FMA 1880 OF 2018
+
IA No. CAN 3 of 2024

13.05.2024
Sl no. 2 & 3
Ct no. 25
P.M.

National Insurance Co. Ltd..
- Vs –
Pradip Karmakar @ Krishna Karmakar & Anr.

With
COT 125 of 2019
Pradip Karmakar @ Krishna Karmakar.
- Vs –
National Insurance Co. Ltd. & Anr.

Mr. Sanjay Paul,
Ms. Jaita Ghosh
... for the Appellant

Mr. Ashique Mondal
... for the respondent No. 1

CAN 3 of 2024

This is an application for recalling of the order dated 13.12.2022 passed by the learned Division of this Court under the jurisdiction of Lazima Bench of this court.

It appears that the learned Bench dismiss the instant appeal preferred by the appellant Insurance Company on the ground that the appellant has not complied with the direction of learned Registrar (Administration) for furnishing the written up notices to the concerned department in respect of respondent No. 1 and 2.

The copy of application was served upon the respondent No. 1 who is the claimant before the learned Tribunal.

Mr. Mondal, learned advocate appears on behalf of the respondent No. 1. Service upon the respondent No. 2 has been effected.

Heard learned advocates.

It appears that there are some merits in the instant appeal to be decided after hearing both parties, so the instant CAN 3 of 2024 is considered and allowed. The order of dismissal passed by the Lazima Bench on 13.12.2022 is hereby recalled.

CAN 3 of 2024 is disposed of.

FMA 1880 of 2018
and
COT 125 of 2019

The instant appeal is preferred against the judgement and award dated 27th April, 2018 passed by the learned Judge, Motor Accident Claims Tribunal, A.D.J. 3rd Court, Howrah in M.A.C. Case No. 78 of 2013.

The brief fact of this case is that the respondent No. 1 is the injured of this case who on 20th April, 2011 at about 00.45 hrs. was driving a car bearing No. WB 52G/3979 from New Alipore to Bally, when he reached in front of Lalbaba College, one

TATA 407 Truck bearing No. WB 41B/1067 proceeding rushly and in negligent manner from Bally dashed the victims car. By such accident the respondent No. 1 herein i.e. the driver of the Ambassador car seriously injured and suffered bodily injury mainly his tibia of the right leg was broken. Thereafter the victim was shifted to the hospital and he treated at least in three hospitals.

The injured victim after recovery became permanent disable and file an application before the learned Tribunal under Section 166 of Motor Accident Claims Act for getting compensation, on the ground that the accident happened solely due to rush and negligent driving of the driver of the offending vehicle duly insured under the policies of the Insurance Company.

The claim case was contested by the Insurance Company by filing the written statement.

After hearing the parties and after receiving the evidences the learned Tribunal has awarded a sum of Rs. 6,05,275/- towards the compensation and directed the Insurance company to pay the compensation to the victim injured together with 8% per annum from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the said award the instant appeal has been preferred .

The claimant injured also preferred one cross appeal being COT 125 of 2019 against the said award.

Let the appeal along with the cross appeal be taken up together for uniformity of the judgeement.

Mr. Paul, learned advocate appearing on behalf of the Insurance Company submits that the learned Tribunal has passed the impugned award without properly determining the some factors which was challenged before the appellate Court.

Firstly the disability certificate assessing the disability of the injured to 55% is erroneous.

Secondly, the multiplier adopted by the learned Tribunal is erroneous considering the conflicting evidences.

Thirdly, the medical expenses was considered without perusing any proper bill.

The cross appeal has been preferred by the injured on the ground that the learned Tribunal has not considered the future prospects according to the law laid down by the Hon'ble Apex Court in the **National Insurance Company Limited Vs. Pranay**

Sethi. The claimant also challenged the multiplier adopted by the learned Tribunal.

In considering the first issue, it appears that the learned Tribunal has adopted the permanent disability of the injured to be 55%. The disability certificate was marked as exhibit-8 and the disability certificate was authored by P.W. 4 Dr. P. Bhatacharyya.

Mr. Paul, submits that the disability certificate issued by the P.W. 4 is not a proper document to appreciate the permanent disability of the injured.

He submits that the P.W. 4 has only issued the disability certificate according to the complaints stated by the claimant before him. P.W. 4 is a private doctor, so the disability certificate is not believable.

He further argued that before issuing such disability certificate no examination or x-ray was conducted upon the person of the injured.

It is the submission of Mr. Paul that the said disability certificate is procured for the purpose of the instant case.

He also argued that doctor i.e. P.W. 4 for the first time on 10.03.2015 just issued the disability certificate in favour of the claimant without properly examined the claimant.

