16.02.2023
Ct. no.654
Sl. Nos.16&17
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 1011 of 2022
with
C.O.T. 36 of 2019

National Insurance Co. Ltd.

Versus

Basudev Patwari & anr.

Mr. M.P. Chakraborty
Ms. Swarnali Biswas
Ms. Ratnadeepa Karmakar
... for the appellant-Insurance Co.

Mr. L. M. Ghosh
... for the respondent-claimant

This appeal is preferred against the judgment and award dated 6th December, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, XIth Bench, City Civil Court, Calcutta in M.A.C. Case No.306 of 2010 granting compensation of Rs.3,36,192/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 15th March, 2010 at about 17.20 hours while the victim as a pedestrian was moving near Esplanade Post Office at that time the offending vehicle bearing registration No.WB-23B/8556 in a high speed and in rash and negligent manner dashed the victim, as a result of which the victim sustained multiple fracture injuries on his person specially on pelvis and left thigh. On account of such injuries, subsequent medical treatments and consequent disablement, the victim (injured) filed application for compensation of Rs.4,00,000/- plus medical expenses together with interest under Section 166 of the Motor Vehicles Act.

The claimant-injured in order to establish his case, examined four witness and produced documents which have been marked as **Exhibits 1 to 12** respectively.

The appellant-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 in favour of claimant to the tune of Rs.3,36,192/- under Section 166 of the Motor Vehicles Act.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the Insurance company has preferred the present appeal.

The respondent no.1-claimant also filed Cross Objection being C.O.T. 36 of 2019 challenging the impugned judgment and award.

Ms Swarnali Biswas, learned Advocate for the appellant-insurance company submits that since on the relevant date of accident the driver of the offending vehicle was not holding effective and valid licence to drive such vehicle, hence the Insurance Company cannot be saddled with the liability to pay compensation amount. She further submits that the learned Tribunal erred in determining the income of the victim and failed to appreciate that no such documentary evidence was placed on record in respect of business of the victim. More so, she submits that since at the time of accident the victim was 57 years of age hence a multiplier of '9' should be adopted instead of '11' as adopted by the learned Tribunal. In view of her aforesaid submission, she prays for modification of the award.

In reply to the aforesaid contentions raised on behalf of the appellant-insurance Company, Mr. L.M. Ghosh, learned Advocate for the respondent no.1-claimant submits that neither there is any pleading nor any evidence has been led by the Insurance Company in support to establish that the driver of the offending vehicle on the relevant date of accident was not holding effective and valid licence to drive such vehicle. He further submits that the income as determined by the learned Tribunal should be affirmed since the victim was running his own business. Furthermore, he submits that the victim is also entitled to an amount equalling to 10% of annual income of the victim towards 'future prospect'.

Moreover, it is submitted that the learned Tribunal erred in deducting Rs.1,00,000/- from the medical expenses incurred on the ground that the victim received medi-claim of such amount whereas it ought to have allowed the entire medical expenses of Rs.2,55,192/- and in support of his contention he relied on the decision of this Court passed in the case of ***New India Assurance Company Ltd. versus Bimal Kumar Shah & Another*** reported in ***2018(4) T.A.C. 226(Cal).*** He further submits that since the victim sustained severe injuries in the accident hence an amount of Rs.1,00,000/- should be allowed towards non-pecuniary damages. In view of his above submission he prays enhancement of the compensation amount.

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

Heard learned Advocates for the respective parties, it is found that the Insurance Company has raised three-fold ground, *firstly,* that since the driver of the offending vehicle on the relevant date of accident was not holding effective and valid licence to drive such vehicle, hence the Insurance Company cannot be saddled with liability to pay compensation; *secondly,* the learned Tribunal erred in determining the income of the victim; and *lastly,* the multiplier to be adopted should be '9'.

With regard to first issue relating to the driver of the offending vehicle not having valid and effective driving licence to drive such vehicle on the relevant date of accident, it is found that though the insurance company has taken such specific plea in its written statement that the driver was not licenced to drive the said offending vehicle on the relevant date of accident yet no evidence has been led from the side of the Insurance Company to establish such fact that the driver of the offending vehicle was not holding valid and effective licence to drive such offending vehicle on the relevant date of accident. In view of the above discussion, in the absence of cogent evidence, the argument advanced in this regard on behalf of the Insurance Company falls short of merit.

With regard to second issue relating to income of Rs.4,000/- determined by the learned Tribunal, it is found that the claimant in his claim application has asserted that the victim had monthly income of Rs.10,000/- from business. PW1 (victim) also deposed that he had income of Rs.10,000/- per month from business prior to accident. However, it is relevant to note that the victim (PW1) in his cross-examination has admitted that he has no document to show that he used to run business and earn Rs.10,000/- per month. Thus the income asserted in the claim application and oral evidence appears to be exhorbitant.

In the case of ***Ramchandrappa versus Manager, Royal Sundram Allaince Company Limited*** reported in ***(2011) 13 SCC 236*** the Hon'ble Supreme Court observed as follows.

