

04.10.2023
Ct. no.654
Sl.Nos.188-189
KB

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**FMA 716 of 2023
with
IA No. CAN 3 of 2019
(Old No. CAN 8819 of 2019)
with
IA No. CAN 4 of 2019
(Old No. CAN 8821 of 2019)
HDFC Ergo General Insurance Co. Ltd.
-Vs-
Putul Begam & Anr.
with
COT 88 of 2019
Putul Begam
-Vs-
HDFC Ergo General Insurance Co. Ltd. & Anr.**

Mr. Rajesh Singh
... For the appellant-insurance company.

Mr. Ashique Mondal
... For the respondent no. 1-claimant.

This appeal is preferred against the judgment and award dated 16th September, 2017 passed by learned Judge, Bench-III, City Civil Court, Calcutta in M.A.C. Case No. 173 of 2013 granting compensation of Rs.22,04,500/- together with interest in favour of the injured-claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 28th January, 2013 at about 14.30 hours the victim was proceeding as a pillion rider on a motor cycle and when they reached near Sahagari Kalitala at that time the offending vehicle bearing registration no.WB-15B/7812 which was proceeding on Udaynarayanpur-Amta Road in a rash and

negligent manner dashed the said motor cycle as a result of which the victim as well as the motor cyclist sustained serious multiple injuries on their persons and they were shifted to B. B. Dhar Hospital. Thereafter, the victim was taken to Sanjiban Hospital, Fuleswar where he was admitted from 28.01.2013 to 21.02.2013 and 28.02.2013 to 16.03.2013. Due to injuries sustained in the said accident, the victim became 100% blind and was disabled totally. On account of the injury sustained and subsequent disablement of the victim, an application for was filed by the victim through his wife claiming compensation of Rs.12,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimant-victim in order to establish his case examined his wife and three other witnesses and produced documents which have been marked as **Exhibits 1 to 14** series respectively.

The appellant-insurance company also adduced evidence of one witness and produced documents which have been marked as **Exhibits A to C** respectively.

The owner of the offending vehicle did not contest the claim application and the case proceeded *ex parte* against him. Steps were taken in this appeal for causing service upon the owner of the offending vehicle through the department as well as personal service.

The affidavit of service filed by the appellant-insurance company shows that the registered letter sent

to the owner of the offending vehicle to the address given in the insurance policy has returned with endorsement "*left*".

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.22,04,500/- together with interest in favour of the claimant-victim 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.

Challenging the impugned judgment and award of the learned Tribunal, the claimant has also filed Cross Objection being COT 88 of 2019.

Both the appeal as well as Cross Objection are taken up for consideration and disposal.

Mr. Rajesh Singh, learned advocate for appellant-insurance company at the outset submits that the offending vehicle did not have valid permit on the relevant date of accident and as such the insurance company cannot be saddled with the liability to pay compensation. Thus, the order of learned Tribunal directing the insurance company to satisfy the award and then recover the same from the owner of the offending vehicle is bad in law and should be set aside in the interest of justice.

He further submits that the learned Tribunal erred in determining the income of the victim at

Rs.6,000/- per month and failed to consider the evidence of the employer who categorically deposed that he used to pay Rs.200/- per day to the victim as wages. He indicates that no person can work for thirty days in a month and, therefore, considering the wages at the rate of Rs.200/- per day and taking into account thirty days of work for determining monthly income is beyond prudence and is short of reasonability. In light of his aforesaid submission, he prays for setting aside of the impugned judgment and award and/or modification of the order passed by the learned Tribunal.

Mr. Ashique Mondal, learned advocate for respondent no.1-claimant submits that considering the oral evidence of the employer and bearing in mind that the victim was a carpenter by profession, the learned Tribunal has assessed the income of the victim at Rs.6,000/- per month which is reasonable and appropriate in the facts and circumstances of the case and should not be interfered with.

