

17.11.2023
Ct. no.654
Sl. Nos.4&5
sn

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

FMA 408 of 2022

With

CAN 1 of 2020(Old CAN No. 237 of 2020)

Reliance General Insurance Co. Ltd.

-Vs-

Animesh Das & Anr.

With

COT 89 of 2022

Animesh Das

-Vs-

Reliance General Insurance Co. Ltd. & Anr.

Mr. Sanjay Paul
Ms. Jaita Ghosh
... for the appellant-Insurance Company

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay,
Ms. Ruxmini Basu Roy
Mr. Argha Bhattacharya
... for the respondent no. 1-claimant

This appeal is preferred against the judgement and award dated 19th September, 2019 passed by learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Islampur, Uttar Dinajpur in M.A.C. Case No. 54 of 2018 granting compensation of Rs.45,12,432/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 27th October, 2017 at about 11-00 p.m. while the victim was proceeding towards Dalkhola side from Raiganj side by driving his motor cycle along NH-34 and when he reached Raniganj under Police Station Dalkhola, the offending vehicle bearing registration no.WB-57A/0015 (truck) dashed the motor cycle of the victim in a rash and negligent manner, as a result of which the victim fell down on the road and the wheel of the said truck darted over his both legs and the victim sustained multiple injuries on his person especially grievous fracture injuries on his both legs. Immediately, the victim was taken to Dalkhola Primary Health Centre wherefrom he was taken to Neotia Getwel Health Care Centre, Siliguri for his better treatment. Due to serious condition of the victim, he was released from the aforesaid hospital and was admitted to Indra Gandhi Institute of Medical Science, Sheikhpura, Patna on 29th October, 2017. He was treated in the aforesaid hospital up to 11th November, 2017 where his left leg was amputated above knee. The victim was further admitted to the said hospital on 30th November, 2017 and treated till 28th December, 2017 and he had to undergo four operations on his both legs. For the reasons of injury received in the accident, the victim sustained permanent disablement. On account of

such injury in the accident and the subsequent disablement, the claimant-injured filed application for compensation of Rs.58,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimant-injured in order to establish his case examined eight witnesses and produced documents, which have been marked as **Exhibit 1** to **24** respectively.

The appellant-insurance company did not adduce any evidence.

Although, the respondent no.2, owner of the offending vehicle, filed written statement before the learned Tribunal but subsequently did not contest the claim application. In the aforesaid backdrop, service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the claimant, the learned Tribunal granted compensation of Rs.45,12,432/- together with interest under Section 166 of the Motor Vehicles Act. 1988.

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

Challenging the impugned judgment and award of the learned Tribunal, the claimant has also preferred a cross objection being COT 89 of 2022.

Both the appeal as well as the cross objection are taken up together for consideration and disposal.

Mr. Sanjoy Paul, learned advocate for the appellant-insurance company submits that the learned Tribunal erred in granting future prospect of 50% whereas it ought to have allowed future prospect of 25% of the annual income of the victim since the victim was 44 years of age at the time of accident. He in his usual fairness submits that the learned Tribunal ought not to have deducted any amount towards personal and living expenses of the deceased in claim arising out of injury sustained in the accident. In the light of his aforesaid submissions, he prays for modification of the impugned judgment and award.

Mr. Subir Banerjee, learned advocate for the respondent no.1-claimant also submits that the learned Tribunal erred in deducting 1/3rd of the annual income of the victim towards personal and living expenses of the victim which should not have been deducted since the present case arises out of injury sustained by the victim. He further submits that the learned Tribunal also failed to grant compensation under the head of pain and sufferings.

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

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in granting future prospect of 50% of the annual income of the victim. *Secondly*, whether the learned Tribunal erred in deducting 1/3rd of the annual income of the victim towards his personal and living expenses and *lastly*, whether the claimant-injured is entitled to compensation under the head of pain and suffering.

With regard to the first issue relating to grant of future prospect, it is found that the learned Tribunal has granted an amount equivalent to 50% of the annual income of the victim towards future prospect. However, since at the time of accident admittedly the victim was 44 years and 10 days of age and self-employed, bearing in mind the proposition laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in **(2017) 16 SCC 680**, the victim is entitled to future prospect of 25% of his annual income.

With regard to the second issue relating to deduction towards personal and living expenses, it is found that the learned Tribunal has deducted 1/3rd

of the annual income of the victim on such head. Since the claim application arises out of injury sustained by the victim-injured, the deduction towards personal and living expenses of the victim made by the learned Tribunal is not at all sustainable.

Coming to the last issue relating to compensation under the head pain and sufferings, it is found that the learned Tribunal did not grant any amount under the head of pain and suffering. It is not in dispute that for medical treatment of the injuries sustained by the victim he had to be hospitalized and operated on several occasions and his left leg had to be amputated above knee. Such being the position, I am inclined to grant compensation of Rs.1,00,000/- towards pain and sufferings.

Other factors have not been challenged in this appeal.

Bearing in mind the aforesaid factors, calculation of compensation is made hereunder.

Calculation of Compensation

Annual income	Rs.3,27,864/-
Add: 25% of the annual income towards future prospect	Rs.81,966/-
	Rs.4,09,830/-
Loss of earnings calculated at 90% of total income	Rs.3,68,847/-
Multiplier 14 (Rs.3,68,847/- x 14)	Rs.51,63,858/-
Add: Pain & sufferings	Rs.1,00,000/-
Add: Medical expenses	Rs.3,81,346/-

Total	Rs.56,45,204/-
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Thus, the claimant-injured is entitled to compensation of Rs.56,45,204/-.

It is found that the insurance company has already deposited the entire awarded sum together with interest as granted by the learned Tribunal in terms of the order of this Court dated 31st August, 2022 amounting to Rs.52,99,099/- vide O.D. challan no. 1889 dated 16th September, 2022 as well as the statutory amount of Rs.25,000/- vide O.D. challan no. 2155 dated 20th December, 2019. Both the aforesaid deposits together with accrued interest be released in favour of the claimant.

The appellant-insurance company is directed to deposit the balance amount of compensation of Rs. 11,32,772/- together with interest @ 6% per annum from the date of filing of the claim application (26.02.2018) till payment by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

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

Upon deposit of balance amount of compensation and interest as indicated above, the learned Registrar General, High Court, Calcutta shall release the aforesaid compensation amount together

with interest in favour of the respondent no.1 (claimant) upon satisfaction of his identity and payment of *ad valorem* court fees, if not already paid.

With the above observations, the appeal and 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.

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

Interim order, if any, stands vacated.

Let a copy of this order along with the Lower Court Records be forwarded to the learned Tribunal for information in accordance with the rules.

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.)