IN THE HIGH COURT, AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE BIVAS PATTANAYAK.

FMAT 1401 OF 2015

Chandan Thakur @ Chadan Thakur

......................Appellant

Versus

Reliance General Insurance Company Limited & Another

..............Respondents

For the Appellant: Mr Subir Banerjee, Advocate.

Mr. Sandip Bandopadhayay, Advocate.

Ms. Ruxmini Basu Roy, Advocate.

For the Respondent no.1: Mrs Gopa Das Mukherjee, Advocate.

Heard on: 09.09.2022, 25.11.2022.

Judgment on: 10.01.2023.

Bivas Pattanayak, J :-

1. The present appeal has been preferred against the judgement and award passed on 28 August 2014 by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Islampur, Uttar Dinajpur in M.A.C Case no. 124 of 2010 under Section 166 of the Motor Vehicles Act, 1988 granting compensation to the victim-injured to the tune of Rs. 5,35,000/- along with interest @ 6% per annum from the date of filling of claim application till realization.

2. The brief fact of the case is that on 6th January 2010 at about 4.15 PM while the victim was returning from Karandighi to his home at Dalkhola in the offending vehicle bearing registration no.WB-59/8694(bus) and when the said bus reached at Bhuri bus stand the driver lost control over the vehicle and it capsized due to rash and negligent driving. Due to sudden impact the '*Khalasi*' of the said bus died instantly and the injured-claimant alongwith other passengers sustained injuries. The injured-claimant sustained multiple injuries all over his body, grievous fracture injuries of both lower limbs and chest injuries with multiple fractures of ribs. Local people shifted the injured-claimant to Karandighi BPHC wherefrom he was referred to Raiganj District Hospital and thereafter he was taken to North Bengal Medical College & Hospital, Siliguri for better treatment. In relation to his injuries sustained in the accident the victim-injured filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs.7,00,000/- along with interest.

3. The respondent no.1-insurance company contested the claim application before the learned tribunal. However respondent no.2-owner of the offending vehicle though filed written statement but did not contest the claim application before the learned tribunal and the claim application was disposed of *exparte* against her. By order dated 26.08.2022 the service of notice of appeal upon respondent no.2-owner of the offending vehicle has been dispensed with for the aforesaid reasons.

4. The claimant in order to prove his case examined three witnesses including him and proved number of documents which have been marked as **Exhibit 1** to **15** respectively. The contesting opposite party no.2-insurance company (respondent no.1 herein) did not adduce any evidence on its behalf.

5. Upon considering the materials on record and the evidence produced on behalf of the claimant the learned tribunal allowed the claim application of the claimant and passed the following order.

> *"That the instant case be and the same is allowed in part exparte without cost as against Salila Basak/OP no.1 and in part on contest without cost as against Reliance General insurance Co. Ltd/OP no.2. The Legal Manager, Reliance General Insurance is directed to issue account payee cheque of Rs.5,35,000/-only with interest as stated above in favour of petitioner Chandan Thakur @ Chadan Thakur within one month from this date of judgment"*

6. Being aggrieved by and dissatisfied with the impugned judgment and award of the learned tribunal the claimant has preferred the present appeal.

7. Mr Subir Banerjee, learned advocate for the appellant-claimant submitted that since in such accident the injured-claimant sustained disability to the extent of 100% as is appearing from the disability certificate **(Exhibit 14)**

hence the learned tribunal by applying multiplier method ought to have assessed the loss of future earnings considering the extent of disablement of the injured.

He further submitted that the learned tribunal erred in calculating the pecuniary damages namely medical expenses incurred by the injured-claimant.

Furthermore he submitted that since at the time of accident the injured-victim as per the voter's identity card **(Exhibit 15)** was aged 28 years and hence multiplier of 17 is to be adopted in terms of observation of Hon'ble Supreme Court made in ***Sarla Verma & Others versus Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298.***

He further submitted that the learned tribunal should have considered the aspect of future prospect of the injured-victim to the extent of 40% of the income of the deceased while assessing the compensation amount as per observation of Hon'ble Supreme Court made in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 (4) T.A.C 673 (S.C).***

Furthermore it is submitted that in view of the extent of injuries suffered by the injured-claimant and the pain and suffering undergone by him an amount of Rs.5,00,000/-be granted towards non-pecuniary damages and in support of his contention he relied on the decision of the Hon'ble Supreme Court passed in ***Laxman alias Laxman Mourya versus Divisional Manager, Oriental Insurance Company Limited and Another*** reported in ***(2011) 10 SCC 756.***

In the light of his aforesaid submissions he prayed for enhancement of the compensation award.

8. In reply to the contention raised on behalf of the appellant-claimant, Mrs Gopa Das Mukherjee, learned advocate for respondent no.1-insurance company submitted that the medical expenses as allowed by the learned tribunal to the tune of Rs. 28,820/-has been rightly granted basing on the medical bills produced before it. Further as far as non-pecuniary damages are concerned relying on the decision of Hon'ble Supreme Court passed in ***R.D Hattangadi versus Pest Control (India) Pvt. Ltd. and Others*** reported in ***(1995) 1 SCC 551,*** she submitted that the compensation towards non-pecuniary damages differs from case to case and needs to be determined on the basis of the circumstances of each case.