> *" 14.We hasten to add that in all cases and in all circumstances, the tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to the ground realities, the tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time............"*

Bearing in mind the observation of the Hon'ble Supreme Court and also since the victim was a graduate and also taking into account the price-index prevailing at the relevant point of time, I am of the view that an income of Rs.3,300/- per month should be apposite in the facts and circumstances of the present case.

So far as the issue of multiplier is concerned, learned Tribunal has adopted multiplier of '11' in computing the compensation amount. Admittedly, the victim at the time of accident was 57 years of age. Following the observation of the Hon'ble Supreme Court in the case of ***Sarla Verma and Others versus Delhi***

Transport Corporation Ltd. & Another reported in ***2009 ACJ 1298,*** the multiplier should be '9' instead of '11'.

The respondent-claimant in his cross-objection has raised the following issues, *firstly,* the victim is entitled the entire medical expenses irrespective of the fact that he received Mediclaim of Rs.1,00,000/-; *secondly,* the victim is entitled to non-pecuniary damages and *lastly,* the victim is entitled to an amount equalling to 10% of his annual income towards 'future prospect'.

With regard to the first issue regarding medical expenses it is found that the learned Tribunal deducted an amount of Rs.1,00,000/- which the claimant received through Mediclaim though the total medical expenses incurred by the victim is of Rs.2,55,191.90.

This Court in *Bimal Kumar Shah (supra)* observed as follows :

> *"27………Should such an Insurance Company despite receiving premiums from the insured to indemnify him be allowed to achieve gains merely because the victim of the accident has received some money out of faithful discharge of contractual liability by another Insurance Company? The answers to the aforesaid questions cannot be in favour of the Insurance Company which is under a statutory liability to pay. One should not forget that what the victim gets from his Mediclaim policy is the return for making payment of premiums. It is the hard earned money that he puts in, in insurance business as premium, that is returned to him upon happening of*

an accident. The money received, thus, does not come free. In most cases, the accident and its aftermath are not only heart breaking for the victim but may also result in severe physical disability to him. To lead a paralysed life, is sometimes more painful than death itself. Such an accident victim may ask "why me"? The return that he receives from his insurer on the claim arising out of Mediclaim policy is consolation money, in the circumstances. To consider such return as a benefit received from other sources while determining compensation, to my mind, would be an approach of a narrow-mind, not intended in the best interests of the victim who might be left high and dry, battling for the rest of his life to survive only on the compensation money. I hold that any money received by an accident victim as return for money invested by him ought not to be comprehended as a benefit received and, therefore, question of the victim in this case being doubly benefitted does not and cannot arise."

Bearing in mind the aforesaid observations, the claimant-injured is entitled to receive the entire medical expenses incurred by him towards his treatment amounting to Rs.2,55,192/- (approx).

With regard to non-pecuniary damages, it is found that the learned Tribunal has granted Rs.5,000/- towards pain and sufferings. Be that as it may, it is found at page 5 of the impugned judgment that the learned Tribunal has noted upon scrutiny of various documents **(Exhibits 5 to 12),** that the victim received several fracture injuries and the disability is permanent in nature. Considering the above injuries in my estimation an amount of Rs.1,00,000/- towards non-pecuniary damages should be appropriate in the facts and circumstances of the case.

So far as the amount towards 'future prospect' is concerned, since at the time of accident the victim was 57 years of age and was self-employed, following observation of Hon'ble Apex Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 SCJ 2700,*** the victim is entitled to an amount of equalling to 10% of his annual income towards 'future prospect'.

Accordingly, the compensation is assessed as follows:

Calculation of Compensation

Monthly income	Rs.3,300/-
Annual Income be assessed as (Rs.3300/- X 12)	Rs.39,600/-
Add: Future prospect @ 10% of annual income of victim........	Rs.3,960/-
	Rs.43,560/-
Multiplier '9' (Rs.43,560/- X 9)	Rs.3,92,040/-
40% loss of income due to disablement	Rs.1,56,816/-
Add : Medical Expenses	Rs.2,55,192/-
Add : Non-pecuniary expenses	Rs.1,00,000/-
Total Compensation	**Rs.5,12,008/-**

Therefore, the claimant is entitled to compensation of Rs. 5,12,008/- together with interest at the rate of 6% per annum from the date of filing of the claim application (1.6.2010) till the final deposit is made by the Insurance

Company. It is found that the Insurance Company has deposited a sum of Rs.25,000/- towards statutory deposit vide OD Challan No.285 dated 08.05.2017 and an amount of Rs.5,08,266/- vide OD Challan No.1329 dated 26.07.2022 in terms of order of this Court dated 5th July, 2022, with the Registry of this Court. Both the aforesaid deposits along with interest be adjusted with the entire compensation amount.

The learned tribunal granted compensation of Rs.3,36,192/-. Accordingly, the appellant-Insurance Company is directed to deposit the balance amount of compensation of Rs.1,75,816/- together with interest @ 6% per annum from the date of filing of the claim application till deposit, by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

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

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

In the ordering portion of the judgment of the learned tribunal the name of the claimant has been wrongly mentioned as *“Smt Purnima Karmakar”* in the second paragraph which should be read as *“Basudev Patwari”* .

With the above observations, the instant appeal as well as the Cross Objection stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

No order as to costs.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

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

(Bivas Pattanayak, J.)