In support of his contention he cited two decisions reported in **Dharma Raj Singh – Vs. – National Insurance Company Limited & Anr. reported in 2009 (1) T.A.C. 551 (Cal).** He also cited the decision of Hon'ble Apex Court reported in **Raj Kumar – Vs. Ajay Kumar & Anr. reported in (2011) 1 Supreme Court Cases 343**. He referred the paragraph 18 of **Raj Kumar** (supra).

Paragraph 18 of **Raj Kumar** (supra) is set out as follows : -

> **"The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give "ready to use" disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily give liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such**

> **certificates. The Tribunal may invariably make it a point to require the evidence of the doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local hospitals/medical colleges) and refer the claimant to such Medical Board for assessment of the disability."**

On citing the said observations by Hon'ble Division Bench of this Court as well as Hon'ble Supreme Court, Mr. Paul submits that in the similar facts and circumstances of this case the Division Bench of this Court in **Dharma Raj Singh** (supra) has denied to place any reliance upon the doctor, who though appears a P.W. 3 before the learned Tribunal but not treated the patient before issuance of the said disability certificate.

Mr. Mondal, learned advocate appearing on behalf of the claimant submits that the facts and circumstances in the case of **Dharma Raj Singh** (supra) is squarely different to this case. He pointed out the examination-in-chief of P.W. 1 wherein he has stated that he was treated by P.W. 4 Dr. Pradip Bhattacharyya on the earlier occasion. He also referred the examination –in-chief of P.W. 4 wherein the doctor has also admitted that he treated the injured.

Mr. Mondal further submits that the doctor has on earlier occasion has treated the injured so the ratio of law laid down in **Dharma Raj Singh** as well as **Raj Kumar** (supra) is not applicable in this case.

Heard the learned advocates, perused the evidences as well as the oral testimonies of P.W. 1 and P.W. 4. It appears that the learned Tribunal has awarded compensation by fixing the functional disability of the injured to be 55%.

It further appears that learned Tribunal has examined the oral evidences of P.W. 1 as well as P.W. 4.

Let me consider whether the ground of challenge of the disability certificate (exhibit 8) as placed before this Court by the Insurance Company is at all sustainable.

It appears that the disability certificate stated the disability and complaints of the injured. It has been stated in the disability certificate that the injured met with a road traffic accident on 20.04.2011 and he was admitted in several hospitals and his fracture was treated. The disability certificate also disclosed about the chief complains of the injured.

The disability certificate was placed by the P.W. 4 i.e. doctor himself and it was exhibited. During cross-examination the doctor has answered the question of the Insurance company that he has treated the injured several times. The insurance company has not placed any other materials to substantiate that for the first time on 10.03.2015 the doctor (P.W. 4) treated the injured and issued the disability certificate. The value of evidence of P.W. 4 suggests that the P.W. 4 (doctor) has treated the patient not only for the first time on 10.03.2015 but also on the earlier occasions.

Considering the same the argument as placed before me by Insurance company regarding the issuance of medical certificate by the P.W. 4 only first time examining the injured on 10.03.2015 has no leg to stand upon.

Let me consider regarding the functional disability as assessed by the learned Tribunal in this case. Admittedly the claimant injured had met with an accident on 20.04.2011 when he was driving an Ambassador Car.

The driving licence of the injured was placed.

The disability certificate disclosed the complaints of the injured and shortening of his right leg.

Considering the avocation of the injured being a driver it is not possible for him to drive the vehicle properly with such disability.

Thus I find no justification to contradict the findings of the learned Tribunal to assess the functional disability to be 55%. I make it clear that the learned Tribunal has correctly assessed the disability to be 55% of this case.

In considering the multiplier adopted by the learned Tribunal it appears to me that the learned Tribunal has adopted the multiplier of this case to be 18 considering the age of the injured to be 29 years.

According to the observation of the Hon'ble Apex Court in **Pranay Sethi** the multiplier for the person within the age group of 26-30 would be 17.

It has been argued by the Insurance company that there are two documents before the learned Tribunal which are self contradictory regarding the age of the injured. The two documents are the Adhar Card as well as driving licence of the injured. Adhar card mentions the date of birth of the injured Pradip Karmakar to be 11.03.1982 and the driving licence of Krishna Karmakar stated the date of birth as on 10.11.1974.

Mr. Paul, submits that the identity of the present claimant is in dispute. There are two documents stating that two names of the injured.

Mr. Paul further submits that when the identity is under challenge so no award can be passed in this case.

