida Khatun minor represented by her father
Mirza Golam Aspia

-Vs-

The National Insurance Company Limited & Anr.

Mr. Amit Ranjan Roy,
Mr. Md. Zakir Hossain

... for the appellant-claimant

Mr. Rajesh Singh

... for the respondent No. 1–insurance company

This appeal is preferred against the judgment and award dated 29th September, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, Special Court, Burdwan in MAC Case No. 13 of 2009 (361 of 2009) granting compensation of Rs. 1,40,000/- together with interest in favour of the minor victim under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 2nd August, 2009 at about 8.30 hours while the victim was standing on the left side of Burdwan-Bankura Road at Nischintapur bus stand for going to her relative's house with her father, at that time the offending vehicle

bearing registration No. WB-41/1385 (Tata 807 Truck) proceeding from Burdwan towards Bankura in a rash and negligent manner dashed the victim, as a result of which the victim sustained severe injuries and was admitted to Burdwan Medical College & Hospital and thereafter she was admitted to Royd Nursing Home, Kolkata and Saviour Clinic, Kolkata. Due to injuries received in the said accident, the minor victim sustained disablement. On account of injuries sustained and subsequent disablement, the minor victim through her father filed application for compensation of Rs. 3,50,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimant in order to establish her case examined two witnesses and produced documents, which have been marked as **Exhibits 1 to 8** respectively.

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

By order dated 5th December, 2022, service of notice of appeal upon the respondent no. 2-owner of the offending vehicle has been dispensed with since he did not contest the claim application.

Upon considering the materials on record and the evidence adduced on behalf of the claimant, the learned Tribunal granted compensation of Rs. 1,40,000/-

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 of the learned Tribunal, the claimant has preferred the present appeal.

Mr. Amit Ranjan Roy, learned advocate for the appellant-claimant submits that the learned Tribunal erred in determining the annual income of the minor victim at Rs. 15,000/- per annum whereas it ought to have considered the annual income of the minor victim at Rs. 30,000/- per annum. He further submits that the minor claimant is also entitled to an amount equivalent to 40% of the annual income towards future prospect. Moreover since the minor victim has lost five fingers of the left foot, certain amount should also be granted towards loss of marriage prospect. 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-claimant, Mr. Rajesh Singh, learned advocate for the respondent no. 1-insurance company submits that the learned Tribunal after considering the facts and circumstances of the case has allowed non-pecuniary damages of Rs. 20,000/- and further the minor victim has been continuing all her activities including studies and the disablement certificate indicates that she can travel without any assistance and, therefore, further

escalation on the head of non-pecuniary damages is not required in the facts and circumstances of the case.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the annual income of the minor victim; *secondly*, minor victim is entitled to an amount equivalent to 40% of the annual income towards future prospect and *lastly*, whether the minor victim is entitled to any amount towards loss of marriage prospect.

With regard to the first issue relating to determination of annual income, it is found that the learned Tribunal has determined the annual income of the minor victim at Rs. 15,000/- per annum. However, bearing in mind the decision of the Hon'ble Supreme Court passed in ***Kishan Gopal versus Lala*** reported in ***(2014) 1 SCC 244***, the annual income of the victim is considered at Rs. 30,000/- per annum.

With regard to future prospect is concerned, admittedly the victim at the time of accident was a minor aged 10 years. Following the observations of the Hon'ble Supreme Court made in ***National Insurance Company Limited versus Pranay Sethi and others*** reported in ***2017 ACJ 2700***, the minor claimant is entitled to an amount equivalent to 40% of the annual income towards future prospect.

Coming to the last issue relating to loss of marriage prospect, admittedly due to injuries sustained in the said accident, the victim lost five fingers of her left foot. Bearing in mind the aforesaid fact, an amount of Rs. 20,000/- is granted towards loss of marriage prospect.

The other factors have not been challenged in this appeal.

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

Calculation of Compensation

Yearly income	Rs.30,000/-
Add: 40% of the annual income towards future prospect	Rs.12,000/-
Total income	Rs.42,000/-
Loss of earnings: 40% of the total income	Rs.16,800/-
Multiplier 15 (Rs.16,800/- x 15)	Rs.2,52,000/-
Add: Pain and suffering	Rs.20,000/-
Add: Medical expenses	Rs.30,000/-
Add: loss of marriage prospect	Rs.20,000/-
Total compensation	Rs.3,22,000/-

It is informed that the appellant-claimant has already received an amount of Rs. 1,40,000/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimant is entitled to balance amount of compensation of Rs. 1,82,000/- together with interest @ 6% per annum from the date of filing of the claim application (07.11.2009) till payment.

Respondent no. 1-Insurance Company is directed to deposit the balance amount of compensation together

with interest as above before the learned Registrar General, High Court, Calcutta by way of a cheque within a period of six weeks from date.

Mr. Amit Ranjan Roy, learned advocate for the appellant-claimant submits that the minor claimant has attained her majority and cheque be issued in her favour. In view of such submissions, upon deposit of the balance amount of compensation and the interest as indicated hereinabove, learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of the appellant-claimant by issuing the cheque in the name of Sanjida Khatun (victim), upon satisfaction of her identity.

With the aforesaid observations, the appeal stands disposed of. The impugned judgement and award of the learned Tribunal is 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.**)