9. Having heard the learned advocates for the respective parties, it is found that precisely following issues are involved in the appeal, *firstly* that the 100% disablement of the injured ought have been taken for assessment of loss of future earnings of the injured-claimant adopting multiplier method; *secondly*, erroneous assessment of pecuniary damages; *thirdly*, entitlement of Rs. 5,00,000/- towards non-pecuniary damages.

9.1. With regard to the first issue, it is the specific case of the injured-claimant that he sustained multiple injuries all over his body, grievous fracture injuries of both lower limbs and chest injuries with multiple fractures of ribs. The injured-claimant produced the discharge summary issued by Anandaloke Hospital & Neurosciences Centre marked **Exhibit 10** wherefrom it is found that the injured-claimant sustained compound fracture of both lower limbs, chest injuries with multiple fractures of rib. The medical certificate **(Exhibit 11)** issued by the treating doctor namely Dr Md Safique Alam of Advanced Orthopaedic & Spine Centre, Purnea also shows that the injured-claimant suffered compound fractures of both leg bones and ribs and he is temporarily disabled completely as on 16.03.2010. The injured-claimant also adduced the evidence of Dr Md Fazlur Rahaman (PW3) of Balarampur PHC, at Telta, Katihar, Bihar, who is a counter signatory to the disability certificate **(Exhibit 14)** issued by the Medical Board of the said hospital. He deposed that the injured-claimant suffered permanent disability to the extent of 100%. Nothing is forthcoming from the cross-examination of the witness to disbelieve his aforesaid evidence. The disability certificate **(Exhibit 14)** issued on 17.01.2014 by the Medical Board of Balarampur PHC, at Telta, shows that the nature of disability is paraplegia and the percentage of disability is 100%. Therefore considering the nature of injuries, the medical evidence indicated above as well as the disability certificate, it is found that the injured-claimant suffered permanent disablement of 100%. Now the question arises at this stage whether in such a case of permanent disability of 100% multiplier method is to be adopted for computation of compensation. The Hon'ble Supreme Court in its decision passed in ***Karthik Subramanian (supra)*** observed as follows:

> *" 4. Learned Counsel for the appellant had relied upon the recent judgement of this Court in Erudhaya Priya v. State Express Transport Corporation Ltd.-2020 Supp. SAR (Civ) 962= 2020 SCC Online SC 601. The judgement took into consideration the earlier judgements including in Pranay Sethi (supra) and Sandeep Khanduja v. Atul Dande-2017 SAR (Civ) 385 = (2017) 3 SCC 351. The latter judgement had opined that multiplier method was logically sound and legally well established to quantify the loss of income as a result of death or permanent disability suffered in an accident. The present case being one of permanent disability of 40 per cent, it has been urged that the same principle should be applied in the present case while in fact nothing has been granted on account of future prospects.*
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> *5. In our view, this issue is no more res integra in view of Sandeep Khanduja's case (supra) and Erudhaya Priya's case (supra) opining that multiplier method has to be applied for future prospects and advancement in life and career."*

Bearing in mind the aforesaid observation of Hon'ble Supreme Court and as the nature of disability is permanent to the extent of 100% the multiplier method is to be applied in order to assess just and fair compensation as has been rightly argued by learned advocate for the appellant-claimant.

9.2. With regard to the second issue concerning pecuniary damages in the form of medical expenses incurred by the injured-claimant towards his treatment it is found that he produced two sets of medical bills, one in connection with his treatment at Anandaloke Hospital & Neurosciences Centre, Siliguri amounting to Rs.28,820/- and the other of his treatment at Advanced Orthopaedic & Spine Centre, Purnea amounting to Rs.1,35,000/-. The learned tribunal accepted the medical bills of Anandaloke Hospital & Neurosciences Centre, Siliguri amounting to Rs.28,820/-however it disapproved the expenses of Rs.1,35,000/-incurred by the injured-claimant at Advanced Orthopaedic & Spine Centre, Purnea on the ground that the injured-claimant did not state anywhere that he underwent operative measures for six times in the said hospital nor there is any receipt showing deposit of the said amount. It is relevant to note that such medical expenses of Rs.1,35,000/-though been mentioned by Dr Md Safique Alam of Advanced Orthopaedic & Spine Centre, Purnea in his prescription noting 6 numbers of operations yet there are neither any documents of operative measures undertaken nor any bills raised by the concerned Hospital. Thus the learned tribunal has rightly declined to approve such medical expenses. Therefore the injured-claimant is entitled to medical bills of Anandaloke Hospital & Neurosciences Centre, Siliguri amounting to Rs.28,820/- which has been accepted duly by the learned tribunal.