He further submits that the claimant is entitled to future prospect of 40% of his annual income. Moreover, he submits that due to the injuries sustained in the accident the victim has become totally blind and thus he requires future treatment in respect of which the claimant is entitled to future medical expenses. Further learned Tribunal has grant a meagre sum of Rs.50,000/- towards pain and sufferings which in the circumstances of the

case needs to be increased. Furthermore, he submits that since the victim is totally blind and the disability certificate shows that he cannot travel without an escort, the claimant is entitled to have certain amount of compensation towards attendant charges which is not considered by the learned Tribunal. To buttress his contention, he relies on the following decisions of Hon'ble Supreme Court:

- (i) ***Jagdish versus Mohan and Others*** reported in ***(2018) 4 SCC 571***.
- (ii) ***Kajal versus Jagdish Chand and Others*** reported in ***(2020) 4 SCC 413***.
- (iii) ***Abhimanyu Pratap Singh versus Namita Sekhon and Another*** reported in ***(2022) 8 SCC 489***.
- (iv) ***Sidram versus Divisional Manger, United India Insurance Company Limited and Another*** reported in ***(2023) 3 SCC 439***.

In light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contention raised by the respondent no.-1-claimant in respect of entitlement of attendant charges Mr. Singh, learned advocate for appellant-insurance company submits that the decisions of the Hon'ble Supreme Court of which reliance has been placed towards attendant charges are factually distinguishable, so far as the injuries sustained by the

victim in the said cases are concerned *vis-à-vis* the injuries sustained by victim in the present case at hand and, therefore, the ratio of such decisions are not applicable to the facts of the case. He further submits that each case has to be dealt with in its own merits.

Having heard the learned advocate for respective parties, the following issues have fallen for consideration.

Firstly, whether the learned Tribunal was justified in passing an order for pay and recovery on the ground that the offending vehicle did not have valid route permit; *secondly*, whether the learned Tribunal erred in determining the income of the victim; *thirdly*, whether the claimant is entitled to future prospect of 40% of his annual income; *fourthly*, whether the claimant is entitled to future medical expenses; *fifthly*, whether the claimant is entitled to escalation under the head of pain and sufferings and *lastly*, whether the claimant is entitled to attendant charges.

With regard to the first issue relating to the direction for pay and recovery, it is found that the learned Tribunal after considering Screen print **(Exhibit B)**, Permit particulars **(Exhibit C)** has come to a categorical finding that the offending vehicle did not have valid permit on the date of accident (i.e. 28.01.2013) and passed direction for pay and recovery. Bearing in mind the catena of decisions of Hon'ble Supreme Court where there is violation of terms and conditions of insurance

policy such direction for pay and recovery can be passed and thus such direction does not call for interference.

With regard to the second issue relating to determination of the income, it is found that the learned Tribunal has determined the income of the victim at Rs.6,000/- per month. The claimant-victim in order to establish his income has examined his employer Sk. Sarfaraj Ali as P.W.3 who in his evidence has deposed that he used to pay Rs.200/- per day as wages to the victim who worked as a carpenter under him. Mr. Singh, learned advocate for appellant-insurance company has raised the issue that a person cannot work for thirty days in a month and as such taking into consideration the evidence of P.W.3 the income of the victim at Rs.6,000/- per month is over estimated. I find substance in the submission of Mr. Singh in this regard. It is of general prudence that a worker cannot work continuously for thirty days in a month. In my opinion, at best a working period of twenty five days in a month would be appropriate in the facts and circumstances of the case and therefore, the income of the victim should be considered at Rs.5,000/- per month.

With regard to the third issue relating to entitlement of future prospect, it is found that the victim at the time of accident was admittedly less than thirty years of age and was self-employed. Thus, following the observation of the Hon'ble Supreme Court in **National**

Insurance Company Limited versus Pranay Sethi and Others reported in ***2017 ACJ 2700*** the claimant is entitled to an amount equivalent to 40% of his annual income towards future prospect.

So far as future medical expenses are concerned it is found that there is no such medical evidence that the victim requires any further treatment in the future. In the aforesaid backdrop, I am not inclined to grant any compensation towards future medical expenses.

