

08.03.2024
SL No.24
Court No. 551
Ali

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

F.M.A. 579 of 2018

**Rabi Nath Yogi
Vs.
National Insurance Co. Ltd. & Ors.**

Mr. Saidur Rahaman
.....for the appellant-claimant.

Mr. Deb Narayan Roy
.....for the respondent-insurance Co.

The instant appeal has been preferred against the judgment and award dated 9th December, 2016, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, 5th Court, Malda, in MAC Case no. 42 of 2015.

The brief facts of the case is that the present appellant/claimant on 25.06.2013 at about 22.00 hrs. was standing at Badnagara Stand More. Suddenly one Truck bearing No. WB-61/2581 which was coming from Gazole side and running in a very high and excessive speed and rash and negligent manner lost control and dashed the present claimant/appellant as a result the claimant sustained severe bodily injury all over the body specifically his right leg was fractured and he was shifted to the Gazole Rural Hospital thereafter referred to Malda Medical College & Hospital wherein, during the treatment an operation was done and his right leg was amputated to save his

life. He, thereafter, admitted to Saha Nursing Home, Kolkata for treatment. The present claimant became permanent disabled due to the loss of his leg and filed an application before the learned tribunal under Section 166 of M.V. Act for getting compensation on the ground that the accident was happened 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 by filing written statement.

The learned Tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs.7,34,000/- towards the compensation and directed the Insurance Company to pay the compensation.

Being aggrieved by and dissatisfied with the said award the claimant has preferred the instant appeal for enhancement of the award.

Learned advocate, Mr. Rahaman appearing on behalf of the appellant submits that the award passed by the learned tribunal is not sufficient. One able bodied person has lost his right leg and became cripple for such accident and disabled for the life. He further alleged that the amount of compensation by the learned tribunal in this case is very meager one. Mr. Rahaman firstly submits that the income of the injured assessed by the learned tribunal is

Rs.3,000/- per month. In the claim petition the income of the deceased was stated as Rs. 10,000/-. Though the deceased has not filed any document regarding his income, and though no oral evidence was adduced in his support, but the claimant himself has appeared before the learned tribunal to prove his income and avocation. So, in this case, the learned tribunal has committed error in assessing the income of the claimant to be Rs. 3,000/-.

Learned advocate, Mr. Roy appearing on behalf of the Insurance Company submits that the learned tribunal has not committed any error. Learned tribunal had no evidence on record to assess the income of the claimant. Accordingly, he adopted the notional income in this case in absence of any particular materials to that effect; the notional income of Rs. 3,000/- is sufficient in this case.

Heard the learned advocates perused the materials. It is true that the occupation of the claimant was stated in the claim application to be business and same self-employed. The monthly income of the claimant was stated to be Rs.10,000/- . The nature of business and place of employment and the position of himself in the business was not mentioned. No documentary evidence was also produced to assess the monthly income of the deceased. Thus, it is correct for the learned Tribunal

to assess the income of the deceased by fixing the notional income.

However, this Court in several occasions has held that when the accident happened from the year 2011-2014 and when there is no reliable documentary evidence in support of the income; the notional income would be Rs.4,000/-. In this case, the same view can be applicable.

Mr. Rahaman further submits that the accident causes the amputation of right leg of the claimant whatever may be the business he adopted to lead his livelihood, that has must have been hampered entirely. So, in this case, though the disability certificate stated his disability to be 85%, in this case, considering the observation of Hon'ble Apex Court in ***Raj Kumar Vs. Ajay Kumar*** the functional disability would be 100%.

Mr. Roy, learned advocate appearing on behalf of the Insurance Company submits that the disability certificate was produced by the claimant before the learned Tribunal. The PW-3 i.e. the Doctor who is author the disability certificate, has deposed and stated that he was himself present at the time issuance of disability certificate. Mr. Roy submits that the disability certificate issued by Government Hospital requires the presence of at least three Doctors. It is evident from the Exhibit-9 (disability certificate) that only the PW-3 is the

signatory of the disability certificate. So, no reliance can be placed upon the disability certificate.

Heard the learned advocates, perused the disability certificate (Exhibit-9). I have also perused the evidence of PW-3. It appears that the disability certificate was issued from the office of the Block Medical Officer of Health, Hatimari R.H. Gazole, Malda. The PW-3 was the BMOH of the said Government Health Centre. It is true that the Block Government Health Centre situated in the rural area of Bengal can only have a Doctor to represent. However, the nature of disability appears to be amputation of leg from right Thi. He assessed the disability to be 85%. Let me consider whether the disability assessed by the PW-3 is correct regarding the functional disability of the claimant.

Hon'ble Apex Court in ***Raj Kumar Vs. Ajay Kumar*** has categorically pointed out that the evidence of a private Doctor also can be very well proved to assess the disability of a person if it is not unreasonable. PW-3 is a BMOH i.e. a Government Medical Officer and issued the certificate under the specific certificate number of the office of the BMOH. The disability certificate issued by the PW-3 appears to me not unreliable at all.

