

28.07.2023
SL No.3
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

FMAT (MV) 224 of 2022

Sukdeb Maiti

Vs.

New India Assurance Company Ltd. & Anr.

Mr. Pingal Bhattacharyya,
Mr. Poonam Keswari,
Mr. Rajdeep Sinha
..... for the appellant-claimant.

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

The instant appeal is preferred against the judgment dated 23rd Day of March, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Tamluk in MAC Case No.27/539 of 2015.

The claimant is the appellant herein.

The brief facts of the case is that the claimant sustained a grievous injury on his person in a road traffic accident on 14.07.2015 he became permanent disable thus he prayed for just compensation before the learned tribunal vide an application under Section 166 of the M.V. Act. The insurance company contested the matter and after hearing both the parties. Learned tribunal has awarded a sum of Rs. 4,56,074/- alongwith interest @ 6% per annum from the date of filing of the claim application. The present claimant preferred this appeal for enhancement of the award. Only some

innocuous prayer was made before this appellate court. It is the observation of the learned tribunal that the future prospects cannot be awarded in favour of the claimant as the injury sustained by the claimant is not so fatal.

Learned advocate for the appellant submitted before this court that the Board of Doctor has issued a disability certificate in favour of the claimant and one of the doctor deposed before the learned tribunal as PW-4 the evidence of PW-4 is distinct to the disability of the claimant to be 45%. The claimant is a mason by occupation so his disability of 45% must have diminished his working ability so he submitted that the learned tribunal has committed error not awarding the compensation to the claimant towards the future prospect. Learned advocate for the insurance company submitted before this court that from the evidence of Doctor it would be revealed that the claimant has not appeared before the Board after five years as instructed. However the injury as observed by the learned tribunal was not so fatal thus the impugned award passed by the learned tribunal on that score need not be altered.

Heard the learned advocate perused the materials on record. In this case the present appellant is the mason by profession the injury in the heap would not allow him to take steps without

help of a stick/staff. Consequently it appears to me that the functional capability of the present appellant must have suffered. Thus, I find by virtue of the judgment of Hon'ble Apex Court passed in ***Pranay Sethi*** the present appellant is entitled to get some relief towards future prospect.

Learned advocate for the appellant also submitted before this court that the learned tribunal has considered the income of the claimant to be Rs. 4,000/- which is erroneous. The income of the claimant was stated to be Rs. 9,000/- per month in the claim application. He is a mason so his income should not be fixed Rs.4,000/- per month as unskilled labour.

Learned advocate for the insurance company raised an objection and submitted before this court that the pleading stated regarding the income of the claimant which was not specifically proved by producing documentary evidences. It has been submitted by the learned advocate for the insurance company that the pleading of the claimant also stated regarding his work under the contractor but no such document was produced thus the learned tribunal has correctly considered the income of the deceased to be notionally Rs. 4,000/-.

Heard the learned advocate perused the materials on record. It is true that there is no convincing document regarding the proof of the

income of the claimant. This court hearing the claim appeals adopted a view regularly that when there is no documentary evidence regarding the income of a person filed an application under Section 166 of the M.V. Act, the income should be calculated Rs. 3,000/- when accident happened upto the years 2010 and when it is from year 2011-2014 the income should be Rs. 4,000/- and from the year 2015 on words the income should be assessed Rs.5,000/- per month. In this case, the accident happened in the year 14th of July 2015. Thus in considering the analogy and the practice adopted by this court in these cases, the income of the claimant appellant should be considered to be Rs. 5,000/- per month.

I do not have any other issue to discuss. Accordingly, the award passed by the learned tribunal is hereby modified. Thus, the just and proper compensation of this case is hereby recasted as follows:-

Calculation of compensation

Monthly Income be assessed as.....	Rs.5,000/-
Add 40% Future Prospect.....	<u>Rs.2,000/-</u>
	Rs. 7,000/-
3. Annual Income be assessed as	
...(Rs.7,000/- X 12).....	Rs.84,000/-
4. Multiplier 17	
(Rs.84,000/-X 17).....	Rs.14,28,000/-
6. Less: Award already received.....	<u>Rs.4,56,074/-</u>
Balance compensation.....	Rs. 9,71,926/-

The insurance company is directed to pay the balance amount alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from August 21, 2015. The insurance company is further directed to deposit the same before the office of the learned tribunal within eight weeks from the date of passing of this order. On such deposit the balance amount shall be disburse to the claimant appellant, subject to the ascertainment of payment of requisite Court Fees.

The instant FMAT (MV) 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.)

