IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 527 of 2021

With

CAN 1 of 2019 (Old No. CAN 3908 of 2019)

Jyotirmoy Das
-Vs-
The Oriental Insurance Co. Ltd. & Anr.

For the Appellants : Mr. Krishanu Banik

For the Respondents/ Insurance Company : Ms. Sucharita Paul

Heard on & Judgment on : 02.05.2025

Ananya Bandyopadhyay, J.:-

1. The claimant being the victim of the accident filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Alipore being MAC Case No.1137/2016, claiming an award of Rs. 25,000/- as well cost and interest whereby the aforesaid victim was grievously injured road traffic accident on 4.11.2015 at about 2:30 pm. The offending vehicle bearing Registration No. WB-02V/2950 hit the aforesaid deceased while he was locking up his parked car in a rash and negligent manner. Consequently, the victim sustained grievous injuries was admitted in Amri Hospital, Salt Lake. He also received treatment from other private doctors. Subsequently, based on a complaint, North Bidhan Nagar P.S. Case No. 69

dated 2/08/2006 was instituted against the driver of the offending vehicle as aforesaid.

2. The owner of the offending vehicle did not contest this case and the case was heard ex parte owner of the vehicle.

3. The respondent, the Oriental Insurance Co. Ltd. contested the aforesaid MAC case.

4. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.2,56,074/- as well as an interest of 9% from the date of filing the case, payable by the National Insurance Company.

5. The Learned Advocate representing the Appellants/claimants submitted as follows:-

   a. “Multiplier system” had not been followed by the learned Tribunal.

   b. Both pecuniary and non-pecuniary damages were not considered.

   c. The decisions (i) R. D. Hattangadi Vs. Post Control (India) Pvt. Ltd. reported in AIR 1995 (SC) 755 1995(I) TAC 5571995(1) ACC 281, (ii) Govinda Yadav Vs. New India Assurance Co. Ltd. Reported in 2012 ACJ 28 = 11(2012) ACC 519 2012(1) TAC I(SC), (iii) New Assurance Company Ltd. Vs. Gajendra Yadav & Ors. reported in 2017 ACJ 2834 etc. were not considered in awarding the compensation.

   d. Certain heads of compensation were not considered while calculating compensation such as (i) damages for mental and physical shock, pains and suffering already suffered or likely to be suffered in future, (ii) damages to compensate for the loss of amenities of life le on account of injury the claimant may not be able to walk. run or sit (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened (iv) inconvenience, hardship discomfort, disappointments, frustration and mental stress in life.

e. Compensation on the heads of loss of earning and loss of earning capacity were not considered while passing the impugned award.

f. Heads of future prospect of the victim/deceased was not considered who had been a highly qualified person having a vast knowledge to continue his practice as a Cost Accountant in view of principle laid down by the Hon'ble Constitutional Bench of the Hon'ble Apex Court of India in the case of National Insurance Company Ltd. Vs. Smt. Pranay Sethi reported in 2017 ACJ 2700 2017 (4) TAC 673-IV (2017) ACC 460-2017(6) WBLR SC 308 which should have been followed wherein it had been held that the victim/injured of a motor accident who fell in the age group from 50 years to 60 years, the additional 15% be granted on the heads of future prospect.

g. Actual figures of expenses on the heads medical treatment had not been considered and furthermore no compensation was granted on the account of future medical expenses although the appellant/claimant had successfully established to submitting himself lifelong treatment particularly the expenses for physiotherapy etc.

h. The leave encashment salary of the victim/injured for 172 days as a part of the leave salary period was deducted from his actual payable salary was arbitrary.

i. Compensation should have been assessed on the "heads of loss of income" due to his permanent disability to the extent of 40% which was assessed by a qualified medical practitioner and subsequently assessed by the concerned medical board.

j. The Learned Tribunal Judge was wrong in holding that the victim/injured did not suffer any loss of income since his income had been increased from 2006 to 2012 i.e. from Rs. 30,000/-approximately to Rs. 60,000/- and therefore he had not suffered loss of income or promotion/future prospects due to the injuries incurred by him.

k. The Learned Tribunal Judge ought to have assessed the compensation for the post medical treatment expenses after discharge from the AMRI hospitals at Salt Lake and furthermore, on the heads of continuous medical checkup by different medical nursing homes, private doctors, physiotherapist while passing the impugned award.