With regard to the compensation under the head of pain and sufferings it is found that the learned Tribunal has granted an amount of Rs.50,000/-. Admittedly, the petitioner for treatment of his injuries had to be hospitalised for a considerable period. It is not in dispute that due to the injuries sustained the petitioner had become blind. Bearing in mind the aforesaid aspect, the compensation under the pain and sufferings is to be increased under such head. Thus, the claimant is entitled to an amount of Rs.1,50,000/- towards pain and sufferings.

With regard to attendant charges, Mr. Mondal, learned advocate for respondent no.1-claimant has strenuously argued relying on *Jagdish (supra)*, *Kajal (supra)*, *Abhimanyu Pratap Singh (supra)* and *Sidram (supra)* that since the victim after the accident has become 100% blind and cannot move without an escort,

he is entitled to attendant charges. The facts of the cited decisions are dealt with for the sake of precise decision.

In *Jagdish (supra)*, both the hands of the victim became dysfunctional and he was unable to eat food or go to toilet. The facts involved in the said decision is distinguishable and does not apply to the present case.

In *Kajal (supra)*, the victim girl suffered from serious injuries resulting in damage to her brain. Due to the reason of head injury, the IQ of the victim became very low and she suffered from hysteria and severe urinary incontinence. Therefore, the facts involved in the said decision is also distinguishable.

In *Abhimanyu Pratap Singh (supra)*, the claimant-victim was a UKG student who suffered injuries in the accident resulting in complete paralysis of both lower limbs and partial movement of hands. He lost all sense of nature calls and needed all time attendants for daily routine work. Thus, the facts involved in the said decision is also different from the case at hand.

In *Sidram (supra)*, the victim suffered from “*Paraplegia*” due to the accident which is distinguishable from the case at hand.

Be that as it may, due to the injuries sustained in the said accident, the victim became blind. The disablement certificate shows that he requires escort for his movement. Bearing in mind the aforesaid, a lump

sum amount of Rs.50,000/- is allowed towards attendant charges.

The calculation of compensation is made hereunder:

Calculation of Compensation

Monthly income	Rs.5,000/-
Yearly income (Rs.5,000/- x 12)	Rs.60,000/-
Add: 40% of the yearly income towards future prospect	Rs.24,000 /-
	Rs.84,000/-
Loss of earnings: 100% loss of income	Rs.84,000/-
Multiplier 17 (Rs.84,000/- x 17)	Rs.14,28,000/-
Add: Medical Expenses	Rs.3,18,500/-
Add: Pain & Sufferings	Rs.1,50,000/-
Add: Attendant Charges	Rs.50,000/-
Total	Rs.19,46,500/-

Thus, the claimant-victim is entitled to compensation of Rs.19,46,500/- together with interest at the rate of 6% per annum from the date of filing of the claim application till payment.

It is found that the insurance company has deposited an amount of Rs.28,26,355/- vide OD Challan No.407 dated 04.06.2018 and also deposited the statutory amount of Rs.25,000/ vide OD Challan No.3000 dated 25th January, 2018 with the registry of this Court.

The respondent no.1-claimant is directed to deposit *ad valorem* court fees on the amount of compensation assessed, if not already paid.

The appellant Putul Begam, wife of the victim filed application praying for order granting compensation in

the name of her husband, Sk Mashidul @ Sk Masidul being CAN 4 of 2019 (Old No. CAN 8821 of 2019).

In view of the prayer in the aforesaid application, learned Registrar General, High Court, Calcutta is directed to release Rs.19,46,500/- together with interest in favour of the injured-claimant Sk Mashidul @ Sk Masidul upon satisfaction of his identity and payment of *ad valorem* court fees, if not already paid.

Upon satisfaction of the entire compensation, if any amount is left over, the same shall be refunded to the insurance company.

With the aforesaid observations, the appeal as well as the cross objection stand disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

CAN 4 of 2019 (Old No. CAN 8821 of 2019) stands disposed of.

All other connected applications, if any, are also disposed of.

Interim order, if any, stands vacated.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)