IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

06.05.2024
SL No.8 & 9
Court No.25
Ali

FMA 725 of 2022

Reliance General Insurance Co. Ltd.
Vs.
Shankar Das & Anr.
With

COT 63 of 2024
Shankar Das
Vs.
Reliance General Insurance Co. Ltd. & Anr.

Mr. Sanjay Paul,
Ms. Jaita Ghosh
……. for the appellant/Insurance Co.

Mr. Ashique Mondal
…for the respondent No. 1.

The instant appeal has been preferred against the judgment and award dated 15th of February, 2022, passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track, 1st Court, Diamond Harbour, in MAC Case No. 51 of 2015.

The brief facts of the case is that on 01.01.2014 at about 10.oo P.M. the victim of this case/respondent No. 1 was returning home from his business place by road side when he reached near Harindanga B.D.O. office suddenly one six wheeler lorry bearing registration No. WB-41D/0887 coming with tremendous high speed and rash and negligent manner dashed the victim. As a result the victim fell down on the roadside and sustained severe injuries by such accident the right leg of the victim was amputated and the finger of his right hand was also severely injured. He was under a prolonged treatment before the S.S.K.M. Hospital and incurred huge amount of money in his treatment.

The victim preferred an application under Section 166 of M.V. Act before the learned Tribunal for getting compensation on the ground that the accident happened due to the 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.

After hearing the parties and after receiving the evidences the learned Tribunal has allowed a sum of Rs. 58,29,782/- towards the compensation and directed the Insurance Company to pay the compensation to the claimant together with interest @ 7% per annum.

Being aggrieved by and dissatisfied with the said award the Insurance Company has preferred the instant appeal.

The claimant also preferred a cross appeal being COT 63 of 2024 against the said award. Both the appeal and the cross appeal is taken up together for uniformity of the decision.

Mr. Paul learned advocate appearing on behalf of the Insurance Company submits that there are some grounds to challenge the award in the instant appeal. They are-

1) The offending vehicle was not at all involved in the alleged accident

2) The income of the claimant was erroneously assessed by the learned Tribunal, and,

3) The functional disability assessed by the learned Tribunal is also erroneous.

Regarding involvement of the offending vehicle

Mr. Paul learned advocate submits that the alleged accident was happened on 01.01.2014. FIR of the case was lodged on 08.03.2014. There is a long delay in lodging the FIR, during that period the victim must have made a nexus with the owner of the vehicle to implead the vehicle in the alleged accident. However, he frankly submits that the DW-1 who is the associated legal claim Manager of the Insurance Company has admitted in his examination that the vehicle was involved in the alleged accident.

Having heard the fair submissions of Mr. Paul, it appears that during the examination of the DW-1 on 16.02.2019 he admitted that the offending vehicle was involved in the road traffic accident on the fateful day i.e. on 01.01.2014. Though it appears that the victim was met with an accident on 01.01.2014 but it reflected from the facts of the case that the victim was shifted to several Hospitals after such accident during his treatment, this may have the reasonable cause as to why the FIR only lodged on 08.03.2024.

Considering the same, it appears to me that the offending vehicle was very well involved in the alleged accident that the 1st point decided against the Insurance Company.

Income of the victim

Mr. Paul submits that the learned Tribunal has assessed the income of the victim to be Rs. 2,69,720/-. In assessing the income, the learned Tribunal has considered the income of the victim appearing in the ITR for the Assessment years 2013-2014. He submits that the ITR for the Assessment Years 2013-2014 was submitted to the concerned department on 02.07.2014. Thus, the said return was submitted after the accident. He submits that by virtue of the decision of the Hon'ble Apex Court in ***Shashikala and Others Versus Gangalakshmamma and Another*** reported in ***2015 (2) T.A.C. 867 (S.C.)*** as well as ***V. Subbulakshmi and Others Versus S. Lakshmi and Another*** reported in ***(2008) 4 SCC 224*** the ITR submitted before the accident can only be considered to be the just and proper income of the victim. He also submits that the income of the victim appearing in the ITR for the Assessment Years 2012-2013 amounting to Rs. 2,48,747/- can be considered the just and proper income of the victim for assessment of the compensation.

