

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 3892 of 2015

Joydev Malik

Versus

National Insurance Company Limited and Another

For the Appellant/Claimant : Mr. Krishanu Banik, Adv.

For the Respondent No. 1/Insurance Company

: Mr. Rajesh Singh, Adv.

Heard on : 20.02.2024

Judgment on : 09.05.2024

Ajay Kumar Gupta, J:

1. This instant First Miscellaneous Appeal has been filed by the appellant/claimant assailing the judgment and award dated 25th day of March, 2014 passed by Learned Additional District Judge, Motor Accident Claims Tribunal, 1st Fast Track Court, Paschim Medinipur in MAC Case No. 92 of 2012 thereby the learned Tribunal awarded a compensation to the tune of Rs. 4,67,800/- against the respondent no. 1/National Insurance Company Limited. The said award shall carry interest @ 8% per annum from the date of filing of the claim application till the date of realization of the award in an application filed under Section 166 of the Motor Vehicles Act, 1988 on contest against Respondent No. 1/National Insurance Company Ltd. and ex parte against Respondent No. 2/owner of offending vehicle, claiming compensation to the tune of Rs. 7 lakhs on account of suffering severe injuries and disablement of the appellant, Sri Joydev Malik due to motor traffic accident.

2. The brief facts of this case are as under:

2a. On 20.10.2007 at about 5 pm the appellant was standing by the extreme left side of Panskura-Ghatal pitch road. Suddenly a bus bearing no. WB-29/1026 came with high speed in a rash and negligent manner of driving and dashed the appellant as a result, the petitioner sustained deep

bleeding injuries on his head, chest and both legs. Local people removed him to nearest Pitpur P.H.C. Thereafter, he was further transferred to Purba Midnapore District Hospital at Tamluk for better treatment. A major operation was done there and his left leg was amputated from the knee. He was treated up to 10.11.2007 as an indoor patient. He sustained permanent disablement due to that motor vehicle accident.

2b. After hearing the parties and considering the evidence, both oral and documentary brought on record by the parties, the learned Tribunal Judge finally came to a conclusion that the appellant/claimant sustained permanent disability to the extent of 80% and calculated the compensation amount on the basis of his income as Rs. 3,000/- per month and finally awarded a compensation as aforesaid.

2c. Feeling dissatisfied with the said inadequate amount of compensation, the appellant filed this instant First Miscellaneous Appeal. Hence, the appeal has come up before this Bench for disposal.

SUBMISSIONS ON BEHALF OF THE APPELLANT/CLAIMANT:

3. Learned advocate appearing on behalf of the appellant/claimant submitted that the learned Tribunal Judge erred in accepting only 80% permanent functional disability though functional disability should be

100% because the victim was working as helper-cum- driver prior to date of accident and his left leg was amputated. He is unable to perform his duties due to amputation of one of his legs. So, his actual permanent functional disability would have considered as 100%. He places reliance of judgments as under:

- i) The New India Assurance Co. Ltd. versus Gajender Yadav and Ors. (Civil Appeal No. 9006 of 2017);***
- ii) Sarnam Singh Versus Shriram General Insurance Co. Ltd & Ors. (Civil Appeal No. 3900 of 2023);***
- iii) Arjun S/O. Ramanna @ Ramu Versus Iffco Tokio General Insurance Co. Ltd. & Anr. (Civil Appeal No. 1555 of 2022) and***
- iv) Pratap Narain Singh Deo versus Srinivas Sabata and Anr.¹***

3a. He further raised other issues that the learned Tribunal Judge wrongly assessed the income of the appellant as Rs. 3,000/- in place of Rs. 4,000/-. The learned Court also did not allow any future prospects or non-pecuniary damages. If the learned Tribunal would have considered compensation on these aforesaid heads of future prospects 40% of the actual income and non-pecuniary damages to the tune of Rs. 3,00,000/=

¹ 1976 AIR 222, 1976 SCR (2) 872.

minimum, then the compensation amount would have higher than the awarded compensation. He has submitted that the principle of allowing non-pecuniary damages was specifically discussed by the Hon'ble Supreme Court in the case of ***Mr. R.D Hattangadi Versus Pest Control (India) Pvt. Ltd.***². Finally, he prays for just compensation in view of his submissions made above since the awarded compensation is inadequate.

