18.04. 2024
item No.8 & 9
n.b./Sws.m
ct. no. 551

FMA 806 of 2022
with
IA No. CAN 1 of 2022
+
CAN 2 of 2022
Reliance General Insurance Co. Ltd.
Vs.
Sinchita Ghosh & Anr.

With
COT 81 of 2022

Sinchita Ghosh
Vs.
Reliance General Insurance Co. Ltd.

Mr. Sanjay Paul
.....for the appellant.
Mr. Ashique Mondal,
.... For the respondent.

The instant appeal has been preferred against the Judgment and award dated March 28, 2022 passed by the learned Judge, Motor Accident Claims Tribunal, 7th Fast Track Court, South 24 Parganas at Alipore in M.A.C. Case no. 726 of 2015.

The brief fact of the case is that the injured of this case, namely, Sinchita Ghosh on 11.2.2015 with her senior colleague entered inside the plant office complex of Philips Corbon Black Ltd at Durgapur and moving towards East by their Scooty along with road inside the factory. At the time one Oil Tanker being No. WB 327B/4101 was also moving towards east with very high speed. Both the vehicles reached near the Old Weigh Bridge insidse the Factory, suddenly the said Oil Tanker turned towards its left and dashed the scooty. As a result, the scooty fell down towards its left side and the victim was also fell down on the road. At the time the left limb/leg of the victim was run over by the said tanker, causing severe injury or over her body, mainly the victim left leg was badly smashed almost up to hip joint including the muscles of right leg above knee up to the right hip joint was also badly damaged. Thereafter, the victim was rescued by the people inside the factory and admitted to the Mission Hospital, Durgapur where she was admitted and treated up to 13.2.2015. Her left leg was amputated on 11.2.2015. Subsequently, the victim was transferred to Woodlands Multispeciality Hospital, Kolkata on 13.2.2015 wherein after intensive treatment and several operations the victim was discharged from the hospital on 1.5.2015.

The injured field a claim case before the learned Tribunal for getting compensation on the ground that the accident happened only due to rash and negligent driving of the driver of the offending vehicle (Oil Tanker). The insurance company contested claim case by filing the written statement along with a leave under Section 170 of MV Act.

After hearing the parties and after receiving the evidence the learned Tribunal has awarded a sum of Rs.1,28,96,237/- together with 7% interest per annum from the date of filing of the claim application towards compensation of this case and directed the insurance company to pay the compensation.

Being aggrieved by the dissatisfied with the said award the instant appeal has been preferred by the Insurance Company. The claimant also preferred one cross appeal against the said award being COT 81 of 2022. Both the Appeal and Cross appeal are taken up for hearing for uniformity of the decision.

The learned advocate for the appellant Mr. Paul submits that the appeal has been preferred only two grounds. Firstly, the learned Trial Court has opined in the award that though the driver of the offending vehicle had no valid licence to drive the oil tanker but the insurance company may pay the third party and thereafter they may be given a liberty to recover the same from the owner of the offending vehicle. Mr. Paul submits that the said observation was not culminated to any specific direction in the operative portion of the judgment. He argued that during the evidence the Insurance Company has called the Motor Vehicle Inspector (DW-1) of Purba Burdwan to verify the driving licnece of the driver of the offending vehicle. DW 1 has stated that the driving licence of the driver was issued on 27.11.2001 for driving LMV, Motor Cycle, Transport Vehicle etc. He further stated that the new driving licnece for driving transport vehicle was issued on 27.11.2001. Up to 18.06.2020 from MV authority Burdwan. PW 2 is the Assistant Manager of East Zone of Reliance Insurance Company Limited deposed that the driver had valid driving licnece to drive LMV (NT), MCWG, Trans(LTV+MGV+HGV) with driving licence valid from 15.06.2020 to 14.06.2025.

Mr. Paul further submits that the relevant oil tanker was carrying the petroleum crude oil which is covered under the Rule 137 in Central Motor Vehicle Rule, 1989. According to the schedule of Rule 137 the petroleum crude oil come under the nature of "dangerous or hazardous goods" as specified in column no. 2. I have perused the Rule 137 of the Central Motor Vehicle Rules and the schedule thereof. In the said schedule the entry no. 1656 is the petroleum crude oil which turmed as the "dangerous and hazardous goods". Thus considering the entire fact it appears to me that the arguments advanced on behalf of the insurance company is justified. The driver of the offending vehicle may have valid driving licence at the date of alleged accident, i.e. on 11th February, 2015, but he did not have the licence to drive the vehicle carrying the nature of goods which are "dangerous and hazardous". On such logic the owner of the offending vehicle must have violated the terms of the policy by employing a driver having no valid licence on the day of accident. Thus, in my view, the insurance company is entitled to get the relief, as observed by the learned Tribunal in the body of the judgment.

