IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

14.09.2023
SL No.4
Court No. 551
Ali

FMAT 357 of 2013

Sankar Roy Chowdhary
Vs.
The New India Assurance Co. Ltd. & Anr.

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

Mr. Rajdeep Bhattacharya
.....for the respondent- insurance Co.

The instant appeal has been preferred against the judgment and award dated 31st August, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Nadia in MAC Case No. 458 of 2006.

The brief fact of the case is that the present appellant being the claimants file one application before the learned tribunal under Section 166 of the M.V. Act for getting compensation on the ground that he 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.

The brief fact of the case is that on 11.10.2006 the present appellant was a minor aged about 12 years at the time the offending vehicle dashed the minor as such he sustained severe bodily injuries and his one leg was amputed from thai. The father of the minor filed the claim case before the learned tribunal. The learned tribunal after hearing both the parties and also hearing the insurance company has awarded a sum of Rs.2,94,000/- in favour of the claimant.

Being aggrieved by and dissatisfied with the said impugned award of compensation, the present appeal was preferred.

Learned advocate for the appellant submits that the observation of the learned tribunal regarding the income of the present petitioner is erroneous. The learned tribunal has considered the income of the child to be Rs.15,000/- per annum and the compensation was awarded. The observation of the learned tribunal is erroneous by virtue of the judgment of Hon'ble Supreme Court passed in ***Kajal-Versus-Jagdish Chand & Ors.*** He further argued that the child has lost his leg and he suffered 80% permanent disability in this case. The claimant is entitled to get more compensation.

Learned advocate for the insurance company submits that the judgment of one Co-ordinate Bench passed in ***Sk. Tupai Versus The National Insurance Co. Ltd. & Anr.*** Wherein the issue was decided by a Co-ordinate Bench wherein the income of the deceased minor child was assessed to be Rs. 30,000/- per year.

In considering the ratio of the judgment passed by the different authority and the view adopted by this court in several occasions specially in ***Sk. Tupai*** as well as ***Astabuddin Gazi @ Aftaruddin @ Aptabuddin @ Aarfatab & Anr.*** It appears that the issue has already been settled. So, in this case, the ratio adopted by the Co-ordinate Bench of this court in earlier occasion has to be followed.

Considering the aspects, I think it necessary that the judgment passed by the learned tribunal need be modified and recasted as follows:-

The yearly income Rs. 30,000/-. The applicable multiplier of this case is 15. So after adopting the multiplier the award comes to Rs.4,50,000/-. The claimant is entitled to get the future prospects of 40% of establish income (according to direction of Hon'ble Apex Court passed in ***Pranay Sethi***) so after adding 40%, it comes to Rs. 6,30,000/-. 80% is the permanent disability, so the 80% of the said award comes to Rs.5,04,000/-. The learned tribunal has already awarded Rs.8,000/- for the cost of medicine and Rs. 1,06,000/- towards the non pecuniary heads. So after adding all the heads the award comes to Rs.6,18,000/-. The claimant has already received the awarded amount of Rs.2,94,000/- so the balance award comes to Rs.3,24,000/-.

The insurance company is directed to pay the compensation amount as mentioned above alongwith interest @ 6% per annum and also to pay the interest amount upon the already received amount of Rs. 2,94,000/- from the date of filing of the claim application till its actual realization through the office of the learned tribunal within eight weeks from the date of passing of this order. On such deposit the claimant is at liberty to receive the same according to the prevalent Rules.

The instant FMAT 357 of 2013 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.)