

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA No.1144 of 2021

Smt. Swarashati Mahanta

v.

Magma HDI General Insurance Co. Ltd. & Ors.

Mr. Krishanu Banik

Mr. Tathagata Banik

... for the appellant/claimant.

Mr. Rajesh Singh

... for the respondent no.1/insurance company.

Heard on: July 19, 2024.

Judgment on: August 7, 2024.

Ananya Bandyopadhyay, J:- The learned advocates for the appellant/claimant and the respondent No.1/insurance company are present.

The instant appeal has been filed by the appellant/claimant agitating the quantum of compensation awarded by the learned Motor Accident Claim Tribunal, 1st Court, Balurghat, Dakshin Dinajpur in disposing of the MACC Case No.68 of 2014 considering the monthly income of the injured victim to be Rs.3,000/- per month.

The learned advocate for the appellant/claimant submitted that the learned Tribunal assessed the monthly income of the victim of the aforesaid Motor Accident Case to be Rs.3,000/- per month and prayed before this Court to

grant compensation considering Rs.4,000/- to be the income of the victim per month.

The learned advocate for the appellant/claimant further submitted the Learned Tribunal erred in not granting the future prospect in favour of the victim. Moreover, the victim has suffered a severe eye injury being incapacitated of her left eyesight and the Learned Tribunal has rightly assessed a total loss of income at the rate of 40% considering the provisions of the Employees' Compensation Act, 1923.

The learned advocate for the appellant/claimant further submitted the victim was entitled to future medical expenses and non-pecuniary damages at the rate of Rs.1,00,000/- respectively.

The Learned Advocate for the respondent No.1/insurance company did not dispute the occurrence of the accident and the involvement of the offending vehicle. The Learned Advocate for the respondent no.1/insurance company conceded to the fact of denial of future prospect by the Learned Tribunal. However, refuted the contentions of the learned advocate for the appellant/claimant in terms of payment of future medical expenses as well as non-pecuniary damages since the victim was unable to produce a proper disability certificate in terms of Section 4 of the Motor Vehicle Act issued by a Government hospital through constitution of a Medical Board by a Government Institution.

Considered the rival contentions of the learned advocates for the appellant/claimant as well as the respondent No.1/insurance company, since, the accident and its occurrence through involvement of the offending vehicle,

have not been disputed along with the ancillary considerations, this Court limits itself to assess the compensation to be awarded to the victim only on the ground of disability. The victim supposedly was engaged as a **“Biri Worker”** and her monthly income can be stated to be Rs.4,000/- per month. The learned Tribunal has considered the medical expenses to the tune of Rs.2,21,784/-. The victim had appeared before the Court for adducing evidence and was cross-examined. Her physical disability to the extent of injury caused to her left eye was evident during her presence in the Court, as she appeared for adducing evidence. She faced the examination-in-chief as well as the cross-examination in the presence of the learned advocate for the respondent No.1/insurance company, who abstained at the relevant time to object to her physical status of incapacitation to the extent of her visibility.

The learned Tribunal has already computed the loss of income at the rate of 40%. The victim was aged about 28 years at the time of accident. Sensibility of the organ has been affected, which in future can be severe and, accordingly, the sum of Rs.50,000/- is to be granted as future medical expenses along with a sum of Rs.1,00,000/- as non-pecuniary damages. The impugned award of Rs.5,30,000/- is modified as follows: -

Monthly Income	Rs. 4000/-
	X 12
Annual Income	-----
	Rs. 48,000/-
Future Prospect to be added(40%)	+ 19,200/-
	Rs. 67,200/-
Total Loss of income (40%)	+ -----
	Rs. 26,880/-

	Rs.26,880/- X 17
Multiplier to be “17”	
	Rs. 4,56,960/-
Medical Expenses	Rs. 4,56,960/-
Future Medical expenses	Rs. 2,21,784/-
Add: Non Pecuniary Damages	Rs. 50,000/-
	Rs. 1,00,000/-
	Rs. 8,28,744/-
Less awarded amount	Rs. 5,30,000/-

	Rs. 2,98,744/-
Entitlement	Rs. 2,98,744/-

It was further submitted by both the learned advocates as aforesaid that the appellant/claimant has received a sum of Rs. 5,30,000/-. The appellant/claimant is entitled to receive the balance amount of Rs.2,98,744/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

The learned advocate for the respondent No.1/insurance Company is to deposit the balance amount of Rs. 2,98,744/- along with interest at the rate of 6 % per cent per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.

The office of the Registrar General, High Court, Calcutta shall encash the cheque stipulating the entire calculated amount as aforesaid and thereafter disburse the same to the present appellant/claimant as mentioned in the impugned judgment dated 20.11.2017 passed by the Motor Accident Claim Tribunal, 1st Court, Balurghat, Dakshin Dinajpur in MACC Case No.68 of 2014

on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court fees.

The instant appeal is disposed of accordingly.

The Trial Court records be sent down to the concerned tribunal forthwith.

Copy of the order be sent to the Department as well as the concerned tribunal for information.

S.R.

(Ananya Bandyopadhyay,

J.)