IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 3392 of 2015

Pradip Mallick

Versus

United India Insurance Company Limited and Another

For the Appellant/Claimant : Mr. Krishanu Banik, Adv.

For the Respondent No. 1/Insurance Company

: Mr. Rajesh Singh, Adv.

Heard on : 31.01.2024

Judgment on : 05.04.2024

Ajay Kumar Gupta, J:

1. This instant First Miscellaneous Appeal has been filed by the appellant/claimant challenging the judgment and award dated 22nd December, 2014 passed by Learned Additional District and Sessions Judge, 3rd Court, Tamluk –cum- Motor Accident Claims Tribunal, Tamluk thereby the learned Tribunal allowed the MACC No. 46 of 2013 filed under Section 166 of the Motor Vehicles Act, 1988 on contest against OP 2/United India Insurance Company Ltd. and ex parte against OP 1/owner of offending vehicle without any cost on account of injury suffered by the appellant/claimant and awarded a compensation to the tune of Rs. 10,01,884/- along with interest @ 6% per annum from the date of filing of the claim application i.e. 30.11.2012 till final realization.

2. The brief facts of this case are as under:

2a. On 06.09.2012 at about 4 PM, while the victim was standing on the extreme left side of Kakgachiya on NH 41 road and talking with his friends at that point of time, the vehicle bearing No. WB 20U/7176 (Xylo) which was going towards Mechada side from Haldia with extreme high speed endangering to human life and safety all on a sudden dashed the victim and his friends with great force as a result of which, the victim sustained grievous injury all over his person and further suffered fractured injury in left leg and injury left upper limb. The victim was removed to Tamluk District Hospital and, thereafter, he was shifted to Nightingale Hospital, Kolkata. He was further shifted to Apollo Hospital, Chennai when his condition became worse. At the time of accident, he was 33 years old and he was collecting betel leaves and supplying the same to the market of Kaktiya and Ramtarakhat. His income was Rs. 7,000/- per month prior to his accident. Due to such sudden accident, he became disabled to the extent of 60% and he could not perform his work at all. As such he filed an application under Section 166 of the Motor Vehicles Act claiming compensation to the tune of Rs. 12 lakhs plus interest including litigation costs.

2b. After hearing the parties and considering the evidence both oral and documentary brought on record by the parties, the learned Tribunal Judge has assessed a compensation to the tune of Rs. 10,01,884/-. Learned Tribunal assessed income of the appellant of Rs. 3,000/- per month as notional income and also added the medical expenses to the tune of Rs. 6, 34,684/- to the total compensation. Appellant, being aggrieved by and dissatisfied with compensation, filed this instant appeal seeking enhancement of the compensation amount as learned Tribunal did not consider the future prospect, actual income and non-pecuniary damages.

3. Under the above facts and circumstances, the appeal has come up before this Bench for disposal.

SUBMISSIONS ON BEHALF OF THE APPELLANT/CLAIMANT:

4. Learned advocate appearing on behalf of the appellant/claimant submitted that the compensation awarded in favour of the claimant was inadequate as such the appellant/claimant prays for enhancement of the awarded compensation.

4a. It is further submitted that the learned Tribunal did not consider the actual income of the victim as Rs. 7,000/- per month as claimed in the claim application. It ought to be considered by the learned Tribunal as Rs. 7,000/- per month instead of Rs. 3,000/- per month. In alternative, he prays for consideration of his income not less than Rs. 4,000/= as per the statics of the market price of commodities and minimum earning at the time of accident. Furthermore, the learned Tribunal did not add the compensation under the head of future prospect and non-pecuniary damages. If the learned Tribunal would have been considered compensation towards future prospect and non-pecuniary damages, the awarded compensation would have more than the aforesaid awarded compensation.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1/INSURANCE COMPANY:

5. Per contra, learned Advocate appearing on behalf of the Insurance Company vehemently opposed the prayer of the appellant/claimant and further submitted that the learned Tribunal Judge has rightly considered the income of the victim as appellant could not produce or prove his actual income by documentary evidence. In view of the Hon'ble Supreme Court judgment passed in **Laxmi Devi & Others vs. Mohammad Tabbar & Another**[1] the learned Tribunal rightly assessed his income as Rs. 3,000/= as his notional income. In that judgment the Hon'ble Supreme Court has held even an unskilled labour can earn Rs. 100/- per day which comes to Rs. 3,000/- per month. As such, his income is rightly considered as Rs. 3,000/- per month. The learned Tribunal has assessed the compensation amount in higher side though the appellant sustained temporary disability to the extent of 60%. Appellant did not suffer any permanent disability and also not suffer any loss of future earnings.

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[1] 2008 (2) T.A.C. 394 (SC)

5a. It is further submitted by the learned Counsel that though the future prospect has not been added with the compensation amount but that compensation amount would be on lower side as the petitioner had suffered temporary disability to the extent of 60%. Disablement, whatsoever, assessed by the Medical Board has not been reviewed after 10 years. It is required to be reviewed to ascertain the actual position of the victim's disability. Furthermore, victim's disability certificate indicates there is no need of any assistance in his day-to-day activities. He can work as similar as he was working. He would not suffer loss of future earnings. Therefore, if this Court considers temporary disability to the extent of 60%, he would not suffer any functional disability. Even if, the learned Tribunal would have been accepted 60% permanent disability, the amount would be lesser than the compensation amount because appellant did not suffer to the extent of 60% functional disability. It should be less than 40%. Even, if this Court allows the future prospect and non-pecuniary damages that amount to be adjusted or equated with the total compensation amount or modified the compensation amount after considering the actual disability or functional disability.

5b. He further submitted that the learned Tribunal has considered multiplier 17 though it would be actually 16 as per the age group of the injured person/appellant. Considering all aspects, the amount can be adjusted and /or modified the awarded compensation.

DISCUSSION, ANALYSIS AND CONCLUSION OF THIS COURT:

6. Having heard the submissions of both the parties and on perusal of the record including exhibits, this Court finds the learned Tribunal has assessed the notional income of the victim as Rs. 3,000/- per month and finally awarded a compensation to the tune of Rs. 10,01,884/- without adding the compensation under the head of future prospect and non-pecuniary damages. In view of the judgment referred by the appellant/claimant in **Raj Kumar Vs. Ajay Kumar and Ors.**[2], **R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd.**[3] and **Pranay Sethi Case (Supra)**[4], the claimant is also entitled to get non-pecuniary damages as well as compensation under the head of future prospects. Furthermore, it is admitted fact that the appellant/claimant had failed to substantiate his income as Rs. 7,000/- per month from collecting betel leaves and supplying of the same to the market of Kaktiya and Ramtarakhat.

7. Upon perusal of the judgment reported in **Laxmi Devi & Others vs. Mohammad Tabbar & Another**, the Hon'ble Supreme Court has held

[2] (2011) 1 SCC 343;
[3] 1995 AIR 755, 1995 SCC (1) 551
[4] (2017) 16 SCC 680

even an unskilled labour can earn Rs. 100/- per day in the year 2008 but in the present case, the accident was occurred in 2012. So, it must be definitely more than Rs. 3,000/- per month. This Court considers his income as Rs. 4,000/- per month. It would be reasonable on the basis of several judgments delivered earlier by this Court and considering the market prices of the commodities in the year 2012. Furthermore, in view of the **Pranay Sethi's Case (supra)**, the victim also entitled to get future prospect. Victim's age was 33 years at the time of accident and when the age is below 40 years, future prospect would be 40% of the actual income as injured falls in the category of self-employed or on a fixed salary. Multiplier would be 16 instead of 17 as per his actual age.

