

15.01.2024
SL No.20
Court No. 551
Ali

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

FMA 933 of 2021

**Haripada Maity
Vs.**

United India Insurance Company Ltd. & Anr.

Mr. Ashique Mondal
..... for the appellant/claimant

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

The instant appeal has been preferred against the judgment and award dated 30th June, 2018 passed by learned Judge, Motor Accident Claims Tribunal, FTC, 2nd Court, Tamluk, Purba Medinipur, in MAC Case no. 84 of 2013.

The brief facts of the case is that the present appellant being the claimant has preferred an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation on the ground that he sustained severe bodily injuries 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 by filling written statement.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a

sum of Rs. 5,00,000/-towards the compensation in favour of the claimant.

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

The first ground: for appeal as argued by the learned advocate the appellant is that the learned tribunal has assessed the compensation erroneously and functional disability of the claimant was calculated to be 50% though the Board of Medical Doctor has issued a disability certificate of 96%. He further argued that the claimant was a labour and labour supplier who lost both his legs from Thai due to such accident but the learned tribunal has erroneously calculated the fact that the functional disability of the case would be 50%.

Learned advocate appearing on behalf of the Insurance Company submits that the learned tribunal has assigned his reasons to pass the impugned award thus there are no justification to revisit in the finding.

Heard the learned advocates perused the materials on records. It appears that the claimant was an unskilled labour and labour contractor who lost both his legs from Thai due to such accident. The disability certificate issued by the Board of Doctors also suggests that the permanent disability

is 96%. The learned tribunal is of opinion that the 100% permanent disability can only be considered if both the hands and legs of a person be amputated. It appears that the learned tribunal has misguided himself and has not followed the observation of the Hon'ble Supreme Court passed in **Raj Kumar Vs. Ajay Kumar**. It has been observed by the Hon'ble Apex Court in **Raj Kumar Vs. Ajay Kumar** that the learned tribunal has the duty to consider the functional disability to assess the just and proper compensation of a case after assessing the occupation of the injured.

In this case, the claimant is a skilled labour in a brick field; loss of both legs of the claimant tantamount him to be jobless. Considering the same, it appears to me in this case the functional disability of the claimant would be 100%.

On that score, the observation of the learned tribunal is erroneous and hereby set aside.

In considering the income of the deceased it appears that the claimant has stated his income to be Rs.8,000/- per month. One witness said to be the employer of the claimant has appeared before the learned tribunal as PW-3. However, he could not produce the relevant documents regarding his ownership or the status of the employer. Thus, the document i.e. the certificate of income produced

before the learned tribunal was not marked as Exhibit. However, it appears that the learned tribunal has awarded the compensation fixing the monthly income of the claimant to be Rs.3,000/- notionally.

This Court is uniformly adopting a the view that in a case, where there is no reliable document of income of a person and who sustained injury within the year 2011 to 2014. The notional income has to be adopted Rs. 4,000/- per month. In this case, the same view can be applied. Accordingly, for the just and proper compensation of this case, the notional income of Rs. 4,000/- has to be adopted in this case. It further appears to me that the claimant was within the age group of 40-50 years at the time of accident. Accordingly, the future prospects would be 25% of his establish income. Considering the age of the claimant, the applicable multiplier is 13. So, after considering the entire facts and materials on records the award passed by the learned tribunal requires modification.

The just and proper compensation of this case assessed as hereunder:-

Calculation of compensation

1.Monthly Income	:Rs.4,000/-
2.Annual income be assessed as	:Rs.48,000/-
3.Add: 25% Future prospects	:Rs.60,000/-

4. Multiplier 13 (Rs.60,000 X 13) :Rs. 7,80,000/-
 5. Disability (100%) :Rs. 7,80,000/-

After calculation the loss of income comes to Rs.7,80,000/-. The learned tribunal has also award Rs.2,00,000/- towards pain and suffering Rs.50,000/- towards the future incidental expenses and also Rs.16,000/- towards loss of income during the period of treatment so after adding all heads the award comes to Rs. 10,46,000/-.

It appears that the claimant has already received the earlier awarded sum of Rs. 5,00,000/- together with interest. The Insurance Company is directed to award the rest balance amount of Rs. 5,46,000/- alongwith interest @ 6% per annum from the date of filing of this claim application till the date when Insurance Company deposit the earlier award before the tribunal through the office of the learned Registrar General, High Court, Calcutta within six weeks. On such deposit the claimant is at liberty to receive the same according to the prevalent Rules. It further appears the Court fees paid is sufficient.

The instant FMA 933 of 2021 is 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.)