Mr. Ashique Mondal learned advocate appearing on behalf of the claimants submits that the learned Tribunal has correctly assessed the income of the victim by virtue of the income appearing in the ITR for the Assessment Years 2013-2014. He submits that though the ITR for the Assessment years was filed on 02.07.2014, after the accident, but the said Assessment year counted the profit and balance sheet of the business of the injured for the financial year ending on 31st March, 2013. He referred the relevant balance sheet annexed with the Assessment Years 2013-2014. He submits that the ITR may have filed after the accident but the said ITR is in respect of the business of the victim for the Financial Years 2012-2013.

On that score, he argued that the income appearing in the ITR for the Financial Years 2013-2014 has to be considered for the income of the victim.

Mr. Paul learned advocate for the Insurance Company further argued that the victim had a business of Tyre Shop and the evidence goes to show that the brother of the victim is conducting the business and some time the brother of the victim carry the business. He submits that the business of the victim actually not stopped after the accident. The only loss the victim suffered i.e. the cost of a manager who can conduct the business in person in absence of the injured at the shop.

In support of his contentions, he cited the decision of Hon'ble Apex Court in ***New India Assurance Co. Ltd. Vs. Yogesh Devi and Others*** reported in ***(2012) 3 SCC 613.***

Mr. Paul, in support of his contentions has cited the cross examination of PW-1 wherein injured has admitted that his brother is now looking after his business.

Mr. Mondal learned advocate for the claimant submits that the argument advanced by the Insurance Company has no materials and cannot be considered at that stage. He further argued that the nature of the particular business requires to expertise and experience of the injured. Due to the fateful accident the victim could not conduct his business properly. Thus his business has been ruined after such accident. He submitted that the stray evidence of PW-1 suggests that his brother sometime bring him to the shop. He also referred further examination of PW-1 on recall wherein the PW-1 has denied all the suggestions made to him by the Insurance Company regarding the conduction of the business by the brother of the victim.

Mr. Mondal also submits that the observation of Hon'ble Apex Court in ***Jogesh Devi (supra)*** is on the basis of the separate facts and circumstances of this case so the ratio as laid down in the ***Yogesh Devi (supra)*** cannot be accepted in this Case. He further cited the decision of Hon'ble Apex Court in ***K. Ramya & Ors. Versus National Insurance Co. Ltd. & Anr. (Civil Appeal No. 7046 of 2022)*** wherein the Hon'ble Apex Court has opined regarding the actual loss of income from business ventures and other investments due to the sad demise of the deceased.

Heard the learned advocates perused the materials also perused the evidences and the exhibited documents. It is true that the ITR for the Assessment Years 2012-2013 was filed on 07.03.2013 and ITR for the Assessment Years 2013-2014 was filed on 02.07.2014. The ITR for the Assessment Years 2013-2014 was filed after the alleged accident on 01.01.2014. It further appears that the Assessment Years 2013-2014 is in respect of Financial Years 2012-2013 ending on 31st March, 2013. The Assessment Years 2013-2014 calculated the profit and loss of the business, namely, M/S MAA KALPANA TYRE under the proprietorship Shankar Das (victim) for the Financial Years ended on 31st March, 2013. So, it appears that the income was assessed in Assessment Years 2013-2014 for the said business prior to the accident dated 01.01.2014. It further appears that the income of the business in Assessment Years 2013-2014 is not so inflated to disbelieve.

Considering the same, I find justification to the submission made on behalf of the injured. Thus, the learned Tribunal has justifiably considered the income of the injured on the basis of the Assessment Years 2013-2014.

In considering the submissions made on behalf of the Insurance Company it appears that in case of ***Yogesh Devi (supra)*** the victim died in a road traffic accident and his income from agricultural land as well as from the three buses was considered. It is true that the Hon'ble Apex Court in ***Yogesh Devi (supra)*** has considered that one driver and Manager can be appointed to conduct the bus business and the cost of appointing manager and driver can only be considered to be the loss in assessing the compensation.

In ***K. Ramya & Ors.*** the Hon'ble Apex Court has also considered the absence of deceased in a particular business ventures and other investments and it has been observed that the absence of the deceased in the business has suffered a huge loss to the business as the other legal heirs of the deceased were not able to care of the business.

