**IN THE HIGH COURT AT CALCUTTA**

**Civil Appellate Jurisdiction**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**FMA 2047 of 2015**

**(FMAT 214 of 2015)**

**National Insurance Company Limited**

**Vs.**

**Sri Palash Prasun Giri & Anr.**

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|---|---|---|
| **For the Appellant/ Insurance company** | **:** | Ms. Sucharita Paul. |
| **For the Respondent No.1/ Claimant** | **:** | Mr. Pratip Kr. Chatterjee,<br>Mr. Arijit Dey. |
| **For the Respondent No.2/ Owner** | **:** | None. |
| **Hearing concluded on** | **:** | 01.10.2024 |
| **Judgment on** | **:** | 01.10.2024 |

**Shampa Dutt (Paul), J.:**

**1.** The present claim appeal has been preferred by Appellant/Insurance Company against the judgment and award dated 26th August, 2014 passed by the learned Additional District Judge, redesignated Court, Paschim Medinipur, in MAC Case No. 259 of 2011, **under Section 166 of the Motor Vehicles Act, 1988.**

**2. FACTS :-**

> *"........The petitioner Palas Prasun Giri, Doctor by profession, aged 34 years having income of Rs.35,000/- per month was subjected to victimize on road by the motor accident with the offending vehicle bearing No. WB-29/0499 while he was standing along with one Surojit Singha on the morum road by the side of the pitch road along with NH-6 at Chandi more under P.S. Jhargram, at that time such offending vehicle rashly and negligently dashed against both of them and in consequence of such accident they fell down on the road and sustained severe injury on their person. The local people came forward and admitted the other companion namely Surojit Singh in Jhargram S.D. Hospital wherein he was declared dead and the present claimant after getting primary treatment in that hospital, was shifted to Calcutta for his better treatment. Thereafter, he was medically treated from 04.05.2011 to 11.05.2011 on admitting himself in Apollo Gleneagles Hospital at Calcutta and thereafter, at different hospitals and nursing home with a view to recover from ill health and spent Rs.4,50,000/- towards the expenses of medical treatment and other incidental cost. The accident occurred on 04.05.2011 due to rash and negligence of the driver of the offending vehicle and thereby he suffered to a great extent financially along with his family members........"*

**3.** **O.P. 2/National Insurance Company Ltd.**, contested the case by filing written statement and denied the positive case of the claimant. The rash and negligence of the driver of the offending vehicle as alleged was totally denied by this answering O.P. The Insurance Company is however, taking defence in view of Sec. 170 of M.V. Act as available to the owner of the vehicle, though the owner of the vehicle did not contest the case in spite of summons served.

**4.** The Claimant examined **four witnesses.** They were cross-examined by the insurance company. Relevant documents were proved and marked as **Exhibits 1 to 19 series**.

**5.** The Insurance Company has proved the original salary statement of the Respondent No. 1/Claimant which has been marked as **Exhibit A** (on admission).