l. (i) 2024(2) TAC 706 Company Ltd. (D.O. Viswanathan (J). (SC) Roshan Lal Vs. New India Assurance

Personal injury Case Claimant-appellant is a Govt School teacher He was aged about 35 years. At the relevant time and sustained disability in functioning of leg and hand Tribunal awarded Rs. 13,10,000/-correct. H.C reduced - SC held that the HC is not correct.

m. (ii)***R. D. Hatangadi Vs. Pest Control (India) Pvt. AIR 1995 (SC) 755*** =

"Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit

upto the date of trial; (iii) other material loss. So far non-pecu-niary damages are concerned, they may include (iv) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (v) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (vi) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (vii) Inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

n. ***(iii) United India Insurance Company Ltd. Vs. Phurba Dorjay Lama and anr. 2004(3) CHN 360***

"Where disablement is permanent, under Section 2(g) of the Workmen's Compensation Act, 1923, made applicable by the Explanation of Section 163A of the Motor Vehicle Act, 1988, the loss of earning capacity is to be assessed not on the basis of actual loss in actual employment, but on the basis of any possible hypothetical loss in any possible hypothetical employment. This is quite in line with common law and common senses; if an Account is earning ten crore and loses a leg, the might force him to work more and earning Rs. 15 crore but that does not mean he is disentitled from receiving compensation."

o. ***(iv) Govinda Yadav Vs. New India Assurance Company Ltd. 2012 ACJ 28 =***

"In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Company Ltd. (supra) and Raj Kumar v. Ajay Kumar (supra) must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

p. (v) ***New India Assurance Company Ltd, Vs. Gajendra & Ors. 2017 ACJ 2834***

"The High Court, in the pecuniary part, has awarded Rs. 8 lakhs on account of physical disability and for future loss of earning Rs. 13 Lakhs. This is certainly a duplication. What is to be compensated is only the loss of account of disability. The said total amount of Rs. 21 Lakhs will stand substituted by Rs. 15,12,000/-(Rupees Fifteen Lakhs and Twelve Thousand) and the rest of the High Court order is maintained."

q. (vi) 2010 ACJ 65 = (2009) Cal. Law Time 480.

Anamika Mondal Vs. United India Insurance Company Ltd. (Relied on R.D Hatangadi's Case)

r. (vii) Sidram Vs. The D.M. United India Insurance Company Ltd. & Ar. 2022 Supreme (SC) 1169 2022 ACJ 2611.

s. ***(vii) National Insurance Company Ltd. Vs. Pranay Sethi and others 2017 ACJ 2700*** (Multiplier System + Future Prospect are followed)

15% Future Prospect in the instant appeal.

6. The Learned Advocate representing the Respondents/insurance company submitted as follows:-

a. <u>1) No loss of income/future income</u>

The victim was an employee of West Bengal Consultation Organization Ltd., Silpa Bhawan. During cross examination the claimant/injured (PW1) confirmed that *"....I submitted medical fit certificate at the time of joining....I received normal increment in the meantime..."*

The Vice Chairman of WB Consultancy Organization Ltd., came forward as PW3 and proved the vocation and salary of the claimant. It was also proved by PW3 that the claimant was on leave from 02.08.2006 to 20.01.2007 for his treatment. While adducing evidence, PW3 stated that *"...After the accident he was on leave up to 20.01.2007. He had leave at his credit and his leave was adjusted with the leave account and he drew full salary during the period..."*.

During cross examination, PW3 further confirmed that the victim *"...produced medical fit certificate. He resumed duty as per normal procedure by producing the fir certificate......In the meantime salary has been increased under normal rules........ Now the incumbent is attending office regularly and discharging his duties satisfactorily....."*

b. <u>2) Extra amount received by the claimant as 'interest' -</u>

Interest @ 9% has been awarded from the date accident, i.e. 02.08.2006 and the claim case was filed in the year 2014. As per section 171 of the Motor Vehicles Act, 1988, simple 'interest' on the awarded sum may be awarded from the date of filing of the claim case. Therefore, the claimant has already received extra amount on the head of interest' @ 9% per annum, for 8 (eight) years, i.e. from 2006 to 2014. The same should be adjusted, in the event the compensation is enhanced.

