

10.01.2024
SL No.10
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

FMAT (MV) 25 of 2023

**Nirmal Pakhira @ Pekhira@ Pekhara @ Pekhira
Vs.**

The Oriental Insurance Co. Ltd. & Anr.

Mr. Pingal Bhattacharyya,
Ms. Poonam Keswari,
Mr. Rajdeep Sinha
..... for the appellants/claimants.

Ms. Sucharita Paul
...for the respondent/Insurance Co..

The instant appeal has been preferred against the Judgment and Award dated 21st March, 2020 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Paschim Medinipur, in MAC Case no. 44 of 2012.

The brief facts of the case is that the present appellant being the claimant has preferred an application under Section 166 of the M.V. Act, before the learned tribunal for getting compensation on the ground that he sustained severe bodily injuries in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company.

The claim case was contested by the insurance company.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a

sum of Rs.8,31,083/- together with interest @ 6.25 per annum from the date of filing of the claim application except the default period from 19.03.2013 to 11.08.2014.

Being aggrieved by and dissatisfied with the said award, the present appeal has been preferred by the claimant.

The only ground for the appeal is that the learned tribunal has failed to award the future prospects in assessing the compensation. Learned advocate for the appellant submits that the learned tribunal has considered all the materials but has failed to appreciate the fact that the claimant is entitled to get the future prospects according to the observation of the Hon'ble Apex Court passed in **Pranay Sethi**. He submits that the claimant is entitled to get the 25% of his establish income towards the future prospects considering his age within 40 years and 50 years.

Learned advocate appearing on behalf of the Insurance Company raised strong objection and submits that the learned tribunal has considered the entire facts and circumstances of this case and has awarded the compensation in favour of the claimant. The claimant is an injured person whose injury was considered alongwith the cost of medical treatment, pain and suffering and all antecedents of

his treatment has been taken care of including the future medical expenses.

At this juncture, the instant appeal is liable to be dismissed and the award passed by the learned tribunal cannot be enhanced.

Heard the learned advocates perused the materials on records. It is the dictum of the Hon’ble Apex Court that in case of injury the claimant is also entitled to get the compensation alongwith the future prospects **(Pranay Sethi)**.

Having heard the submissions of the learned advocate of the parties it appears to me that the award passed by the learned tribunal requires modification only in respect of the future prospects which would be 25% of the establish income of the deceased.

In considering the just and proper compensation of this case, the award passed by the learned tribunal need be modified.

Calculation of compensation

- 1. Monthly Income.....Rs. 4,500/-
- 2. Add: 25% Future Prospects.....Rs. 1,125/-
Rs. 5,625/-
- 3. Annual Income.....Rs. 67,500/-
(Rs. 5,625 X 12)
- 4. Multiplier 14X 14
Rs 9,45,000/-
- 5. 70% loss of earning capacity.....Rs.6,61,500/-
(Rs. 9,45,000/- X 70%)
- 6. Add: Loss income during
treatment period (already awarded)...Rs.4,500/-

7. Add: Pain and Suffering.....Rs. 2,50,000/-
8. Add: Attendant Charges
during treatment period.....Rs. 2,000/-
9. Add: Transportation charges
during the treatment period.....Rs. 5,000/-
10. Add : Medical Expenses.....Rs. 17,383/-
11. Add: Expenses made on
Special Diet.....Rs. 3,000/-
12. Add: Loss of amenities.....Rs.10,000/-
13. Add: Future Medical Expenses..Rs. 10,000/-
Rs. 9,63,383/-
Less: Tribunal awarded.....Rs. 8,31,083/-
Enhance Compensation.....Rs. 1,32,300/-

After calculation the just and proper compensation comes to Rs. 9,63,383/-. The claimant has already received the awarded sum of Rs.8,31,083/-. The balance award comes to Rs.1,32,300/-. The insurance company is directed to pay the balance award alongwith interest @ 6% per annum from the date of filing of the claim application except the default period from 19.03.2013 to 11.08.2014 within six weeks to the office of the learned Registrar General High Court Calcutta. On such deposit the office of the learned Registrar General High Court Calcutta shall disburse the same in favour of the claimant subject to the ascertainment of payment of deficit Court Fees, if any.

The office of the learned tribunal is directed to act upon regarding receive of the deficit Court Fees, if any, by virtue of certified copy of this order.

The department is directed to issue the certified copy within a fortnight after making an application.

The instant FMAT (MV) 25 of 2023 is disposed of.

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

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)