In considering the functional disability of this case it appears that the claimant has failed to enlighten the tribunal as well as this Court

regarding the income and avocation; without which it is quite difficult to assess the functional disability of this case. It is quite impossible to assess that whether the legs of the claimant is imported for the carry out of his business or not. I make it clear that- if some business requires the activity of hands and some business requires the activity of legs; in this case such evidence is not placed. So, this Court failed to ascertain the just functional disability of this case. Finding no other alternative, I think it fit to place reliance upon the evidence of PW-3 to assess the disability of the victim. So, in this case, the learned Tribunal has correctly assessed the disability of the appellant to be 85%.

It further appears that by virtue of the decision of Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi***, the claimant is entitled to get the future prospects which would be 40% (age below 40 years) to the establish income.

Mr. Rahaman, learned advocate submits that the bills of Medical treatment of amounting to Rs. 1,72,000/- has been proved and it was allowed by the learned Tribunal. The admission of different Hospitals of the claimant is well proved. The claimant must have incurred some ancillary expenses regarding transportation and fooding etc.

Mr. Rahaman further submits that the learned Tribunal has awarded a meager amount of Rs. 1,00,000/- towards pain and suffering. The learned Tribunal has failed to appreciate the other non pecuniary heads like loss of amenities of life, Loss of expectation of life, loss of future medical expenses and cost of Prosthetic legs. He submits that some amount may be added under the head of non-pecuniary damages.

Heard the learned advocates it appears that the receipt and bills has been proved and learned Tribunal has awarded Rs. 1,72,000/- towards the pecuniary heads. Under the non-pecuniary heads the learned Tribunal has awarded Rs. 1,03,000/- which has sub-heads-as pain and suffering and loss of one month's earning. It appears to me that the learned Tribunal has failed to appreciate the view of Hon'ble Apex Court in **R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd.** Wherein, the Hon'ble Apex Court has held that in a case of serious injury and amputation the several heads may be added in a claim case under Section 166 of M.V. Act towards non-pecuniary heads. It has been clarified by the Hon'ble Apex Court that non-pecuniary heads are the heads which the claimants are entitled to get under the different sub heads i.e. loss of amenities of life, loss of future Medical expenses, loss of

transportation, loss of expectation of life, loss of expectation of marriage etc.

In this case, it is evident that after the accident the victim was admitted to the Gazole Rural Hospital, thereafter to Malda Medical College & Hospital and lastly at Saha Nursing Home, Kolkata. The claimant must have incurred a huge cost regarding the transportation. The claimant was admitted to the Malda Medical College & Hospital from 26.06.2013 to 30.06.2013, and, thereafter, 01.07.2013 to 26.07.2013 to the Saha Nursing Home, Kolkata. During such hospitalization the victim/claimant must have suffered immense mental pain and agony including the physical pain. The cost of transportation is also necessary to be awarded for transportation of the claimant from Malda to Calcutta. I have also considered in this case under other non pecuniary heads, such as loss of amenities of life and loss of expectation of life as the claimant has to lead his rest life as a limping/handicapped person; if the accident not happened, the expectation of life of the present claimant must not be hampered in such a fashion. Considering the same, I award further Rs.1,00,000/- towards non pecuniary heads, I make it clear as no document regarding the proposed cost of prosthetic leg has been produced by the claimant

so this Court refrain itself for passing any amount on that head.

Considering the above observation the award passed by the learned Tribunal need be modified.

Considering the all heads, the just and proper compensation of this case is as follows:-

Calculation of compensation

1. Monthly Income	:Rs.4,000/-
2. Annual Income	:Rs.48,000/-
2. Add: 40% Future Prospects	: <u>Rs.19,200/-</u>
	:Rs.67,200/-
4. 85% Disability	: <u>Rs.57,120/-</u>
5. Multiplier 15	:Rs.8,56,800/-
(Rs.57,120/- X 15)	
6. Add: Pecuniary heads	: <u>Rs.1,72,000/-</u>
(bills)	
	:Rs.10,28,800/-
7. Add: Non-pecuniary heads	: <u>Rs. 1,03,000/-</u>
(learned Tribunal awarded)	
	:Rs.11,31,800/-
8. Add: Enhance	:Rs.1,00,000/-
Non-pecuniary heads	
	:Rs.12,31,800/-
9. Less: Award already received	: <u>Rs.7,34,000/-</u>
	:Rs.4,97,800/-

After calculation the award comes to Rs. 12,31,800/-. The claimant has already received the awarded sum of Rs.7,34,000/- so the balance award comes to Rs.4,97,800/-. The Insurance Company is directed to pay the balance awarded sum together with interest @ 6% per annum from the date of filing of the claim application through the office of the learned Registrar General, High Court, Calcutta within eight weeks. After such deposit the claimant

is at liberty to receive the same on usual terms and conditions subject to ascertainment of payment of deficit Court Fees, if any.

The office of the learned tribunal shall act upon the certified copy of this order to receive the deficit court fees, if any.

LCR be sent down immediately.

The instant **FMA 579 of 2018** is disposed of.

All connected 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.)