3b. It is further submitted that the learned Tribunal did not also accept evidence of the appellant that he spends Rs. 45,000/- towards his medical treatment that should also be included in the total compensation.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1/INSURANCE COMPANY:

4. Per contra, learned Advocate appearing on behalf of the Insurance Company submitted that even, for the sake of argument, if he was a helper- cum- driver, his disability is assessed by the learned Tribunal is in higher side. As per the Workmen's Compensation Act, his actual disability should not be more than 50% because his functional disability is less than 50%. He can earn even his one leg is amputated. It is claimed by the claimant that he was helper-cum- driver but unable to produce driving license to show he was driver prior to his accident. It is also failed to prove

² **1995 AIR 755; 1995 SCC (1) 551**

that he was helper-cum- driver of any vehicle. So, his loss of earnings capacity would not be affected as 100% in future. The learned Tribunal has already awarded excess amount of compensation. As such, the appeal is liable to be dismissed. Finally, he submitted that his income cannot be higher than Rs. 3,000/- because he is unable to prove his income by way of oral and documentary evidence. So, his income has rightly assessed by the learned Tribunal as notional income to the tune of Rs. 3,000/-.

4a. It is further submitted by the learned Counsel that though the future prospects has not been added with the compensation amount but that awarded compensation amount would be on lower side as the appellant had suffered partial permanent disability to the extent of 50 % and not 80 % or 100% because he can earn in future by doing any work as he has suffered partial permanent disability. Furthermore, victim's disability certificate indicates there is no need of any assistance in his day-to-day activities. He can work. Therefore, if this Court considers disability to the extent of 50%, he would never suffer any functional disability to the extent of 100%. The learned Tribunal would have been accepted 50% permanent disability, the amount would be lesser than the awarded compensation amount because appellant did not suffer to the extent of 80% functional disability. It should be less than 50%. Even, if this Court allows the compensation under the heads of future prospects

and non-pecuniary damages that amount to be adjusted or equated with the total compensation amount or modified the compensation amount after considering the actual disability or functional disability. Judgment relied by the appellant/claimant is not applicable in this case because he was neither driver, carpenter or helper prior to the accident as such consideration of his 100% functional disability does not arise at all. Considering all aspects, the amount can be adjusted and/or modified the awarded compensation as per actual case of the claimant as aforesaid.

DISCUSSION, ANALYSIS AND CONCLUSION OF THIS COURT:

5. Having heard the submissions of both the parties and on perusal of the judgment and award passed by the learned Tribunal, this Court finds it is admitted facts that the accident was taken place on 20.10.2007. It is also not disputed by the respondent no. 1/insurance company about the mode, manner, date and time of the accident and injuries suffered by the appellant/claimant. However, disputes between the parties herein are as follows:

- (i)** Whether the disability suffered by the appellant/claimant should be considered as 100% as permanent disability or functional disability?
- (ii)** Whether the appellant/claimant is entitled to get compensation under the head of future prospects and non-pecuniary damages in the instant case?

(iii) Whether the appellant/claimant is entitled to get more compensation in the instant case considering his income more than Rs. 3,000/-?

(iv) Whether the appellant/claimant is entitled to get medical expenses to the tune of Rs. 45,000/- which was alleged to be incurred towards medical treatment?

6. Upon perusal of the judgment reported in **Laxmi Devi & Others vs. Mohammad Tabbar & Another**³, the Hon'ble Supreme Court has held even an unskilled labour can earn Rs. 100/- per day but in the present case, the accident was occurred in year 2007. So, income of claimant considered by the Learned Tribunal is perfectly correct to the tune of Rs. 3,000/- per month. This Court does not find any error in considering the notional income of the claimant at the time of accident. However, in view of the **Pranay Sethi's Case (supra)**, the claimant is entitled to get future prospects. It is undisputedly proved that the claimant's age was 38 years at the time of accident and when his age is below 40 years, future prospects would be 40% of the actual income as injured falls in the category of self-employed or on a fixed salary. His Multiplier would be 15 because he falls in the age group of 36-40 years. In view of observation made in **Sarla Verma and Others vs. Delhi Transport Corporation and**

³ 2008 (2) T.A.C. 394 (SC)

Another⁴ and later a judgement passed by a Larger Bench of the Hon'ble Supreme Court affirming the manner of selection of multiplier in **National Insurance Co. Ltd Vs. Pranay Sethi & Others**⁵ by indicating therein that the selection of multiplier as declared correctly as indicated in the paragraph in **Sarla Verma's** case as, inter alia, as follows: -

M-18 for (15 to 25 years)

M-17 for (26 to 30 years)

M-16 for (31 to 35 years)

M-15 for (36 to 40 years)

M-14 for (41 to 45 years)

M-13 for (46 to 50 years)

M-11 for (51 to 55 years)

M-9 for (56 to 60 years)

M-7 for (61 to 65 years)