Mr. Mondal submits that there are two names of the injured which was specifically stated in the first page of the claim application wherein he is stated his name as Pradip Karmakar @ Krishna Karmakar. The injured has two address one is his residential address that is native place at Taherpur, Nadia and another address is the address of his work place i.e. 8, Bhukailash Road , Kolkata – 23. Mr. Mondal, further submits that there is no dispute in this case that the present injured has sustained injury in the said road traffic accident thus he is entitled to get compensation according to the age described in the Adhar Card. He submits that the Adhar card is more valuable and acceptable document to assess the compensation of this case.

Heard the learned advocates, perused the entire case record and examine the same. It appears that at the time of filing of the claim application the claimant/injured has stated his age as 35 years at the time of examination-in-chief the claimant stated his age as 29 years. From the Adhar card his age can be calculated to be 29-30 years but according to the driving licence his age can be considered as 37 years.

It appears that the driving licence was issued in the year 1996 but the Adhar Card was issued after the issuance of the driving licence.

Considering the entire aspect and considering the facts and circumstances of this case specially the claim application where it has been mentioned the age of the injured, I think it necessary that the age of the injured shall be calculated according to the driving licence of the injured.

It further appears that the driving licence was considered to be valid to assess the avocation of the injured. Thus the reliance must be placed upon the driving licence to consider the age of the victim. Accordingly the age of the injured in this case at the time of accident must be within the age group of 36-40 years. Thus in this case the correct multiplier would be 15.

It further appears that in considering the argument Mr. Paul regarding the medical expenses incurred by the injured, it appears to me that one staff of Krishnanagore Central Nursing Home appeared as P.W. 3; who exhibited some documents containing the medical papers and bills. I have perused the said medical papers and bills which are exhibit as exhibit 7 collectively. The collective documents are seven sheets in number. I have perused the same.

It appears that the learned Tribunal has correctly assessed the medical expenses of the injured to be Rs. 16,000/-on the basis of exhibit 7.

It further appears to be that according to the observation of the Hon'ble Apex Court in **National Insurance Company Limited Vs Pranay Sethi** the claimant /injured is entitled to get the future prospect in this case.

Considering the age of the injured, he is entitled to get 40% of the his established income as future prospect.

It appears that learned Tribunal has awarded 4500/- was the non-pecuniary head. In this case it appears that after accident the injured has admitted at least three hospitals and wherein major operation was done at his limb.

Considering the same, I think it necessary that the amount of Rs. 25,500/- more required be awarded as non-pecuniary head. Considering the facts and circumstances it appears to me that award passed by the learned Tribunal requires modification.

It further appears to me that the learned Tribunal has awarded interest on and upon the awarded amount to 8% from the date of filing of claim application. In all the claim appeals this Court has adopted view on the earlier occasion that simple interest would be 6% per annum from the date of filing of the claim application i.e. from 16.04.2013 till its actual realization.

The just and proper compensation is herein assessed as follows : -

Calculation of compensation

1.	Monthly Income :	Rs. 5,000/-
2.	Annual Income :	Rs.60,000/- (Rs.5,000/- X 12)
3.	Add: Future Prospects @ 40%	Rs.24,400/- :Rs.84,000/-
4.	Multiplier 15 :	Rs.12,60,000/-
5.	Disability (55%)	Rs.6,93,000/-
6.	Add: Medical Expenses	Rs.16,000/-
7.	Add: Non-Pecuniary	Rs. 30,000/-
		Rs. 7,39,000/-

(Along with interest @ 6% per annum from 16.04.2013.)

After calculation it appears that the award comes to Rs. 7,39,000/-. The Insurance company is directed to pay the compensation along with 6% interest per annum from the date of filing of the claim application till its actual realization.

It appears that at the time of filing of the instant appeal the Insurance company has deposited the statutory sum of Rs. 25,000/- on 11.07.2018 and thereafter also deposited an amount of Rs. 8,28,016/- on 31st August, 2018. Thus the Insurance Company has deposited a total sum of Rs.

8,53,016/-. The deposited amount has been invested so, it must have accrued some interest.

The office of the learned Registrar General, High court at Calcutta is directed to disburse the amount along with the accrued interest in favour of the claimant within four weeks from the date of passing of this order. The claimant /injured is further directed to inform the Insurance company regarding the amount he has received from the office along with his bank particulars, on such information the Insurance company shall disburse the balance amount, if any, directly to the bank account of the claimant within six weeks from the date of receiving the information.

The payment of compensation is subject to ascertainment of payment of deficit court fees, if any.

Learned Tribunal shall act the certified copy of this order to receipt the deficit court fees, if any.

Lower Court Record be send down immediately.

The office of the learned Registrar General, High Court at Calcutta is directed to disburse the deposited amount in the name of the claimant as "Pradip Karmakar" (appearing in the Adhar Card/ exhibit 4).

FMA 1880 of 2018 and COT 125 of 2019 are disposed of.

Pending applications, if any are also 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.)