**IN THE HIGH COURT AT CALCUTTA**
**CIRCUIT BENCH AT JALPAIGURI**
**(CIVIL APPELLATE JURISDICTION)**

PRESENT:
**THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE**

**FMA 14 of 2024**

**Rita Modak**
**Vs.**
**Cholamandalam MS General Insurance Co. Ltd. & Another.**

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| For the Appellant | : | Mr. Gobinda Saha<br>Mr. Tamal Kr. Sen<br>Ms. Priyanka Dey<br>Mr. Milan Ch. Laskar |
| For the Respondent No.1. | : | Mr. Partha Bhowmick |
| Heard on | : | 23.08.2024 |
| Judgment on | : | 03.09.2024 |

**Ajoy Kumar Mukherjee, J.**

**1.** Being aggrieved by and dissatisfied with the judgment and award dated 21st December, 2022 passed by Motor Accident Claim Tribunal, 3rd Court, Jalpaiguri, in MAC Case No. 396 of 2018, present appeal has been preferred by the appellant for enhancement of compensation amount.

**2.** Mr. Saha Learned Counsel appearing on behalf of the appellant has taken the following grounds in preferring the appeal.

**(i)** Learned Tribunal below has not granted amount towards future prospect at the rate of 40%, upon the awarded compensation amount as victim was aged about 32 years at the time of accident and he had sustained 60% disablement due to the accident.

**(ii)** Learned Tribunal was absolutely wrong in awarding Rs. 10,000/- only towards pain and suffering which is not justified and also not acceptable amount in view of the ratio laid down by the Apex Court in several judgments. Tribunal ought to have considered both pecuniary and non pecuniary damages as laid down by the Apex court ***in R.D. Hatangghadi Vs. Paste Control (India)*** reported in **AIR 1995 SC 755**, ***Govinda Yadav Vs. New India Assurance Co. Ltd. & others*** reported in **2012 ACJ 28**, ***New India Assurance Co. Ltd. Gajendra Yadav*** reported in **2017 ACJ 2834**.

**(iii)** Learned Tribunals was wrong in not assessing medical expenses and future medical expenses which is near about Rs.60,000/- and more, without considering the documents filed by the petitioner/claimant.

**(iv)** Learned Tribunal below has committed error in law and fact in not awarding interest at the rate of 9% per annum upon compensation amount from the date of filing of the claim case till the date of realization of the awarded amount.

**3.** So far as refusal to grant future prospect by the Tribunal below is concerned, it is submitted on behalf of the Insurance Company/Respondent that after recovery the victim joined in the same post, where he used to work prior to accident and as such no monetary loss has been suffered by the victim nor there is any loss of future prospect and as such the court below rightly rejected to grant any future prospect in the present context. It is not in dispute that at the time of accident, the victim was posted as supervisor SHG & SE Mathabhanga-1 and she has also filed and proved salary certificate. There is nothing to show that after the said accident her scale of pay got affected due to disablement suffered in consequence of accident. No evidence has also been adduced to that extent and as such I find nothing to interfere with the order of not granting any amount towards future prospect in favour of the petitioner.

**4.** However, though the Tribunal has observed that it is clear from evidence on record that the victim has suffered pain and sufferings, which is still going on and which is perpetual in nature and she has to undergo pain and injury throughout her life, but the Tribunal below had only granted Rs. 10,000/- towards pain and suffering. In ***Mr. R.D. Hatangghadi Vs. Paste Control (India)*** reported in **AIR 1995 SC 755**, the court held that the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those, which the victim has actually incurred, whereas non-pecuniary damages are those which are capable of being assessed by arithmetical calculation. Such damages may include damages for mental and physical shock, pain and suffering already suffered as well as likely to be suffered, loss of amenities in life. The special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The court further observed that the amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. In the said case the age of the claimant was 52 years and was an Advocate having good practice in different courts and due to accident he can move only on wheel chair and for which the court awarded Rs. 1,50,000/- in respect of claim of pain and Rs. 1,50,000/- for suffering.

**5.** In ***Govinda Yadav Vs. New India Assurance Co. Ltd. & others*** reported in **2012 ACJ 28**, the victim suffered amputation of left leg above knee when he was aged about 24 years and engaged as cleaner in minibus, drawing salary of Rs. 4,000/- per month. The Apex Court in the said case awarded Rs. 1,50,000/- for pain suffering and trauma and also Rs. 1,50,000/- for loss of amenities and enjoyment of life.

**6.** Coming back in the present case we find that the victim when met the accident aged about 34 years and became permanently disabled persons to the extent of 60% and at the time of accident she was serving as supervisor SHG & SE Mathabhanga-1, having monthly income of Rs. 12,890/-. Considering the facts and circumstances of the case, I find that the present claimant is entitled to get Rs. 50,000/- towards pain suffering and trauma and Rs. 50,000/- towards loss amenities and enjoyment in life.

**7.** Though the claimant/appellant has argued that he incurred medical expenditure for an amount of Rs. 50,000/- approximately but he did not file any original document in support of his contention. Accordingly the Tribunal below rightly came to a finding that though in view of ***Rekha Jain Vs. National Insurance Co. Ltd***., victim is entitled to get reimbursement of medical bills, if those are filed in original and in that context it is immaterial whether said documents were marked as exhibit or not but in the present context since the appellant has not filed any authenticated medical paper in support of his claim of medical reimbursement, the Tribunal below rightly refused his prayer for reimbursement of medical bills as claimed by him.

**8.** While passing the order the Tribunal below refused to grant interest on the awarded amount as the Tribunal was of the view that there was no delay on the part of the insurance company. Such observation appears to be not acceptable in view of the fact that though under section 171 of the Motor Vehicles Act, 1988 the provision of payment of interest is discretionary and cannot be bound by the rules but logically the awarded amount should carry interest from the date of making of the claim application as on the failure of insurance company to secure the compensation amount the claimant had to approach the Tribunal for a decisions on contest. Accordingly there is no reason why Tribunal would not award interest when it allows the compensation amount or enhance the compensation amount, and it finally allows claimants claim which it also finds due and payable to the complainant on the date of making claim application. Section 171 does not speak anything about rate of interest and duty has been bestowed upon the court to determine such rate of interest. Accordingly as the prevailing rate of interest on bank deposit for the relevant period is more or less 6%, I find it appropriate to award 6%, simple interest upon the total compensation amount from the date of filing of the claim application.

**9.** In such view of the matter the present appeal being **FMA 14 of 2024** is hereby disposed of with the observation that in addition to the awarded amount of Rs. 14,94,928/-, the opposite party no.2/insurance company is directed to pay Rs. 1,00,000/- further towards pain & suffering and for loss of future amenities and enjoyment in life. The opposite party no.2 therefore shall pay total compensation of Rs. 15,94,928/-, along with 6% simple interest per annum from the date of filing of the application till the date of actual payment, within a period of two months from the date of communication of the order in the mode and manner as indicated in the order impugned, in default the claimant will be at liberty to execute the award as per law.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

**(AJOY KUMAR MUKHERJEE, J.)**