In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 355 of 2024

National Insurance Company Ltd.
v.
Somnath Ghosh & Anr.

With

COT 54 of 2024

Somnath Ghosh
v.
National Insurance Company Ltd. & Anr.

Mr. Rajesh Singh ... for the appellant/insurance company.

Mr. Ashique Mondal ... for the respondents/claimants.

Heard on: February 18, 2025.

Judgment on: February 18, 2025.

Ananya Bandyopadhyay, J:- The learned advocates representing the respective parties are present.

The instant appeal had been preferred against the impugned judgment and award dated 7th December, 2023 passed by the learned Judge, Motor Accident Claims Tribunal & Additional District Judge, Fast Track, 7th Court, Alipore, South 24-Parganas in MAC Case No.29 of 2020.

An application under Section 166 of the Motor Vehicles Act had been filed by the victim on account of injuries sustained by him to the extent of 35%, as assessed by the private doctor in an accident, which occurred on 23rd October, 2020 at 02.00 hours in the night with the involvement of the offending vehicle being a Wagnor R bearing registration no.WB 16Z-9083, which collided with the victim riding his motorcycle bearing registration no. WB-01AH/3410.

The learned advocate representing the appellant/insurance company submitted that the learned Tribunal considered the extent of injuries suffered by the victim to be 20% disregarding the 35% injuries, as assed by a private doctor being PW 3, namely, (Mrs.) Binoti Das.

The learned advocate representing the appellant/insurance company submitted that the victim did not suffer any loss of income because at the time of filing of the claim application, subsequent to the occurrence of the accident, he claimed to have earned Rs.16,000/- per month contrary to his statement in the affidavit-in-chief, wherein he stated he used to earn sum of Rs.9,000/- per month. Therefore, the learned Tribunal erroneously granted a sum of Rs.4,88,376/- towards loss of earning due to permanent disability. He further submitted that the leaned Tribunal granted an exorbitant sum of Rs.1,00,000/- towards pain and suffering and sought for the intervention of this Court.

The learned advocate representing the respondents/claimants submitted that the learned Tribunal did not accord the multiplier method in assessing the amount of compensation including the element of future prospect.

Heard the submissions of the learned advocates representing both the parties.

Since, the occurrence of the accident, involvement of the offending vehicle, the driving license, Insurance certificate etc. are not disputed by the learned advocate representing the appellant/insurance company, this Court restricts itself to the extent of assessing as to whether the victim had been functionally disabled to the extent to have been permanently incapacitated from his locomotion as well as pursing any kind of avocation. The victim PW1 in the claim application column no.6 mentioned the monthly income of the victim to be Rs.16,000/- per month contrary to his claim of earning Rs.9,000/- per month at the time of sustaining the accident. The victim supposedly did not lose his earning. Nowhere did he mention that he was devoid of any work or had been destabilized in his locomotion or any kind of physical movement. During cross-examination, he stated to have come to Court without any sort of assistance as he did not use any clutch or any other support to work. The admission of the victim during cross-examination precluded him from being determined as permanently disabled in terms of his physical movement. Therefore, the sum of Rs.4,88,376/- had been erroneously granted in his favour. However, the victim to have suffered physical injury of fracture of tibia and fibula should have generated immense pain and the recuperation process must have continued for a period of six months. The victim during that period must have faced difficulties in commuting place to place and, therefore, he is entitled to an amount towards transportation expenditure as well as medical expenditure and pain and sufferings. He must have incurred sufficient expenditure towards pursuance of the instant litigation and is entitled to be compensated on the same account. In the above premise, this Court is entitled to modify the impugned judgment and order to the following extent.

Less of earning during treatment For 180 days (329x 180)	Rs. 59,220/-
Medical Expenses	Rs. 50,000/-
Transportation Charges	Rs. 30,000/-
Litigation Expenses	Rs. 30,000/-
Loss of Amenities	Rs. 30,000/-
Pain and Suffering	Rs.1,00,000/-

	Rs. 2,99,220/-

The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.8,69,619/- through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

The Respondent Nos. 1 /claimant is entitled to receive the amount of Rs. 3,00,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse awarded amount so deposited to the present respondent Nos. 1 /claimant as mentioned in the impugned judgment learned Judge, Motor Accident Claims Tribunal & Additional District Judge, Fast Track, 7th Court, Alipore, South 24-Parganas in MAC Case No.29 of 2020 on proof of proper identification of the respondent No.1 /claimant subject to payment of ad valorem Court fees and refund the balance amount through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

The interest generated on the sum of money deposited by the appellant/insurance company at the office of the Learned Registrar General, High Court at Calcutta which has already been 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 the aforesaid amount is to be disbursed in favour of the appellant/insurance company for the accounts of the insurance company.

The instant appeal is disposed of accordingly.

The pending applications, if any, stands disposed of.

The TCR be sent down to the concerned Tribunal forthwith.

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

(Ananya Bandyopadhyay, J.)

S.R.