Thus, this issue decided in favour of the insurance company.

Secondly, Mr. Paul submits that the quantum of compensation as awarded by the learned Tribunal is erroneous in several grounds. Firstly, the learned Tribunal as adopted the monthly income of the injured to be Rs.31,250/- per month. There are no such evidence or documentary proof regarding such monthly income of the injured. Moreover, the employer of the injured has appeared before the learned Tribunal and exhibited the Form 16 issued by the employer in favour of the injured including the pay slips. The last pay ship for the month of January, 2015 was also exhibited, wherefrom it appears that the gross total earning of the injured was Rs.23,750/-. So the monthly income adopted by the learned Tribunal on the basis of the claim application is erroneous.

Mr. Paul further argued that the learned Tribunal has awarded 40% future prospect which was added with the income of the deceased. He submits that the injured has deposed before the learned Tribunal as PW 1. In her cross-examination, she admitted that at the time of accident, she used to earn Rs.31,000/- per month and at present her earning was Rs.38,000/-. There are no loss of income of the injured due to such accident, rather her income was increased so, the future prospects considered by the learned Tribunal is erroneous.

Mr. Paul further argued that there is no loss of income in this case so the injured can only entitled to get the pecuniary and non-pecuniary damages.

Mr. Paul further argued that the learned Tribunal has considered the disability of the injured to be 70% and this permanent disability was calculated and the award was passed accepting the functional disability to be 70%. From the facts and circumstances the percentage of disability as assessed by the learned Tribunal is not correct.

Lastly, Mr. Paul submits that the learned Tribunal has awarded Rs.5,00,000/- towards the pain and suffering and also awarded further Rs.30,00,000/- towards the future medical expenses including the replacement of component of artificial limb and also future transportation charge in addition to other compensation. Mr. Paul submits that the awarding future medical expenses of such huge amount of Rs.30,00,000/- is not justified. There is no specific evidence of cost of prosthetic limb and its requirement for replacement of components after a few years. Mr. Paul frankly submits that though the PW 1/ injured has produced the receipt of purchasing prosthetic limb before the learned Tribunal but such receipt was not validly proved, so he argued that the learned Tribunal has erroneously awarded the compensation of future medical expenses. Mr. Paul further argued that in this case an interest of 7% per annum was awarded by the learned Tribunal which is in the higher side.

Mr. Mondal, learned counsel appearing on behalf of the claimant submits that the argument advanced by Mr. Paul is not justified. He submits that the income of the injured was specifically proved by calling the employer who deposed before the learned Tribunal and has produced the pay slips. From the pay slips it would be revealed that just before the accident the injured has received the monthly salary of Rs.23,750/- wherefrom the professional tax of Rs.130 can be deducted.

Mr. Mondal further submits that this is a fit case where the earning prospect of the injured has been totally disrupted by the said accident. He submits that the injured was a young, unmarried lady aged about 26 years old and was engaged in a service as an Assistant Manager posted at Plant Office, Durgapur, Philips Corbon Black. Her sole intention of joining the job was to gain some experience in such factory and thereafter intend to complete master degree in chemical engineering for better promotion as well as to obtain better job opportunity. Just few days of her service she promoted to the post of factory premises as Assistant Manager to look after the quality assurance of the product as a chemical engineer. Her career was going smoothly and upwardly, but due to such accident her entire profile and entire prospects of job has been drastically changed. Mr. Mondal further argued that as the accident happened within the factory premises, so the owner had showed mercy upon the injured and she was engaged in a separate job and compelled to employ under HRD department, that is , a desk work at the Head Office of Kolkata. Mr. Mondal further submits that the increase of her salary is due to the inflation but her entire job prospect of chemical engineer has been entirely lost. So in this case the claimant has suffered huge loss of income. In support of his contention, Mr. Mondal has cited two decisions of Hon'ble Apex Court passed in ***Hari OM Const. vs. Natinal Insurance Company Ltd. & Ors. (Civil Appeal Nos. 7262 – 63 of 2022)*** *and* ***Dinesh Singh vs. Bajaj Allianz General Insurance Company Limited and Another*** *reported in* ***(2014)9 SCC 241.***

