19.07. 2023
item No.17 & 18
n.b.
ct. no. 551

FMAT 1182 of 2014

Reliance General Insurance Co. Ltd.
Vs.
Renuka Singha & Anr.
With

COT 48 of 2021
Renuka Singha & Anr.
Vs.
Reliance General Insurance Co. Ltd.

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay,
Ms. Ruxmi Basu Roy,
…..for the appellant.
Ms. Gopa Das Mukherjee,
…. For the respondent.

The instant appeal has been preferred against the judgment and order dated March 27, 2004 passed by the learned Tribunal, Islampur, Uttar Dinajpur in M.A.C. Case No.86 of 2010.

The brief fact of the case is that the respondent/claimant is a lady aged about 35 years, who filed one claim application before the learned Tribunal on the ground that she sustained bodily injury in the road traffic accident on 06.01.2010. It is the claim of the claimant that she sustained bodily injury, which is permanent in nature. The Insurance Company contested the case by filing written statement and after hearing the parties, the learned Tribunal has awarded a sum of Rs.6,27,109/- towards the compensation.

Hence, the Insurance Company preferred this appeal.

The insurance company has only two main grounds in this appeal. Firstly, the learned Tribunal has awarded exorbitant amount towards the medical expenses i.e. Rs.3,21,109/-. It is the case of the Insurance Company that the medical bills and vouchers were forged and concocted. There are no money receipts in support of that bills. The learned Tribunal has committed an error in passing the huge amount compensation towards the medical expenses.

Secondly, the Insurance Company has pointed out that the disability of the lady was found to be 50% by the Government Doctors and the learned Tribunal without assessing the functioning disability of the lady, awarded 50% of the statutory compensation.

It is the argument of the learned advocate for the insurance company that the physical disability is not equated with the functional disability. The lady is housewife. So, considering the nature of occupation the percentage of disability assessed by the learned Tribunal in giving the compensation is erroneous.

He also pointed that the Honb'ble Supreme Court in several judgments has guided that physical disability should not be equated with the functional disability.

The cross-objection was preferred by the claimant/respondent on the ground that the learned Tribunal has not awarded any compensation towards the pain and suffering of the lady and Tribunal has also not considered the future prospects as per the dictum of the Hon'ble Supreme Court passed in **Pranay Shetty.**

In considering the materials on record, it appears to me that the claimant himself deposed as P.W. 1 before the learned Tribunal stated the entire fact of accident and also stated her treatment and the duration of hospitalization in her deposition. The Superintendent, Islampur Sadar Hospital appeared before the learned Tribunal as P.W. 2 who proved the disability certificate issued by the Board of Doctors of that hospital. P.W. 3 is a Doctor (Orthopedic Surgeon), who treated the claimant during her stay at Anadaloke Hospital, Siliguri. The Assistant Manager of Anadaloke Hospital deposed as P.W. 4 and proved the bills issued by the Anandaloke Hospital. One-eye witnesses adduced as P.W. 5 before the learned Tribunal. Non one deposed on behalf of the Insurance Company. No document was proved by the Insurance Company during the period of trial.

Learned advocate for the Insurance Company has raised a question regarding the bill issued by the Anandaloke Hospital i.e. Exhibit 13. It appeasers from the entire bill that the claimant was admitted to the Anandaloke Hospital four times. The total bill appears to Rs.3,21109/-. Learned Tribunal has considered the Exhibit 13 to be the expenses towards the medical charge. The Exhibit 13 is supported by some bills issued by the Doctors itself. The Doctors receipt was also appears to be part of the final bill. The other bills issued by the Anandaloke Hospital several times during the hospitalization and discharge of the claimant is clearly reflected in the final bills. The final bills, Exhibit 13 was duly proved by the Manager of that Hospital. Though, learned Tribunal has not observed the particulars of expensed incured by the claimant during her stay at hospitals and connected bills and vouchers thereof, but it appears to me that the bills and co-related documents are the actual medical expenses of the claimant.

Thus, I find no justification is the ground raised by the learned advocate for the Insurance Company in raising questions against Exhibit 13.

In considering the functional disability of the claimant, it appears from the claim application that the occupation of the claimant to be housewife and Tuition. It is true that housewife has limited activity within the house but the day to day activities for a housewife needs her healthyphysical condition. In perusing the disability certificate issued by the Doctor and duly proved before the learned Tribunal by the Superintendent of the said Hospital, it appears that the disability was stated to be right leg and ankle and nee stifle, which was calculated as 50% disability. It is true if a lady suffered the stiffness in her nee and right ankle, it is not possible for her to move freely. The day by day personal activities of the lady is appears to be hampered. Thus, the active housewife (claimant) to discharge her function towards the home is become impossible. In this case, it appears to me that 50% functional disability as assessed by the learned Tribunal as quite correct.

Considering the merits of cross objection, it appears to me that the learned Tribunal has committed an error not passing an award in favour of the claimant towards her pain and suffering and future treatment. It is true, that the lady suffered accident on January 6, 2010. She appears before the Doctors of the Medical College in September 2011 i.e after long two years of such accident then also she was suffering a lot.

Considering the same, it is obvious that during the long period of her treatment the claimant has suffered bodily pain which she could not be suffered if the accident not occurred. Considering the same, I think it necessary to award Rs.50,000/- towards pain, suffering and future treatment.

The claimant is also entitled to get the future prospects @40% of his established income. The multiplier adopted by the Tribunal in this case is 17 which appears to be in correct.

According to the Judgment of Hon'ble Supreme Court in **Sarala Verma,** the applicable multiplier of this case would be 16 (The claimant was within age group 30-35.) After considering the entire materials on record, the award passed by the learned Tribunal need be modified and recasted hereunder;

1. Annual Income be assessed as Rs. 3000 X 12=	36,000/-
2. Future prospect @40%	= 14,400/-
	52,400/-
3. Deduction 50%	25,200/-
	25,200/-
4. Multiplier 16	X 16
	4,03,200/-
5. Add Medical expenses	3,21,109/-
	7,24,309/-
6. Pain & Suffering	+ 50,000/-
	= 7,74,309/-
7. Tribunal Granted	(-) 6,27,109/-
Total Compensation	**Rs. 1,47,200/-**

The Insurance Company has already deposited Rs.25,000/- on 29.09.2014 and the Insurance Company also deposited amounting to Rs.7,62,155/- on 10.12.2014. The amount has already carrying some interest.

The Insurance Company is directed to pay the balance amount of Rs.1,47,200/- along with 6% interest per annum within a period of eight weeks from the date of filing of the claim application with the office of the learned Registrar General, High Court, Calcutta.

The Registrar General, High Court, Calcutta is directed to disburse the amount in the name of the claimant as early as possible.

Accordingly, FMAT 1182 of 2014 is disposed of.

Connected applications, if any, are consequently 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.)