In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. No. 1082 of 2024
CAN 3 of 2024

National Insurance Co. Ltd.
Versus
Roy Durlav Roy & Anr.

Mr. Parimal Pahari
...for the Appellant/Insurance Company.

Mr. Subrata Bhattacharyya
...for the Respondent No.1/claimant.

Heard on: February 5, 2025.

Judgment on: February 5, 2025.

Ananya Bandyopadhyay, J:-

1. Both the learned Advocates for the appellant/insurance company and the respondent No.1/claimant are present.
2. The instant appeal had been filed against the judgment and award dated 3rd July, 2023 passed by the learned Judge, Motor Accident Claims Tribunal, cum Additional District Judge, 5th Court, Purba Bardhaman in M.A.C. Case No. 59 of 2013.
3. An application under Section 166 of the M.V. Act had been filed by the claimant due to the injury to the extent of 40 % sustained by the victim in an accident which occurred on 18.01.2013 at about 8.00 P.M. at Bhadiya More under the jurisdiction of Ausgram Police Station, District Burdwan, with the involvement of the offending vehicle being LMV Jeep bearing Registration No. OR 02AE-5716 which hit the victim from behind and as a result the victim severely injured. The victim was subsequently admitted at BMCH Burdwan and thereafter shifted to CMRI Hospital.
4. The Learned Advocate for the appellant/insurance company submitted that the Learned Tribunal in absence of relevant documents considered the monthly income of the victim to be Rs. 5000/- per month in absence of prove

of his avocation through a tea stall in respect of Rs. 4000/- per month increased the fiscal index prevalent at the relevant time. The Learned Advocate representing the appellant/insurance company further submitted that the Learned Tribunal had considered the rate of interest to be 7 % per cent which had been exorbitant. More-over, the Learned Advocate representing the appellant/insurance company further stated that the physical disability assessed to the extent of 40% by the Medical Board did not have said as to whether the same resulted in the functioning of the disability of the victim burring him to continue with any kind of profession in life.

5. The Learned Advocate representing the respondent No.1/claimant submitted that the Learned Tribunal had justifiably considered the monthly income of the victim to be Rs. 5000/- per month since a person could have earned Rs. 200 per day through his tea stall which otherwise would have amounted to Rs. 6000/- per month and was meagrely considered to be Rs. 5000/- per month.

6. The Learned Advocate representing the appellant/insurance company did not dispute the occurrence of the accident, insurance policy, the involvement of the offending vehicle, driving licence, route permit etc. and other ancillary issues, this Court restrict itself only to the extent of considering the monthly income of the victim, the extent of disability suffered by the victim and the rate of interest assessed at the time of computing the compensation. A person being engaged in a business of selling tea by the road side tea stall could not be expected to produce document to justify his monthly income. However, since the fiscal index prevalent at the relevant time of the accident as assessed by this Hon'ble Court at the relevant time to be Rs. 4000/- as the monthly income. This Court too grant the compensation passed on the monthly income of Rs. 4000/- per month. The medical board after proper assessment of the injuries suffered by the victim opined the extent of disability to be 40% in absence of categorizing to the extent of physical disability or functioning disability cannot be adjudged at this stage by this Court. Therefore, the disability of 40% to be assessed by the Medical Board is

not interfered with. The rate of interest to the extent of 7 % per annum is reduced to the extent of 6% per annum.

Considering the observations of the Hon'ble Apex Court Pranay in *National insurance company Ltd. Vs. Pranay Shetty & Anr*[1] *and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.*[2]*,* the impugned award of Rs. 6,69,971/- is modified as follows:

Monthly Income	Rs. 4000/-
Annual Income	Rs. 48,000/-
	Rs. 19,200/-
Disability to be added(40%)	Rs. 19,200/-
Multiplier to be "17"	X 17
	Rs. 3,26,400/-
Pain of sufferings	Rs. 1,00,000/-
Medical Expenses	Rs. 1,04,471/-
Loss of future amenities	Rs. 50,000/-
Loss of income during the period of treatment	Rs. 6000/-
	Rs. 5,86,871/-

7. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company has deposited the entire awarded amount along with interest at the rate of 7 % per annum from the date of filing of the claim application i.e. 10,98,450/- as per the challan filed by the learned advocate for the Appellant/Insurance company.
8. The respondent No.1/claimant is entitled to receive the balance amount of Rs. 5,86,871/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
9. The office of the Registrar General, High Court at Calcutta is to calculate the award passed by this Court today together with interest as aforesaid and thereafter disburse the same to the present respondent No.1/claimant as mentioned in the impugned judgment dated 3rd July, 2023 passed by the learned Judge, Motor Accident Claims Tribunal, cum Additional District Judge, 5th Court, Purba Bardhaman in M.A.C. Case No. 59 of 2013 on proof of proper identification of the respondent No.1/claimant subject to

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1 **2017(4)TAC 673(S.C)**

payment of ad valorem Court fees and refund the differential amount through a cheque to the learned advocate representing the appellant/insurance company for the accounts of the insurance company.

10. 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 been further 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 through a cheque to be deposited at the office of the appellant/insurance company.
11. The instant appeal and connected application are disposed of accordingly.
12. The interim order if any stand vacated.
13. The TCR be sent down to the concerned tribunal forthwith.
14. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

c.m. Ar.Ct.

(Ananya Bandyopadhyay, J.)

[2] (2009) 6 SC 121