In a case of ***Hari Om (supra)*** a constable has suffered multiple fracture injury and dislocation of elbow and other bodily infirmity wherein the Doctor has assessed the permanent disability of 45%. The Tribunal has awarded a compensation applying the multiplier of 16 wherein the Hon'ble High Court has reduced the multiplier of 9 considering the fact that her job was not lost but the Hon'ble Apex Court has supported the view of the learned Tribunal with a finding that the continuous to be in service of the constable cannot be considered, as his efficiency as a constable has been seriously compromised by the accident.

In ***Dinesh Singh (supra)***, the Hon'ble Apex Court in the similar fact and circumstances has adopted the correct multiplier and set aside the order passed by the Hon'ble High Court wherein the compensation was reduced.

Mr. Mondal further argued that in this case, the learned Tribunal has correctly adopted the multiplier method and also has correctly considered the permanent disability to be 70%. He argued that in this case the injured was a chemical engineer. Due to such accident her prospect as a chemical engineer has been lost, she was only engaged in a desk job. So in this case the claimant is entitled to get 100% disability towards her functional disability.

Mr. Mondal further argued that the learned Tribunal has awarded Rs.5,00,000/- towards the pain and suffering and further Rs.30,00,000/- towards the future medical expenses. The award passed by the Tribunal is not excessive. The case of the accident goes to show that on the date of accident, that is, on 11.02.2015 the injured was admitted to the Mission Hospital, Durgapur, wherein her left leg was amputated. Thereafter, on 13.02.2015 she was shifted to the Woodlands Multispeciality Hospital, Kolkata wherein she was admitted from 13.02.2015 to 01.05.2015. During her treatment at Woodlands Hospital, there are at least 27 surgeries at her person and about more than 80 days she was hospitalised. The injured has suffered immense pain during the treatment and operation. Such pain she could not be suffered if the accident had not happened. He further argued that the amount of compensation of Rs.5,00,000/- towards pain and suffering in this case is meager one.

Mr. Mondal further argued that Rs.30,00,000/- was awarded towards the future medical expenses including the cost of prosthetic limb and replacement of component of prosthetic limb. It is true that the bill of prosthetic limb of Rs. 10,21,000/-, though produced before the learned Tribunal, but it was not sufficiently proved. The claimant had issued summon upon the competent person for proving the same document but none appeared after receiving thesummon. The learned Trial Court has considered the receipt which was produced before him and also considered the evidence as advanced by the injured as PW1. After considering the entire facts, the learned Tribunal has correctly awarded Rs.30,00,000/-. He submits that the Hon'ble Division Bench of this Court as well as the Hon'ble Apex Court has held that though the documents are not proved but if there are placed in the record, they can consider to provide just and proper compensation. In support of his contention he cited ***Rekha Jain vs. National Insurance Company Limited and Ors.*** reported in ***(2013)8 SCC 389*** *and* ***Dodul Paul vs. United India Insurance Company Ltd.*** reported in ***2015 SCC Online Cal 496.***

Heard the learned advocates.

Perused the materials including the exhibits placed in the informal paper book as well as exhibits in the LCR. It appears that the PW5 was appeared on behalf of the employer/injured and exhibited the pay slip as well as Form 16 issued by the said organisation in favour of the injured. It appears that just before the accident the pay slip for the month of January, 2015 stated the gross income of the injured was Rs.23,750/-. It appears from the deduction column that the professional tax of Rs.130 was deducted. So considering the pay slip for the month of January, 2015, the monthly income of the injured just before the accident was (Rs. 23,750-130) Rs.23,620/-.

It is argued before this Court by the Insurance Company that the injured i.e. the claimant is not entitled for any compensation towards the loss of income. On plain perusal of the instant fact of accident, it appears to me that the entire job opportunity of the present claimant has been destroyed due to such accident. She was a chemical engineer and has just started her job as junior engineer in a factory at the time she suffered the accident. Due to such accident her left leg was amputated and she is now suffering as a limping person with the help of prosthetic limb. It is admitted fact that after such accident she was engaged by the employer in a completely separate job wherein her expertise towards chemical engineer was not involved. If the accident had not happened, the injured may have entered in a job of further higher degree and she may have got some job which is more lucrative and more incomable than the job which she is now performing as a table work under the department of HRD of the said concern. Considering the fact it appears to me that due to such accident the person injured/claimant has lost her entire prospect of job opportunity. Thus she is entitled to the compensation towards the loss of income.

