IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1051 of 2024

With

COT 129 of 2024

HDFC Ergo General Insurance Co. Ltd.

Vs.

Mousumi Ghosh & Anr

For the Appellants : Mr. Soumalya Ganguly

For the Respondents : Mr. Jayanta Mondal
Mr. Sayantan Rakshit

Heard and Judgment on : 07-05-2025

:

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading *"For Hearing"* for further clarification.

2. The learned advocates representing both the parties are present.

3. The claimant, being the victim, had filed an application under Section 166 of the Motor Vehicles Act, 1988 before the Court of the Motor Accident Claims Tribunal, being MAC Case No. 78 of 2014, claiming compensation to the tune of Rs. 30,00,000/- along with interest @ 9% per annum. The said claim arose out of a motor vehicle accident which had occurred on 19.05.2011 at about 10:00 a.m., when the claimant, namely, Mousumi Ghosh, was

proceeding towards her school, Benachity High School, by riding a bicycle. While she was crossing Link Road (Bidhan Sarani), within the jurisdiction of Durgapur Police Station, a truck bearing Registration No. WB39A 4159 had dashed against her. The said vehicle had been driven in a rash and negligent manner and at a high speed at the relevant time.

4. Due to the said accident, the claimant had sustained grievous injuries, including multiple fractures and profuse bleeding on both her legs. She had initially been removed to DSP Main Hospital by local persons and had thereafter been referred to Peerless Hospital and Research Centre Ltd., where she had remained under treatment for a considerable duration. The claimant had incurred substantial medical expenses and, as a consequence of the said injuries, has been rendered permanently disabled to the extent of 80%, resulting in severe locomotor impairment and loss of future earning capacity.

5. The owner of the offending vehicle HDFC Ergo General Insurance Company Ltd. did not contest the case and the case proceeded ex parte against him.

6. The respondents, The National Insurance Co. ltd. contested the aforesaid MAC case.

7. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidence and awarded a sum of Rs. 31,78,719/- as well as an interest of 7.5% from the date of filing the case till the realization of the amount.

8. The Learned Advocate representing the Appellant/Insurance Company submitted that the learned Tribunal had erroneously considered the multiplier to be 15 instead of 18. He further submitted that the interest was directed to be paid at the rate of 7.5% per annum from the date of filing of

the application under Section 164 of the Motor Vehicles Act i.e. 08.07.2011 till the date of actual realization of the entire amount. The disability of the victim was assessed to be 80%. However, the learned Tribunal had enhanced it to be 100%.

9. The Learned Advocate representing the respondents/claimants submitted that the learned Tribunal had rightly granted the compensation and this Court should not be interfered with the same.

10. Heard the submissions of the learned advocates representing the respective parties and considered the materials on record.

11. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. and other ancillary issues have not been disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent as agitated by the Learned Advocates representing the both the parties. Since the victim had suffered 80% disability as per the opinion of the Medical Board the compensation granted by the learned Tribunal is modified to the extent under respective heads.

12. Following the directions of the Hon'ble Supreme Court in the decisions cited above in ***Sarnam Singh v. Shriram General Insurance Co. Ltd (supra)*** and ***Divya v. National Insurance Co. Ltd (supra),*** the compensation awarded by the tribunal is modified to the following extent:-

Annual Income Add 40% Future Prospect		Rs.54,624/- Rs. 21,850/-
Multiplier		Rs. 76,474/- X 15

Total Annual Income Disability 80% as per Medical Board		Rs.11,47,110/- X 80%
 Pain and suffering Attendant charges Future medical expenses Loss of expectation of life Loss of amenities Travelling expenses Actual medical expenses	 + + + + + + +	Rs.9,17,688/- Rs.1,00,000/- Rs.2,00,000/- Rs.2,00,000/- Rs.1,00,000/- Rs. 50,000/- Rs. 50,000/- Rs.11,02,151/-
Entitlement		Rs. 27,19,839/-

13. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company submits to have deposited a sum of Rs. 56,69,089/-=(Rs. 25,000 + Rs. 56,44,089/-) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company.

14. The respondent no.1 /claimant is entitled to a sum of Rs.27,19,839/- along with interest at the rate of 6% per annum to be paid from the date of filing of claim application till the date of actual realisation.

15. The office of the Registrar General, High Court, Calcutta shall encash the cheques and, thereafter, disburse the same to the present respondent No. 1 /claimant as mentioned in the award passed by the Motor Accident Claims Tribunal, being MAC Case No. 78 of 2014 on proof of proper identification of the respondent No. 1/claimant subject to payment of ad valorem Courts fees within

four weeks and refund the balance amount through a cheque to the Learned Advocate representing the appellant/insurance company for the accounts of the insurance company.

16. The interest generated on the sum 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.

17. The instant appeal and cross objection are disposed of accordingly.

18. The interim order if any stand vacated.

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

(Ananya Bandyopadhyay, J.)

S.R.(ARC)