In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMAT(MV) 578 of 2023
The Oriental Insurance Co. Ltd.
v.
Tara Sk. @ Seikh & Anr.
With
C.O.T. 3 of 2024
Tara Sk. @ Seikh & Anr.
Vs.
The Oriental Insurance Co. Ltd & Anr.

Mr. Ananda Gopal Mukherjee
... for the appellant/insurance company
in FMAT(MV) 578 of 2023
for the respondent/insurance company
in COT 3 of 2024 .

Mr. Amit Ranjan roy
Mr. Pradyut Kr. Ray
... for the respondent/claimant
in FMAT(MV) 578 of 2023
for the appellant/claimant
in COT 3 of 2024.

Heard on: 24th September, 2024.

Judgment on: 24th September, 2024.

Ananya Bandyopadhyay, J:-

The learned advocates for the appellant/claimant as well as respondent Nos. 1 are present.

The learned advocate for the appellant/insurance company did not contest before the leaned Tribunal.

In an application filed under Section 166 of the M. V. Act being MACC Case No in M.A.C. Case No.13 of 2014 has been disposed of by Motor Accident Claim Tribunal and learned Additional District Judge, 2nd Court, Katwa as the same is challenged with regard to the multiplier considering the error on the part of the learned Tribunal to have considered the age of the victim to be 49 years on the basis of difference in the age stated in the Aaadhar Card and the disability certificate which after thorough scrutiny would reveal the age of the victim to have 61 years on the date of the accident as per the Aaadhar card and 60 years as per the Disablement Certificate.

The learned advocate for the appellant/ Insurance company further submitted that the doctor prescribing the Disability Certificate assessed the disability to the extent of 80% partial disablement contrary to the functional disability of the victim to have been considered to be 100% by the learned Tribunal. It was further stated that the multiplier should have been seven(7) with regard to the age of the victim to have been 61 years on the date of the accident without being entitled to the aspect of the future prospect.

The learned advocate for the respondent/ claimant submitted that the Aaadhar card cannot be considered to be sacrosanct and the age mentioned therein are not to be considered to be the ultimate proof of age of the victim. Moreover, the Disablement Certificate issued by the concerned authority had not been filled up by the assessing doctor in its entirety with the first half of the said certificate being filled up by somebody else. The victim being amputed of his right leg from the knee has suffered a total disablement to enable him to be engaged in any kind of provocation and the consideration of 100% disablement is functional disablement as declared by the learned Tribunal is not unjustified or not considered.

An application under Section 166 of the Motor Vehicle Act had been filed by the injured victim who had sustained an accident on 20th December, 2013 at about 11.30 a.m. at Bonkapashi Karojgram Road near Karojgram village within the jurisdiction of the Katwa Police Station in Burdwan District with the involvement of the offending vehicle wherein the registration no. is WB 42R/ 1655(motor cycle).

The occurrence of the accident, involvement of the offending vehicle, the driving licence, route permit and other ancillary issues were not disputed by the Learned Advocate for the appellant/insurance company.

The learned Tribunal has reasonably considered the extent of functional disability of the victim to be 100% being incapacitated to work without assistance precluding him to perform his work as a 'mason' and such aspect of 100% disablement considered by the learned Tribunal is not interfered with. The age of the victim is under challenge as to whether the same would be 60 years or 61 years. The Disablement Certificate mentioned the age of the victim to be 60 years contrary to the date of birth as mentioned in the Aaadhar card to be 1st January, 1953 which cannot be verily relied upon since the Disablement Certificate may have been filled up by the concerned Authority at the instance of the victim and, therefore, the age of the victim at the relevant point of accident can be safely construed to be 58 years of age and the Disablement Certificate was issued on 13th May, 2015. Therefore, the victim was 58 years of age on the date of accident and, therefore, the multiplier would be considered.

Considering the observation of the Hon'ble Supreme Court reported in *National insurance company Ltd. Vs. Pranay Shetty & Anr.*[1]

The impugned award of Rs. 12,45,000/- is modified as follows:-

Monthly Income	Rs. 6,000/-
Annual Income	X 12 ------------------ Rs. 72,000/-
Add Future Prospects (40%)	+ 7200/- ------------------- Rs. 79,200/-
Multiplier to be "9"	x 9 ____________ Rs. 7,12,800/-
Add: Pain & Suffering Future medical expenses	Rs. 75,000/- ------------------- Rs.7,87,800/-
Non pecuniary damages	

It was further submitted by the Learned Advocate as aforesaid that the Appellant/Insurance Company has deposited the entire awarded amount along with interest of 6 % per annum from the date of filing of the claim application i.e. 18,85,342/- as per the challan filed by the learned advocate for the Appellant/Insurance company.

The respondent/claimant is entitled to receive the balance amount of Rs. 7,87,800/- along with interest at the rate of 6% per cent per annum from the date of filing of the application till the date of actual realization.

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1 2017(4)TAC 673(S.C)

The office of the learned Registrar General, High Court, Calcutta shall encash the cheque stipulating the entire calculated amount as aforesaid and thereafter disburse the same to the present respondent/claimant as mentioned in the impugned judgment dated 2nd February, 2023 passed by the 20th January, 2023 passed by the Motor Accident Claim Tribunal and learned Additional District Judge, 2nd Court, Katwa in M.A.C. Case No. 13 of 2014 on proof of proper identification of the respondent/claimant subject to payment of ad valorem Court fees and refund the balance amount if any through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

The interest accrued on the sum of money deposited by the Appellant/Insurance company at the office of the Learned Registrar General, High Court at Calcutta which was further deposited in the Nationalized Bank by the office of the Learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on Rs. 7,87,800/-is to be disbursed in favour of the respondent/claimant and the balance sum of interest to be refunded to the Insurance Company through distinct account payee cheques.

The instant appeal being FMAT(MV) 578 of 2023 and COT 3 of 2024 are disposed of.

The application if any stands disposed of.

The lower court records be sent to the concerned tribunal forthwith.

Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

c.m.

(Ananya Bandyopadhyay, J.)