7. Upon perusal of the evidence, it appears claimant suffered injuries in the motor traffic accident and subsequently his left leg was amputated from his knee joint and he became permanent partial disability. Disability certificate, marked as Exhibit 7, shows he suffered permanent disablement to the extent of 80% due to disarticulation of his left leg from

⁴ (2009) 6 SCC 121;

⁵ (2017) 16 SCC 680

knee. P.W. 2, Dr. Aparesh Chandra Sardar clarified that disarticulation means if any part of limb is severed from its joint, then it is called disarticulation. During cross-examination, he admits that he has not opined whether the claimant can travel with or without assistance or escort. It means he does not require any assistance or escort. As per the judgments referred by the appellant, if a person could not perform his duties as he was doing prior to accident due to permanent disability, whatever may be the percent to the extent of disability. Then it could be accepted as 100% loss of functional disability. For example, a driver, if any limb amputated, he would not be able to drive. Similarly, a carpenter loss even a single hand he will not be able to perform his work as Carpenter. In ***Raj Kumar Vs. Ajay Kumar and Ors.***⁶, the Hon'ble Supreme Court has given guideline for calculation of actual functional disability of the body and nor could it be assumed in result in corresponding of loss of earning capacity in future. The claim of the claimant was that at the time of accident, he was a helper-cum- driver of a truck but fails to prove the same by way of evidence either oral or documentary evidence. He even fails to produce driving license. Under the said facts, the learned Tribunal has assessed his disability as permanent and also assessed the total loss of earning capacity of 80% (Ext. 7). There is no need to any assistance or escort to the appellant/claimant and also

⁶ (2011) 1 SCC 343, (2011) (1) TAC 785.

not required any help from anybody for his movement. It means the victim's disability was assessed to the extent of 80% as permanent disability, which cannot be more than 80% as functional disablement. The Learned Tribunal rightly held claimant can suffer his earning capacity as he is illiterate person and his earning is totally based on his physical labour but not to the extent of 100% as prayed by the claimant. Accordingly, this Court does not find any cogent reason or reasonable ground to interfere with the observation of the learned Tribunal towards disablement of the claimant as 80%.

8. Appellant is not entitled to get medical expenses as claimed as it is not proved by the appellant by producing medical documents and bills. Appellant further fails to prove the same by adducing oral evidence. However, Appellant is entitled to get non-pecuniary damages for pain, suffering and trauma as a consequence of the injuries suffered by him to the tune of Rs. 2,00,000/= as lump sum amount considering the facts and circumstances of the age of the injured, nature of injury, disability suffered by the appellant and effect thereof on the future life of the appellant and in view of aforesaid judgment passed in ***R.D. Hattangadi Versus Pest Control (India) Pvt. Ltd.***

9. Keeping in mind of the above observations and judgments of the Hon'ble Apex Court, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3,000/-
Total Annual Income Rs. 3,000 X 12	Rs. 36,000/-
Add 40% Future Prospects	Rs. 14,400/-
Total income	Rs. 50,400/-
80% Loss of future income of the victim	Rs. 40,320/-
Multiplier 15 (Rs. 40,320/- X 15)	Rs. 6,04,800/-
Add- Non-pecuniary damages	Rs. 2,00,000/-
Total Compensation	Rs. 8,04,800/-
Less awarded amount received	Rs. 4,67,800/-
Total enhanced Compensation receivable	Rs. 3,37,000/-

10. Thus, the appellant/claimant is further entitled to get enhanced compensation amount to the tune of Rs. 3,37,000/= (Rs. Three Lakhs Thirty-Seven Thousand Only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. on and from 02.01.2008 till final payment.

11. The Respondent No. 1/Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 3,37,000/= (Rs. Three Lakhs Thirty-Seven Thousand Only) together with the interest as indicated above by way of cheque before the Office of learned Registrar General, High Court, Calcutta within a period of eight weeks from date.

12. Learned Registrar General, High Court, Calcutta, upon deposit of the enhanced compensation amount together with interest on the enhanced awarded compensation amount, shall release the amount in favour of the appellant/claimant upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid.

13. The impugned judgment and award of the learned Tribunal dated 25th day of March, 2014 passed by Learned Additional District Judge,

Motor Accident Claims Tribunal, 1st Fast Track Court, Paschim Medinipur in MAC Case No. 92 of 2012 is hereby modified to the extent as aforesaid.

14. With the above observations, the instant appeal being **FMA 3892 of 2015** is, thus, **allowed** without order as to costs. Consequently, connected applications, if any, are also, thus, disposed of.

15. Let a copy of this Judgment along with Lower Court Records, if any, be sent back to the learned Tribunal forthwith for information.

16. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

17. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)