Insurance Company submits that -

a) The claimant was medically 'fit' to join his service and thereafter, he rejoined his office.

b) There was no 'loss of income' during the period of treatment of the claimant and he received full salary during this period.

c)Furthermore, the salary increased in accordance with the normal rules and he rendered his service 'satisfactorily', before finally retiring in the year 2012, in accordance with the rules applicable for all the employees of the concern.

d) In absence of any loss of income/future income' no compensation should be assessed using the 'multiplier' method and no amount can be awarded under the head of loss of earning' of the victim.

e) The extra amount of interest already received by the claimant should be adjusted, in the event the compensation is enhanced.

c. <u>Judgements relied on by Respondent Insurance Company -</u>

A) ***2011 (1) SCC 343 Raj Kumar Vs. Ajay Kumar & Anr.***

"The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable...".

"In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv)".

"Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature

of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood".

For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of eaming capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found *suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity".*

"We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons,

depending upon the nature of profession, occupation or job, age, education and other factors."

B)***2009 (3) TAC 330 Hon'ble Calcutta High Court Division Bench Anamika Mondal -Vs- United India Insurance Co. Ltd. & Anr.***

"We hold that on the basis of evidence on record, there is no scope of granting any further compensation for the loss of better prospect of job nor do we intend to maintain the amount of Rs.40,000/- granted by the Tribunal under the heading "loss of earning capacity" in this appeal preferred by the victim".

"We are quite conscious that the Insurance Company has not preferred any appeal or cross-objection against the award passed by the Tribunal but having regard to the fact that the award is of a nature of money decree, even without filing any cross-objection, the Insurance Company has right to support the award up to the amount granted by the Tribunal and in this appeal if it is found that the appellant is entitled to get any additional amount under any heading, the respondent is entitled to maintain that a particular amount was wrongly given in the award and that amount should be adjusted from the amount this Court proposes to enhance."

7. Heard the submission of the learned advocates representing the respective parties.

8. The victim-injured who was aged about 55 years old and was working as Chief Consultant in West Bengal Consultancy Organisation Ltd. (A Govt. Enterprise) Silpa Bhavan, 3rd Floor, 31, Black Burn Lane, Kolkata - 700 012 having a monthly income of Rs. 29,189/- and who faced a motor accident occurred on 02.08.2006 in front of premises no. DA-3, Salt Lake City, Kolkata, caused by a offending vehicle (Ambassador) bearing registration no.

WB-02V-2950 consequently became permanent disabled person to the extent of 40% as assessed by the Medical Board at R. G. Kar Medical College and Hospital, Kolkata-700004.

9. The victim continued to be in service post accident and had been granted increment in salary. The victim continued his service till retirement. Therefore, the victim did not suffer any actual or probable loss. The victim continued to work drawing full salary and allowance. From the evidence of P.W. 3 it appeared that the leave of 172 days was adjusted with the leave account of the victim which otherwise could have been encashed by the victim if he did not suffer the accident. The victim is, therefore, entitled to leave encashment of 172 days as per the document marked as exhibits 9 and 10. The victim is entitled to the expenditure incurred towards medical treatment. The victim continued with his service till retirement which endorsed his physical capability to have regained his normal functioning after suffering 40% physical disability.

10. In Sarla Verma –Vs.- D.T.C. (2009) 6, SCC 121, the Supreme Court had observed, “future prospects and loss of earning should be based on actual earning capacity. If the injured continues in service there is no justification for awarding compensation under loss of income.”

11. The victim is entitled to the following compensation:-

Leave encashment for 172 days		Rs. 1,80,715/-
Medical Expenses		Rs. 2,06,074/-
Pain & Sufferings		Rs.50,000/-
Loss of amenities in future life		Rs.1,00,000/-
Total		Rs.5,36,789/-

12. The appellants/claimants are entitled to a sum of Rs.5,36,789/- along with 6% interest per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.
13. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 2,80,715/- along with interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within eight weeks from the date of passing of this order.
14. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellant/claimant as mentioned in the award passed by the M.V. Act in the Court of the Learned Additional District Judge, Motor Accident Claims Tribunal, 3rd Court, South 24-Parganas being MAC Case No.1137/17 of 2016/2014 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court's fees.
15. The instant appeal is disposed of accordingly.
16. The Trial Court Records shall be sent down to the concerned tribunal forthwith.
17. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)