In this particular case, the victim was conducting a Tyre business, after the said accident his right leg was amputated and he became cripple. He could not conduct the business. It appears that the particular Tyre business required some goodwill as well as the experience of the victim which he could not perform if he not appears regularly in the business place. The evidence goes to show that he is not appearing in the shop regularly. Considering the same, I think it necessary to hold that the only employing a Manager to conduct the Tyre business would not revive the entire business reputation and experience of the victim to conduct the said business.

Considering the same, I find no justification to the submission of the Insurance Company regarding the fact that the victim has suffered only managerial loss to conduct the business. In this case, I am of the specific view that the income of the victim was correctly calculated by the learned Tribunal by virtue of ITR for Assessment Years 2013-2014.

Regarding functional disability of the victim

Mr. Paul submits that the victim lost his one leg and the concerned Government Hospital issued a disability certificate mentioning his permanent disability to be 80%. He further submits that one of the Doctor of that board has deposed as PW-5.

During the cross examination he deposed that the percentage of disability was assessed in respect of lower limb as 80%.

Mr. Paul submits that the disability was assessed to be 80% in respect of only lower limb. The said percentage of disability cannot be equated in assessing the entire bodily disability of the victim. So, in this case, the functional disability assessed by the learned Tribunal on the basis of the said disability certificate is not correct. He further argued that the learned Tribunal has awarded a huge amount of money towards the non pecuniary damages. The victim may very well carry on his life by using prosthetic/artificial limb. So, the percentage of disability assessed by the Dr. cannot be equated with the functional disability.

Mr. Mondal learned advocate appearing on behalf of the victim submits that after the accident the right leg of the victim was amputated. It is not possible for any person to procure the new limb. Moreover, the disability is total and permanent. He submits that the entire business as well as the activity of the victim has been devastated due to the sudden accident. So, the percentage of disability should be 100%.

Heard the learned advocates perused the disability certificate issued by the Superintendent of Diamond Harbor District Hospital. It appears that the Locomotors disability was assessed by the Doctor to be 80%. The PW-5 (Doctor) during his examination-in-chief stated that the percentage of disability is 80% due to the amputation of right leg above knee, he also deposed that it is not possible to lead a normal life with the 80% disability.

In assessing the entire facts it appears to me that one person has lost his leg over the knee by the accident. The disability was assessed by the Doctor as 80%; to assess the functional disability by virtue of the decision of the Hon'ble Apex Court in ***Raj Kumar Vs. Ajay Kumar,*** the Tribunal has to look into the avocation of the victim and his requirement of the limb in such avocation. It appears that the avocation of the victim was a Tyre business. I have already noted earlier that the business requires the activity of the person conducting the business. It is not possible for the present (victim) to be bodily active as he was conducting the business before the accident.

Considering the same, it appears to me that the percentage of functional disability as assessed by the learned Tribunal is justified. I find no reason to interfere with the said finding of the learned Tribunal. So, in this case, the functional disability would be 80%.

It further appears that the learned Tribunal has awarded Rs.5,50,000/- towards the non-pecuniary heads. It contains loss of pain and suffering, loss of amenities of life, transportation charges, attendant charges, food and nourishment charges as well as the cost of living and cost of artificial limb.

Considering the entire facts and circumstances, I find no justification to interfere with the said finding also. Accordingly, the award passed by the learned Tribunal amounting to Rs. 58,29,782/- appears to be justified. However, this Court in several occasions has decided the interest portion as 6% on and upon the awarded sum. The same view is adopted. The awarded amount of Rs.58,29,782/- shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 13.02.2015 till its actual realization.

It appears that the Insurance Company has already deposited an amount of Rs. 25,000/- on 31.03.2022 and further deposited an amount of Rs. 58,29,782/- on 25.04.2024 totaling of which comes to Rs.58,54,782/-. The same amount must have accrued some interest. The office of the learned Registrar General, High Court, Calcutta is directed to disburse the same along with accrued interest in favour of the victim within four weeks according to the regular norms of identification and certification. The Insurance Company is further directed to deposit the interest portion on an upon the awarded amount through the office of the learned Registrar General, High Court, Calcutta within six weeks which shall be calculated from the date of filing of the claim application i.e. from 13.02.2015 to 25.04.2022 less the statutory amount of Rs. 25,000/-. After such deposit the victim is at liberty to receive the same on usual norms.

The applications being **FMA 725 of 2022** along with **COT 63 of 2024** are 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.)