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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

IA No. CAN 1 of 2014 (CAN 3844 of 2014)
in
FMAT 959 of 2013

Bapi Biswas
Vs.
The National Insurance Company Limited & Ors.

Mr. Amit Ranjan Roy
… For the appellant/claimant

Mr. Sanjay Paul
… For the respondent no.1/Insurance Co.

In re: IA No. CAN 1 of 2014 (CAN 3844 of 2014)

This application has been filed for condonation of delay in filing the Motor Accident Claim Appeal after 449 days.

Heard both sides.

Considering the reasons assigned in the application itself and also keeping an eye to the beneficial legislation, the prayer for condonation of delay is allowed and the delay is condoned.

The application stands disposed of.

In re: FMAT 959 of 2013

The appeal is admitted.

Service of notice to the respondent no.1/Insurance Company is dispensed with as the Insurance Company is represented by the learned advocate.

Copy of the informal paper book is served upon the respondents. The owner did not contest the case.

The appeal is taken up for hearing.

This appeal is directed against the judgment and award dated 13th February, 2012 passed by the learned Motor Accident Claims Tribunal, Additional District Judge, 4th Court, Nadia, in connection with MAC Case No.97 of 2005.

The case arose out of an application under Section 163A of the Motor Vehicles Act, 1988 by the claimant/injured himself on account of an accident which took place on 2nd January, 2001 at about 2.30 a.m. while the victim was sleeping at his own tyre repairing shop along with his two staff. One Truck, bearing registration no.WB-03-A/3995, driving in rash and negligent manner, dashed the said tyre repairing shop. thereby the claimant sustained grievous multiple injuries all over his person. He was taken to Nadia District Hospital and admitted therein from 2nd January, 2001 to 17th February, 2001. The Medical Board of the hospital issued Disability Certificate in favour of the claimant/injured. Victim used to earn Rs.3,000/- per month from his tyre repairing shop and prayed for compensation to the tune of Rs.3,40,000/-.

Learned Judge of the Tribunal after considering the evidence of the claimant (PW-1) came to his opinion regarding monthly income of the claimant/injured as

Rs.2,000/- as the claimant miserably failed to provide his income by adducing any documentary evidence in support of his business. On that assessment of monthly income, learned Tribunal returned his findings towards compensation to the tune of Rs.1,03,800/-.

Here, in this case, the appellant/claimant/injured himself examined as PW-1 and one of the members of the Medical Board, i.e., Dr. Tarunjit Dutta Roy, was examined as PW-2 to prove the Disability Certificate.

Being aggrieved by and dissatisfied with the judgment passed by the learned Tribunal, this appeal has been preferred by the appellant/claimant/injured.

Learned advocates appearing on behalf of the parties to this appeal only argued on the point of monthly income and the Disability Certificate issued by the Medical Board.

Mr. Amit Ranjan Roy, learned advocate appearing on behalf of the appellant/claimant has submitted that the learned Judge of the Tribunal assessed the monthly income as Rs.2,000/- per month as the learned Judge found the claim of Rs.3,000/- per month as inflated. It has been further submitted on behalf of the appellant/ claimant that the reason given by the learned Tribunal regarding reduction of percentage of disability cannot be accepted in terms of evidence of the doctor himself (PW-2) who was the member of the Board and an Ortho Surgeon.

On the other hand, Mr. Sanjay Paul, learned advocate appearing on behalf of the respondent no.1/Insuraqnce Company has submitted that monthly income of the appellant/claimant was rightly assessed by the learned Tribunal as the appellant/claimant could not prove his tyre repairing business by any substantive piece of evidence either documentary or oral. With regard to the Disability Certificate, Mr. Paul did not argue much but supported the observation passed by the learned Tribunal.

From the evidence of PW-1, I find that he has filed both the trade licence and income certificate but those were not admitted in evidence as exhibit and in cross-examination, he has specifically stated that "*I was running the said business 3 years prior to the said accident. I have got only one trade licence. I cannot file any trade licence prior to the said accident or after the said accident. I have no papers excepting the commissioner's certificate to show that I used to earn Rs.3000/- per month.*"

In the aforesaid view of the matter as well as keeping an eye to the notional income, I am unable to come to any conclusion that the income of Rs.3,000/- per month by the claimant was inflated.

Considering all the facts and circumstances as well as in terms of evidence on record, I find that it would be justified to assess the income of the appellant/claimant as Rs.3,000/- per month instead of Rs.2,000/- per month.

So far as the Disability Certificate issued by the Medical Board is concerned, I find the reason assigned by the learned Judge of the Tribunal in his judgment is not acceptable on the ground that one of the members of the Medical Board, i.e., Dr. Tarunjit Dutta Roy, who was an Ortho Surgeon in the Nadia District Hospital, testified in this case and it appears from his evidence that the entire Medical Board after examining the patient issued the Handicap Certificate declaring him 50% permanent disabled. He also proved the certificate signed by the other members of the Board. Therefore, in that view of the matter, I am unable to hold that the learned Tribunal was justified in reducing the percentage of disability from 50% to 25%.

Therefore, I determine the compensation as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Less: 50% disability (Rs.36,000/- x 50%)	Rs. 18,000/-
Multiplier by 17 (as per age of the deceased)	x 17
Total	Rs.3,06,000/-
Less – Awarded by ld. Tribunal	Rs.1,03,800/-
ENHANCEMENT	Rs.2,02,200/-

For the reasons, it is seen that the appellant/claimant/injured is entitled to the total compensation to the tune of Rs.3,06,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 28th February, 2005 till the deposit of the amount.

It is reported that the appellant/claimant/injured has already received Rs.1,03,800/- as awarded by the learned Tribunal.

Therefore, the appellant/claimant is entitled to the balance amount of Rs.2,02,200/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 28th February, 2005, till the deposit of the amount.

Accordingly, the respondent no.1/National Insurance Company Limited is directed to deposit the enhanced amount of Rs.2,02,200/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 28th February, 2005, till the deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/claimant/injured is entitled to withdraw the balance award amount with interest.

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMAT 959 of 2013, stands disposed of.

All pending applications, if there be any, stand disposed of.

A copy of this order be forwarded to the learned Tribunal immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)