

10.01.2024
SL No.11
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

FMA 816 of 2023

**Rakesh Kumar Sahni @ Sahani
Vs.
United India Insurance Co. Ltd. & Anr.**

Mr. Pingal Bhattacharyya,
Ms. Poonam Keswari,
Mr. Rajdeep Sinha
..... for the appellants/claimants.

Mr. Parimal Kumar Pahari
...for the respondent/Insurance Co.

The instant appeal has been preferred against the Judgment and Award dated 11th August, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Tamluk, Purba Medinipur, in MAC Case no. 46 of 2016/ No.274 of 2016.

The brief facts of the case is that the present appellant being the claimant has preferred an application under Section 166 of the M.V. Act, before the learned tribunal for getting compensation on the ground that the present appellant has sustained severe bodily injuries and became permanent disabled in a road traffic accident due to 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 before the learned tribunal.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs.13,42,400/- together with interest @ 6% per annum from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the said award, the present appeal has been preferred by the claimant.

The only ground challenge is that the learned tribunal has adopted the monthly income of the deceased to be Rs.4,000/-. The claim application was filed for stating the income of the deceased to be Rs. 6,000/- per month as a Helper of a Truck bearing No. WB-11B/5093.

Learned advocate for the appellant submits that the learned tribunal has not considered the income of the claimant properly and the claimant had been deprived for just and proper compensation.

Mr. Parimal Kumar Pahari, learned advocate appearing on behalf of the United India Insurance Co. Ltd. submits that the learned tribunal has not committed any error. He further submits that the learned tribunal has considered each and every aspects of this case. Moreover, the functional disability of the claimant was considered by the learned tribunal to be 100% though the Doctor has

given the certificate of disablement @ 80%. He further argued that the income of the claimant has never been specifically proved before the learned tribunal. So, he argued that there is no point to enhance the award. He prayed for rejection of the instant appeal.

Heard the learned advocates perused the materials on record. It appears that one certificate allegedly written by one Bijay Kumar Singh to be the owner of the Truck bearing No. WB-11B/5093 has issued to the fact that the deceased used to earn Rs. 6,000/- per month. Such certificate has never been specifically proved before the learned tribunal by calling the author of the said certificate. Thus, I think it proper to hold that the learned tribunal has committed no error by assessing the compensation fixing the monthly income of the claimant to be Rs.4,000/-.

However, it has been adopted by this Court on several occasions that when the accident was happened from the year 2015 onwards, and there is no specific proof of income, the claimant is entitled to get the compensation by fixing the notional income of Rs.5,000/-. This Court has adopted such view in several occasions. Accordingly, the same view is adopted here. So, in this case, the income of

the claimant would be assessed to be Rs.5,000/- per month.

Thus, the impugned award is modified as hereunder:-

Monthly income assessed to be Rs.5,000/-. 40% of the future prospects is added so after adding Rs.2,000/- the monthly income comes to Rs.7,000/- annually comes to Rs.84,000/-. It appears that the learned tribunal has adopted the multiplier of this case considering the age of the claimant to be 25 years 3 months 6 days. It appears that according to the Aadhar Card of the claimant his date of birth is 01.01.1992. The date of accident is 06.04.2016, so after deduction the correct age of the claimant at the time of accident is 24 years 3 months and 5 days. In this case, the claimant was within the age group of 21 years to 25 years. Accordingly, the direction of Hon'ble Supreme Court in **Sarla Verma** the applicable multiplier is 18. So after adopting the multiplier the award comes to Rs. 15,12,000/-. Thus, loss of the future income comes to Rs. 15,12,000/-. The appellant is also entitled to get already awarded medical expenses and transportation of Rs. 1,50,000/- and further Rs. 50,000/- towards the pain and suffering. After adding all heads the just and proper compensation comes to Rs. 17,22,000/-. The claimant has already

received the awarded sum or Rs. 13,42,000/- so the balance award comes to Rs. 3,80,000/-

The insurance company is directed to pay the balance award sum of Rs. 3,80,000/- together with interest @ 6% per annum from the date of filing of the claim application within six weeks through the office of the learned tribunal in the name of the claimant. On such deposit the office of the learned tribunal shall disburse the cheque in favour of the claimant subject to the ascertainment of payment of deficit Court Fees, if any.

The instant FMA 816 of 2023 is disposed of.

All connected pending 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.)

