

06.10. 2023
item No.4
n.b.
ct. no. 551

FMAT 1180 of 2008

with

IA no. CAN 1 of 2023

Buddhadeb Das

Vs.

The New India Assurance Co. Ltd. & Anr.

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

Mr. Sanjay Paul,
Ms. Jaita Ghosh,
..... for the respondent.

In Re. CAN 1 of 2023

Heard the learned advocates. The delay in preferring the instant appeal is hereby condoned.

The respondent no.1/Insurance Company has already made appearance and respondent no.2 i.e. the owner of the vehicle did not contest the matter before the learned Tribunal. So, his appearance is not necessary for the determination of the appeal and the service of notice of appeal upon the respondent no.2 is dispensed with.

A very single point of law is involved in this appeal. Thus, the appeal is taken up for hearing.

Accordingly, CAN 1 of 2023 is disposed of.

In Re. FMAT 1180 of 2008

The instant appeal has been preferred against the judgment and award dated March 27, 2008 passed by the learned Tribunal and Additional District Judge, 2nd Court Nadia, in M.A. C. case No. 641 of 2003.

The brief fact of the case is that the present appellant being claimant preferred an application before the learned Tribunal under Section 163A of the Motor Vehicles Act for getting compensation from the Insurance Company on the ground that he suffered a severe injury due to road traffic accident happened for rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company. It is the case of the claimant that he sustained 55% permanent disablement by such injury.

The claim case was contested by the Insurance Company before the learned Tribunal.

After hearing the parties the learned Tribunal has awarded a sum of Rs.2,18,200/- in favour of the claimants.

Being aggrieved by and dissatisfied with the impugned award, the present appeal has been preferred. The instant appeal has a single ground that the income of the injured was erroneously considered to Rs.1,500/- per month only.

Learned advocate for the appellant submits that the petitioner was a Manager of the brick field and used to earn Rs.3,000/- per month. The plea of the appellant was not considered by the learned Tribunal. Thus, such meager amount of the monthly income was calculated. He submitted for just and proper compensation of the case,

the monthly income of the claimant should be considered to Rs.3,000/- .

Learned advocate appearing on behalf of the Insurance Company submits that that claimant has not filed any document regarding his occupation before the learned Tribunal. Moreover, the income of the claimant was not support by any oral evidence. Thus, the learned Tribunal has committed no error.

Heard the learned advocate and perused the materials on record. In considering the entire facts and circumstances of the case, it appears to me that occupation of the claimant was stated to be a Manager of brickfield. Though, there is nothing before the learned Tribunal to believe that the occupation of the claimant. The manager of a brick field would have no document to show his income. The evidence of P.W. 1 was not contradicted. Thus, in considering the oral evidences and in considering the date of accident i.e. 9.11.2002, I think it would be fit to fix the monthly income of the claimant to be Rs.2,500/- per month.

The observation of the learned Tribunal in respect of other factors for determining just and proper compensation appears to be justified. Hence, the observation of the learned Tribunal and the award passed by the learned Tribunal is hereby modified.

Considering the entire aspect the award passed by the learned Tribunal need be modified and hereby recusted as follows:

1. Monthly income	Rs. 2,500/-
2. Year income (2,500 X12)	Rs. 30,000/-
3. 55% disability	Rs.16,500/-
4. Age 26 (multiplier) (16,500x18)	Rs.2,97,000/-
5. Non pecuniary (already awarded)	<u>Rs.40,000/-</u> Rs.3,37,000/-
6. Tribunal awarded (-)	<u>Rs.2,18,200/-</u> Rs.1,18,800/-

The learned Tribunal awarded Rs.2,18,200 which was received by the appellant. So, rest award comes to Rs. 1,18,800/-.

Insurance Company is directed to pay the above mentioned award amount to the claimant through the office of Learned Tribunal along with 6% interest per annum from the date of filing of the claim application within eight weeks from the date of passing of the order.

On such deposit, the claimants are at liberty to receive the same subject to payment of ascertainment payment of requisite court fees.

Accordingly, FMAT 1180 of 2008 is disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)