In considering the disability certificate issued to the Doctors, who deposed as the PW 3 before the learned Tribunal and stated that the extent of disability suffered by the injured is 70%. The evidentiary value of exhibit 13 supported by PW3 before the learned Tribunal has been well placed and I find nothing immaterial or derogatory to disbelieve the evidence of PW3. So in this case the permanent disability of the present injured is correctly assessed as 70%. Now considering the functional disability of the injured, it appears to me that, the injured has lost her opportunity to proceed her occupation as her occupation as chemical engineer. However, the claimant/injured has engaged in a job under the same company though in a separate nomenclature but considering the facts and circumstances of this case, I think it necessary to hold that the functional disability of the present injured should be equally to her physical disability as assessed by the Doctors, that is 70%.

It appears to me that the compensation in favour of the claimant towards the non-pecuniary head was heavily challenged by the insurance company. Under the non-pecuniary head the learned Tribunal has awarded Rs.5,00,000/- towards the pain and suffering and also awarded further Rs.30,00,000/-towards the cost of prosthetic limb and change of components of the prosthetic limb as well as future transportation charge in addition to the other compensation. It is true that the receipt for the purchasing prosthetic limb of Rs.10,21,000/- was placed before the learned Tribunal but was not correctly proved by the author of the said receipt. It is not denied by insurance company that the injured was not using the prosthetic limb. Only the question is whether the cost of prosthetic limb of rs.10,21,000/- is justified. It appears to me that there is no document or suggestion on behalf of the insurance company to show that the prosthetic limb or the cost thereof is less to that of Rs.10,21,000/-. Moreover, I find no justification to hold that the claimant is not entitled to get the cost of prosthetic limb. The observations of the learned Tribunal in believing the unexhibited receipt of prosthetic limb is justified by virtue of observation of Hon'ble Apex Court in ***Rehka Jain (supra).*** Thus, the cost of prosthetic limb and the change of its components after some interval is required. It further appears to me that the claimant has deposed that she used to expand Rs. 12,600/- per month for her transportation from her father's house to her office at Dalhousie. The learned Tribunal has considered the same and has awarded the future transportation charges. Considering the entire facts I find that the learned Tribunal is justified in awarding the non-pecuniary head. It further appears that the learned Tribunal has awarded Rs.31,48,737/- towards the cost of pecuniary damages which was not challenged by the insurance company in this case. Under the above circumstances it appears that the award passed by the learned Tribunal requires modification.

The just and proper compensation of this case calculated as follows:-

Particulars	**Amount(Rs.)**
Monthly income (Less: Tax)	23,620/-
Annual income (X12)	2,83,440/-
Add: Future Prospects (40%)	1,13,376/-
	3,96,816/-

Multiplier (X17)	X17
	67,45,872/-
Disability (70%)	47,22,110/-
Add: Medical expenses	31,48,737/-
	78,70,847/-
Add: Non-pecuniary damages	35,00,000/-
	1,13,70,847/-

Along with interest @ 6% from 11.09.2015

After calculation the award come to Rs.1,13,70,847/-. The insurance company is directed to pay the compensation along with 6% interest per annum from the date of filing of the claim application that is from 11.09.2015 till payment. It appears that the insurance company has already deposited the awarded amount by two OD challans with the office of the learned Registrar General, High Court, Calcutta amounting to Rs.1,90,72,658/-. The said amount must have accrued some interest.

The office of the learned Registrar General, High Court, Calcutta is directed to calculate the award passed by this Court as above and disburse the same in favour of the claimant within four weeks. After such payment the residue in the account of the insurance company may be returned to the insurance company along with accrued interest on usual prayer.

The insurance company is also at liberty to recover the entire amount of compensation from the owner of the offending vehicle according to the law laid down by the Hon'ble Apex Court in ***Nationa Insurance Company Limited vs. Swaran Singh.***

FMA 806 of 2022 with COT 81 of 2022 along with connected CAN applications are disposed of.

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

(Subhendu Samanta, J.)