IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

06.03.2024
SL No. 5
Court No. 551
Ali

FMA 1048 of 2021

Arun Mahar
Vs.
The Oriental Insurance Co. Ltd. & Ors.

Mr. Amit Ranjan Roy
.... for the appellant.

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

The instant appeal has been preferred against the judgment and award dated 21st November, 2017, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, 3rd Court, Paschim Medinipur, in MAC Case no. 431 of 2010.

The brief facts of the case is that the present appellant being the claimant preferred an application before the learned tribunal under Section 166 of M.V. Act on the ground that he sustained severe injuries in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle wherein she was working as a 'Khalasi' and due to such accident one of his leg has been amputated. He prayed for compensation.

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. 6,00,000/- together with interest @ 6% per annum as a compensation and directed the Insurance Company to pay the compensation.

Being aggrieved by and dissatisfied with the said award the instant appeal is preferred by the claimant on the ground for enhancement of the compensation.

Learned advocate, Mr. Roy appearing on behalf of the appellant submits that the learned tribunal has wrongly assessed the compensation in this case like a case of fatal accident. The learned tribunal has deducted 1/3rd from the income of the claimant towards his personal expenditure. The observation is erroneous. The income should not be deducted 1/3rd in a case of injury. He further argued that the multiplier adopted by the learned tribunal is erroneous. The age of the claimant was 31 years at the time of accident. So, according to the observation of Hon'ble Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation*** affirmed by ***National Insurance Co. Ltd. Vs. Pranay Sethi,*** the correct multiplier would be 16. He further argued that the learned tribunal has not considered the future prospects in this case as per observation of the Hon'ble Supreme Court in ***Pranay Sethi (Supra).***

Mr. Roy further argued that the learned tribunal has awarded only Rs. 1,10,400/- towards the non pecuniary heads. He specifically argued that a person aged about 31 years was a 'Khalasi' who lost his leg due to such accident. He must have suffered immense pain and suffering due to his hospitalization. His entire prospects of life has been drastically changed. So, in this case, the compensation towards the non pecuniary heads should be enhanced.

Learned advocate, Ms. Paul appearing on behalf of the Insurance Company submits that the learned tribunal has categorically observed the findings and has held that the disability of the claimant is 80% according to the Board of Doctor and in this case, the leg of the claimant has been amputated. So, it is not required further hospitalization or further medication. The learned tribunal has correctly adopted the non pecuniary heads in this case; there is no chance of enhancement. She further pointed out that the multiplier adopted by the learned tribunal is erroneous.

Heard the learned advocates perused the materials on record also perused the observation of the learned tribunal at inner page eight (8) of impugned judgment. It appears that the claimant was 31 years old at the time of accident. So, in this case, the applicable multiplier according to the observation of the Hon'ble Supreme Court in ***Sarla Verma (Supra)*** would be 16 instead of 17.

The learned tribunal has deducted 1/3rd of the income of the claimant towards his personal expenditure. The said principle can be adopted in a case under Section 166 of M.V. Act where the fatal accident takes place; in this case the deduction is erroneous. It further appears that the Hon'ble Supreme Court in ***National Insurance Co. Vs. Pranay Sethi*** has observed that the application under Section 166 of M.V. Act shall have a future prospects. The future prospects has been specifically guided by the Hon'ble Apex Court. In this case, the claimant was below the age of 40 years and he was self-employed so, 40% of his establish income should be added as a future prospects.

In considering the non pecuniary heads in this case it appears to me that the claimant was a Khalasi of a vehicle, by the accident he lost his leg. Actually, his leg was amputated in the Hospital. A person has lost his entire expectation of life with the loss of his leg. Moreover, the pain and suffering and the trauma suffered by the claimant has to be considered in this case. So, in my view, under the head of non pecuniary damages the claimant should be awarded more Rs.50,000/-.

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

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

Calculation of compensation

1. Monthly Income	:Rs.4,500/-
2. Add: 40% Future Prospects	:Rs.1,800/-
	:Rs.6,300/-
3. Annual Income (Rs. 6,300/- X 12)	:Rs.75,600/-
4. Multiplier 16 (Rs.75,600/- X 16)	:Rs.12,09,600/-
5. 80% Disability	:Rs.9,67,680/-
6. Add: Medical expenses	:Rs.1,10,400/-
	:Rs.10,78,080
7. Add: General Damages	:Rs.50,000/-
	:Rs.11,28,080/-
8. Less: Award already received	:Rs.6,00,000/-
	:Rs.5,28,080/-

After calculation the award comes to Rs. 11,28,080/-. The claimant has already received a sum of Rs. 6,00,000/- so the balance award comes to Rs. 5,28,080/-. 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 i.e. from 25th November, 2010 through the office of the learned Registrar General, High Court, Calcutta within six weeks. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the same to the claimant according to the prevalent Rules, 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.

The instant **FMA 1048 of 2021** 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.)