

08.03. 2024
Item No.22
n.b.
Ct. no. 551

FMAT 309 of 2018

Mithurani Mahato.

Vs.

Cholamandalam MS General Insurance Co. Ltd..

Mr. Soujanya Bandyopadhyay,
.....for the appellant.
Mr. Debanjan Mukjherjee,
Mr. Aziz Amin,
... for the respondent.

This appeal has been preferred against the judgment and order dated May 30, 2017 passed by the learned Judge, Motor accident Claims Tribunal, 2nd Bench, City Civil Court, Calcutta, in M.A.C. Case No.204 of 2012.

The brief fact of the case is that the present appellant/claimant on 4.7.2011, at about 10.30 a.m., while she was going from Chottobainan to Farimpur on the bus bearing no.WB 41D/6144 and when she reached Raina Hospital due to negligent driving of the driver of the bus it did not stop the bus properly and the appellant who was getting down off the bus fell down due to rash driving and the wheel of the bus drove on over the hands of the claimant. Claimant suffered bleeding injury and admitted to the Raina Hospital thereafter she was shifted to the Burdwan Government hospital wherein doctor realizing her dangerous condition referred her to the S. S. K. M Hospital wherein her hand was amputated to save her life.

The claimant filed an application under Section 166 of the M.V. Act for getting compensation before the learned Tribunal. The claim case was contested by the Insurance Company by filing written statement.

After hearing the parties and after considering the evidences on record, the learned Tribunal has calculated the just and proper compensation to be Rs.7,67,000/- but has awarded only Rs.6,72,000/- according to the prayer of the claimant together with 9% interest per annum from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the said award, the present appeal is preferred by the injured claimant.

Learned advocate Mr. Bandhopadhyay appearing on behalf of the claimant submits that the award passed by the learned Tribunal is erroneous. The claimant was housemaid. Her right hand was amputated. Thus her avocation destroyed by such accident. He further argued that though the disability certificate issued by the Burdwan Medical College and Hospital shown the disability of the claimant to be 85%, but considering the facts and circumstances of the case the functional disability of this case would be 100%. She further pointed that the learned Tribunal has failed to appreciate the future prospect in favour of the claimant by virtue of the decision of Hon'ble Supreme Court in **National Insurance Co. Ltd Vs. Pranay Shetti**. He further argued that the

learned Tribunal only awarded Rs.2000/- towards pain and suffering. The claimant has undergone serious trauma due to such accident. She shifted one hospital to another hospital. A long surgery was conducted at the person of the claimant. So, in this case compensation towards the non-pecuniary head must have more than Rs.2,000./-. He further argued that the learned Tribunal may not have restricted to the claim as prayed by the claimant at the time of filing application for compensation, the learned Tribunal should assess just and proper compensation of this case and that is required to be allowed in favour of the claimant. He prayed for just and proper compensation by setting aside the impugned award.

Learned advocate appearing on behalf of the Insurance Company raised strong objection and submits that the disability certificate was issued by the doctors of Government Hospital. The disability certificate shown the disability to be 85%. The doctors have taken care of the entire amputation of the victim. After taking the view that the one hand of the victim was amputated, the disability was assessed to be 85%. He further argued that, if the schedule of Workmen Compensation Act, be considered, the disability assessed by the doctor is on the higher side. So, in this case, the functional disability cannot be 100%. The loss of one hand cannot be stated to be 100% disability. She can always work with one of his hand. She

further argued that in this case, the interest awarded upon compensation is higher side.

Heard the learned advocates and perused the materials on record, it appears that the avocation; appellant was stated to be housemaid servant. The P.W. 2, namely, Joy Deb Chakraborty appeared and stated that the claimant was housemaid of his house and after the accident she could not work properly, so the P.W. 2 terminate her from her job. It is true that being a housemaid servant, the hands are required to be active. In this case, one hand of the claimant has amputated. So, in this case, the work quality of the claimant must have suffered immense. However, considering the evidences on record and considering the materials, it appears that the disability certificate was issued to be 85%. I think it is proper for the assessment of the just and proper compensation of this case. The functional disability cannot be equated to be 100% by virtue of the decision of Hon'ble Supreme Court in ***Raj Kumar Vs. Ajoy Kumar*** as the disability is in respect of a particular limb of the body. I find no justification to interfere with the finding of the learned Tribunal regarding the disability assessed by him to be 85%.

However, by virtue of the decision of Hon'ble Supreme Court in ***Pranay Sethi(Supra)*** the claimant/appellant is entitled to get the future prospect

which would be added to the tune of 40% of her established income.

It appears that only Rs.2,000/- was awarded towards pain and suffering of the claimant. The fact goes to show that after the said accident, the deceased initially admitted to the Raina Hospital, thereafter, to the Burdwan Government Hospital and again shifted to S.S.K.M. Hospital wherein a major surgery held upon her and hand was amputated. The fact goes to show if such accident does not happened the prospects of life of the victim cannot be suffered so much. However, the victim must have suffered serious pain an agony and due to hospitalization.

Considering the facts and circumstances of the case, by virtue of the decision of Hon'ble Supreme Court in **R.D. Halangari Vs. Pest Control(India) Pvt. Ltd.** I think it necessary to award some adequate amount under the non-pecuniary head. In this case, it appears to me appropriate to award Rs.1,00,000/- towards the non-pecuniary head including all heads pain and suffering, future medical expenses, loss of amenities, loss of expectation of life etc.

However, in considering the argument of the learned Counsel for the Insurance Company, it appears that the learned Tribunal has awarded 9% simple interest upon the awarded sum. Awarding interest is at discretion of the learned Tribunal which must have to applied reasonably; but it appears that the interest is higher on side, so in this

case the interest would be 6% per annum on and upon the award.

Considering the materials, the award passed by the learned Tribunal modifies.

1. Monthly income	: Rs.5,000/-.
2. Annual income	: Rs.60,000/-.
3. Add 40% future prospect	:Rs. <u>24,000/-</u> : Rs.84,000/-
4. Multiplied 15	: Rs.12,60,000/-
5. Disability 85%	: Rs.10,71,000/-
6. Add Non-pecuniary head	: <u>Rs.1,00,000/-</u>
Total	: Rs.11,71,000/-

The instant award shall carry 6% interest per annum from the date of filing of the claim application. It appears that the appellant has already received the Sum Rs.6,72,000/-. So the balance award comes to Rs.4,99,000/-.

The insurance company is directed to pay the balance awarded amount together with 6% interest from the date of filing of the claim application through the office of the learned Registrar General, High Court, Calcutta within six weeks. After such deposit, the claimant is at liberty to receive the same on usual terms and conditions. The payment of compensation is subject to the ascertainment of payment of deficit court fees, if any.

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

Accordingly, F.M.A.T. 309 of 2018 is disposed of.

Connection applications, if any, are disposed of.

LCR, if any, be send down immediately.

All parties shall act on the server copy of this order
duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)