9.3. As far as third issue concerning non-pecuniary damages, learned advocate for the appellant-claimant relying on the decision of Hon'ble Supreme Court passed in ***Laxman alias Laxman Mourya (supra)*** submitted that an amount of Rs.5,00,000/-be granted keeping in mind the nature of injuries, pain and sufferings and loss of amenities sustained by the injured-claimant. *Per contra* learned advocate for respondent no.1-insurance company drew the attention of the court relying on the decision of Hon'ble Supreme Court passed in ***R.D Hattangadi (supra)*** that the non-pecuniary damages are to be determined on the basis of facts and circumstances involved in each case. In view of the rival contentions raised on behalf of the parties, it appears that there is no rule of thumb to determine the quantum of compensation towards non-pecuniary damages. In catena of decisions, the Hon'ble Supreme Court as well as this Court has assessed compensation towards non-pecuniary damages considering the facts and circumstances involved in the case.

9.3.1. In ***Laxman alias Laxman Mourya (supra)*** cited on behalf of the appellant-claimant the Hon'ble Supreme Court considering the nature of injuries suffered by the injured and the fact that the injured person have to take treatment throughout life assessed the non-pecuniary damages towards future treatment, pain, suffering and trauma and loss of amenities. However in the case at hand there are no such medical evidence that the injured-claimant will have to take treatment throughout his life. Thus the facts involved in the cited decision are dissimilar to the case at hand and therefore is not applicable.

9.3.2. In ***R.D Hattangadi (supra)*** the Hon'ble Supreme Court observed as follows:

> *" 12. In its very nature whenever a tribunal or court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid arrangements have to be viewed with objective standards."*

Bearing in mind the observation as above of the Hon'ble court and also keeping in mind the nature of injuries suffered by the injured-claimant and the treatment undergone by him, it appears that a sum of Rs. 2,00,000/- towards non-pecuniary damages will be just and appropriate in the facts and circumstances of the case.

10. Now for the sake of computation of compensation by applying multiplier method the income of the deceased at the relevant time of accident, the appropriate multiplier to be adopted and the future prospect of the deceased is to be determined.

10.1. As far as the income of the injured-claimant is concerned, it is stated in the claim application that the injured at the time of accident was a barber by profession and his monthly income was Rs.3000/-. However nothing has been proved with regard to the income and profession of the injured-claimant. Be that as it may, bearing in mind the price index prevailing at the time of accident in the year 2010, the quantum of income @ of Rs.3,000/- per month as claimed by the claimant is not exorbitant and is reasonable and can be accepted for calculation of just and fair compensation.

10.2. So far as the multiplier to be adopted is concerned, it is found from the voter's identity card of the injured marked as **Exhibit 15** that his year of birth is 1982. Thus in the year 2010 when the accident took place he was 28 years of age. Following the observation of Hon'ble Supreme Court made in ***Sarla Verma's Case (supra)*** the multiplier to be adopted for calculation of just compensation should be 17.

10.3. As on the date of accident the injured-claimant was less than 40 years and presumably self-employed hence following the observation of Hon'ble Supreme Court made in ***Pranay Sethi's Case (supra)*** an additional amount equalling to 40% of the annual income of the deceased be taken into account towards future prospect.

11. Now taking into consideration the aforesaid aspects the compensation amount is calculated hereunder.

Calculation of compensation

Monthly Income..Rs.3,000/-

Annual Income.....(Rs.3,000/- X 12)..............Rs. 36,000/-

Add: Future Prospects @ 40% of total Income...Rs.14,400/-

Total...Rs.50,400/-

100% loss of Income due to disablement of 100%...Rs.50,400/-

Adopting multiplier 17 (Rs.50,400/- X 17)..........Rs.8,56,800/-

Medical Expenses Incurred Rs.28,820/-

Non-pecuniary damages.....................................Rs.2,00,000/-

Total Compensation..........................**Rs.10,85,620/-**

12. Thus the total compensation comes to Rs.10,85,620/-. Admittedly, the injured-claimant has received the amount of compensation of Rs.5,35,000/- along with interest as directed by the learned tribunal. Accordingly, claimant-injured is entitled to receive the balance amount of Rs.5,50,620/- along with interest @ 6% per annum from the date of filing of the claim application till deposit.

13. The respondent no.1-Reliance General Insurance Company Limited is directed to deposit the balance amount of Rs.5,50,620/- along with interest @ 6% per annum from the date of filing of the claim application till deposit by way of cheque with the learned Registrar General, High Court, Calcutta within the period of six weeks from date.

14. Appellant-claimant is directed to deposit *advalorem* court fees on the enhanced amount of compensation, if not already paid.

15. The learned Registrar General, High Court, Calcutta upon deposit of the aforesaid amount shall release the said amount to the injured-claimant on satisfaction of his identity and payment of *ad valorem* court fees, if not already paid.

16. Accordingly the appeal stands allowed on contest. The impugned judgment and award of the learned tribunal is modified to the aforesaid extent. No order as to cost.

17. With the aforesaid direction the appeal stands disposed of.

18. All connected applications, if any, stand disposed of.

19. Interim orders, if any, stand vacated.

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

(Bivas Pattanayak,J.)