**6.** **On conclusion of the hearing the learned Tribunal granted compensation as follows :-**

*"…….**MAC Case No. 259 of 2011***

***Dated: 26th August, 2014***

*On meticulous and earnest consideration of the entire materials on record, as available keeping in view of the said observation, I find that the petitioner being the injured person of the accident in issue on road is entitled to have compensation from this tribunal. The following calculation is thus made to determine the actual compensation in this case. The factual matrix and documentary prove I assessed that the medical expenses of Rs.3,57,187/- was actually incurred for receiving treatment of the petitioner from different hospitals along with Apollo Hospital and he is entitled to receive the same as medical expenses. The petitioner being a doctor due to such injury not only suffered financial loss since he stated by his deposition in cross examination that he was not without pay for 13 months but also he suffered loss owing to disbursement of his costly medical treatment which was required for recovery of his ill health. He being a doctor also suffered mental pain and agony for his recovery from his injured condition to a better position so that he can continue his profession either to maintain his* *family or to render service to the locality where he comes. Considering such aspect, I am inclined to award Rs.3,00,000/- towards mental pain and agony to the petitioner. The income as comes into existence on proving the competent authority that the petitioner used to earn at least Rs.35,000/- at the time of incident. On calculating such monthly income his yearly income comes into existence Rs.4,20,000/- at the time of such incident. Due to accident he was badly injured and incapable to perform his work as doctor and as such I am inclined to award Rs.3,00,000/- for loss of his future income though I am not inclined to make any observation or payment of award on the basis of extent of disablement as of the petitioner in view of the certificate produced as I have already observed. From the medical document i.e. prescription and investigation report as submitted, I find that the nature of injury as sustained by the petitioner in this case is within the purview of grievous injury and for that purpose I am inclined to award Rs.50,000/-. On arithmetical calculation the aggregate of compensation in this case as awarded is Rs.10,07,187/- which will serve the purpose in this case. However, the claim as submitted in this case by the claimant is Rs.8,00,000/-. But the tribunal enjoys unfettered jurisdiction to pass award more than claim on the basis of assigning reasons and factual materials. In the instant case, I am inclined to award such amount to the petitioner due to injury sustained in the incident in issue.*

***Sd/-***
***Motor Accident Claim Tribunal***
***Additional District Judge,***
***Re designated Court,***
***Paschim Mednipur......... "***

7. **Being aggrieved, the Insurance Company has preferred the present appeal on the ground :-**

*That the learned Tribunal granted excessive compensation which is disproportionate to the injuries sustained by the claimant and* *erroneously granted Rs.6,50,000/- as non-pecuniary compensation.*

**8. Considering the materials including the evidence on record, this Court finds that :-**

(i) The injured Claimant is a doctor by profession and was aged about **34 years** at the time of the accident and has proved his income as **Rs.35,000/- per month.**

(ii) The incident in this case which injured the claimant occurred due to the rash and negligent driving by the offending vehicle which had a **valid insurance.**

(iii) The claimant was medically treated from **04.05.2011 to 11.05.2011** and incurred medical expense to the tune of **Rs.4,50,000/-.**

(iv) Though the insurance company tried to deny the said salary of the Claimant by producing the document marked **Exhibit A**, the Tribunal rightly did not accept the contention of the Insurance Company.

(v) Medical papers produced before the Trial Court were duly proved. The **medical expenses** have been rightly assessed by the Tribunal to be **Rs.3,57,187/-.** The Tribunal also rightly assessed that the claimant was entitled to **Rs.3,00,000/-** towards **mental agony** and accepted the **income of the claimant** as **Rs.35,000/- per month** at the time of accident. For grievous injury, the learned Tribunal granted **Rs.50,000/-** and finally granted a total compensation of **Rs.10,07,187/-.** Though the claim was for **Rs.8,00,000/-. Exhibit 9** is the disability certificate. The said disability certificate has been issued by the **medical board of Uluberia Sub Divisional Hospital** which is a **valid disability certificate** and his disability has been **calculated at 40%. (*Bajaj Allianz General Insurance Company Pvt. Ltd. Vs Union of India and ors., 2021 (4) T.A.C. 676 (S.C.)*)**

**9.** Considering the amount of compensation granted by the learned Tribunal, this Court finds that the Tribunal rightly assessed the compensation and the compensation granted by the Tribunal is ***'Just Compensation'*** and the finding of the learned Tribunal requires no interference by this Court.

**10. The Insurance Company has already deposited the compensation amount as granted by the tribunal. As such, the Insurance Company shall now deposit the interest @ of 6 % P.A. from filing till deposit, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimant, upon satisfaction of his identity and payment of *ad valorem* Court fees, if not already paid.**

**11. The appeal being FMA 2047 of 2015/ FMAT 214 of 2015 is thus disposed of. The impugned judgment and award of the learned Tribunal under appeal is affirmed.**

**12.** All connected applications, if any, stand disposed of.

**13.** Interim order, if any, stands vacated.

**14.** Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

**15.** Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

**(Shampa Dutt (Paul), J.)**