8. Upon perusal of the evidence, it appears P.W. 4, Dr. Sumit Karak stated that a medical board was constituted. Finally, the board opined that the patient has Mal-united distal tibia fracture with stiff ankle and the patient has temporary disability up to 60 % and to be reviewed after 10 years. Disability certificate marked as Exhibit 12. During cross-examination, he admits that the patient, however, is not required any help from anybody for his movement. He further opined that said percentage of disability may increase or reduce by the passage of time in future. As per the judgment in ***Raj Kumar Vs. Ajay Kumar and Ors.***, when the disability is temporary in nature, there must be a calculation of actual functional disability of the body and nor could it be assumed in result in corresponding of loss of earning capacity in future. The claim of the victim was that at the time of accident, he was collecting betel leaves and supplying of the same to the market of Kaktiya and Ramtarakhat. But the learned Tribunal has assessed erroneously his disability as permanent and also assessed the total loss of earning capacity of 60% though the certificate was issued as temporary disability by the Medical Board (Ext. 12). There is no need to any assistance to the appellant/claimant and also not required any help from anybody for his movement. It means the victim disability was assessed to the extent of 60% as temporary disability towards his Mal-united distal tibia fracture with stiff ankle, which cannot be more than 40% actual physical disability and functional disablement. Therefore, his actual loss of earning capacity may virtually be 40% instead of 60% because he may be able to discharge his duties attached to his job, which he was earlier doing. He was collecting betel leaves and supplying of the same to the market of Kaktiya and Ramtarakhat. In view of the above observation, it appears the Learned Tribunal erred in assessing 60% permanent disability and assessed the total loss of earning capacity of 60% which required to be modified to the extent of 40%.

9. In addition, appellant is entitled to get medical expenses to the tune of Rs. 6,34,684/= as it is proved by the appellant by producing medical documents and bills. Appellant is also entitled to get non-pecuniary damages for pain, suffering and trauma as a consequence of the injuries to the tune of Rs. 2,00,000/= as lump sum amount considering the facts and circumstances of the age of the injured, nature of injury, disability suffered by the appellant and effect thereof on the future life of the appellant.

10. Keeping in mind of the above observations and judgments of the Hon'ble Apex Court, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 4,000/-
Total Annual Income Rs. 4,000 X 12	Rs. 48,000/-
Add 40% Future Prospect	Rs. 19,200/-
Total income	Rs. 67,200/-
40% Loss of future income of the victim	Rs. 26,880/-
Multiplier 16 (Rs. 26,880/- X 16)	Rs. 4,30,080/-
Add- Non-pecuniary damages	Rs. 2,00,000/-

Add- Medical Expenses	Rs. 6,34,684/-
Total Compensation	Rs. 12,64,764/-
Less awarded amount received	Rs. 10,01,884/-
Total enhanced Compensation receivable	Rs. 2,62,880/-

11. Thus, the appellant/claimant is further entitled to get enhanced compensation amount to the tune of Rs. 2,62,880/= (Rs. Two Lakhs Sixty-Two Thousand Eight Hundred and Eighty Only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. on and from 30.11.2012 till final payment.

12. The Respondent No. 1/Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 2,62,880/= (Rs. Two Lakhs Sixty-Two Thousand Eight Hundred and Eighty Only) together with the interest as indicated above by way of cheque before the Office of learned Registrar General, High Court, Calcutta within a period of 4 weeks from date.

13. Learned Registrar General, High Court, Calcutta, upon deposit of the enhanced compensation amount together with interest on the enhanced awarded compensation amount as well as compensation awarded by the learned Tribunal as indicated above, shall release the amount in favour of the appellant/claimant upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid.

14. The impugned judgment and award of the learned Tribunal dated 22nd December, 2014 passed in MACC Case No. 46 of 2013 filed under Section 166 of the Motor Vehicles Act, 1988 by the Learned Additional District and Sessions Judge, 3rd Court, Tamluk, Motor Accident Claims Tribunal, Tamluk, Purba Medinipur is hereby modified to the extent as aforesaid.

15. With the above observations, the instant appeal being **FMA 3392 of 2015** is, thus, allowed without order as to costs. Consequently, connected applications, if any, are also, thus, disposed of.

16. Let a copy of this Judgment along with Lower Court Records, if any, be sent back to the learned Tribunal forthwith for information.

17. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

18. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)