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

Present:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

FMA 21 of 2024

Mithu @ Mithun Sen
Versus
New India Assurance Co. Ltd. Anr.

For the Appellant	:	Mr. Hirak Barman Mr. Bikash Singha
For the Respondent/Insurance Co.	:	Mr. Rishin Chakraborty
Heard on	:	11.03.2025
Judgment on	:	20.03.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. Being aggrieved by and dissatisfied with the judgment and award dated 16th February, 2023 passed by Motor Accident claim Tribunal, 1st Court, Jalpaiguri in MAC Case no. 9 of 2015, the appellant preferred the present appeal contending that the learned Tribunal, despite of healthy documents, evidences, facts and circumstances erred in law and in fact in granting inadequate compensation to the tune of Rs. 2,94,200/-,without following the statutory guidelines and settled principles of law. The

Tribunal below ought to have awarded at least Rs. 17,00000/- along with interest at the rate of 9% per annum, from the date of filing the claim application.

2. Ld. Counsel for the appellant further contended that the victim was a gold smith by profession and for which his monthly income ought to have taken as Rs. 9,000/- per month. He further contended that the Tribunal was erred in law and in fact in not granting compensation on the ground of loss of future prospect, due to the injuries of the victim, at the rate of 40% on the actual monthly income of the victim, who suffered partial disablement at the age of 22 years and in this context the appellant has relied upon the judgment of Apex Court in the case of ***National Insurance company Ltd. Vs. Smt. Pranay Shetty*** reported in **2017 (6) WBLR SC 308** and contended that the victim falls within the age group up to 25 years, the additional 40% amount is to be granted towards future prospect.

3. He further contended that the victim had suffered 50% disability, but the Tribunal below while making computation of the compensation amount had taken the disablement to the extent of 20% only without reason.

4. Learned Tribunal also erred in law in not awarding compensation to the tune of Rs. 1,00,000/- on account of pain and sufferings and also erred in not awarding adequate compensation to the tune of Rs. 2,00,000/- on account of future treatments.

5. He further contended that the appellants/claimants are also entitled to get interest on the awarded sum, which the Tribunal below has illegally refused to grant.

6. Learned Counsel for the appellant in support of his contention also relied upon judgment of:-

- ***(i)*** ***Arun Mahar Vs. Oriental Insurance Company Ltd.*** reported in **2024 2 TAC.**
- ***(ii)*** ***Reliance General Insurance Co. Ltd. Vs. Nitya Ram Mukherjee***, reported in **2019 3 TAC 916**.
- ***(iii)*** ***New India Assurance Co. Ltd. Vs. Amzad Khan*** reported in ***2017 ACJ 610.***

7. Mr. Chakraborty learned Counsel appearing on behalf of the opposite party/insurance company contended that the judgment and order passed by the Tribunal below is quite justified, in the facts and circumstances of the case and the petitioner herein can at best claim interest over the awarded sum. Beside that, the petitioner/claimant is not entitled to get any further sum and as such the appeal is liable to be dismissed, having no merit at all.

8. I have considered submissions made by both the parties.

9. Now so far as the income of the victim is concerned though claimant has contended that he being a goldsmith used to earn Rs. 9,000/- per month but in support of the said contention the claimant could not show any document. Moreover, during cross examination, the claimant admitted that he has no document to show that he used to earn Rs. 9,000/- per month on the date of accident and as such I do not find any perversity or illegality in the order, where the Tribunal below observed that the notional income of the petitioner is to be assessed as Rs. 6,000/- per month.

10. Now so far as the disability certificate is concerned, the petitioner contended that a competent medical board comprising of government doctors opined that the disablement suffered by the petitioner is 50%, which the Tribunal below did not accept and made his own assessment that the disablement of the petitioner cannot be more than 20%.

11. From the disablement certificate marked exhibit 7 it appears that the victim had stiffness in left knee which is partial in nature. His partial disability was calculated as 50% with a direction to review after 5 years. Such disability certificate was issued on 14th January, 2012, whereas the petitioner faced the dock on 20.01.2023, when he admitted that he did not appear before any medical board to determine his persistent disability after the completion of five years. From the disability certificate it appears that disability is partial and there is no mention that it is permanent in nature

12. In this context learned counsel for the insurer contended that the disability certificate was not proved by any Doctor or the Medical Board, though the claimants had every opportunity to prove the disability certificate by the member of the Medical Board, which the claimants failed to do. Learned counsel for the insurer also pointed out that the disability certificate was issued on 14.01.2012 though the date of accident was 18.12.2009, which means that after the lapse of more than 2 years the victim was allegedly examined by the medical board and issued certificate in his favour. In the above backdrop learned Counsel for the opposite party/insurer argued that it is not clear whether the disability certificate was issued due to result of the accident or not, as also the petitioner did not produce any evidence of the treating doctor or any member of the medical board. Considering the above mentioned facts and circumstances of the case, I find nothing wrong in the Tribunals observation that at the time of calculation of the compensation amount the victims persistent disability would not be more than 20%.

13. So far as reimbursement of Medical expenditure, allegedly incurred by the petitioner during his treatment is concerned the Petitioner did not prove any medical treatment related paper or prescription or medical bill before the Tribunal. The petitioner not even attached any medical treatment related paper in the paper book also. As such there is no reason to believe that petitioner incurred the amount of expenditure as shown in the application.

14. In this context though ld. Counsel for the opposite party insurer argued that the claimant is not entitled to get future prospect, since he has not sustained any permanent disablement but I am not agreeable with the aforesaid submissions made by the opposite party, in view of the fact that the Tribunal below on the date of passing judgement observed that at least 20% partial disablement of the victim still persists. If that be so considering the age of the victim, he is entitled to get 40% future prospect.

15. The amount awarded towards the pain and suffering and medical treatment as 10,000/- and 20,000/- respectively, is meagre amount and has been passed without keeping in mind the fact that the relevant provisions of the Motor Vehicles Act is a social welfare legislation.

16. Now as far is interest part is concerned the Tribunal below did not award interest upon the awarded sum. It is true that under section 171 of the MV Act, it is not mandatory that the interest is to be granted upon the awarded sum, but from the various judicial pronouncements, I find that in order to protect interest of victim who suffered loss due to accident, the petitioner is also entitled to get interest at the rate of 5% on the awarded sum.

17. From the aforesaid discussion I find that the tribunal below ought to have made the calculation for quantum of compensation as follows:-

- **I.** Monthly income of the victim = Rs. 6,000/-
- **II.** Future Prospect at the rate of 40% (Victim 22 years old)
- **III.** Monthly income + Future prospect = 8,400/-
- **IV.** Annual income of the victim (8,400 X 12) = 1,00,800/-
- **V.** Since the victim suffered loss at the age of 22 years the multiplier would be 18.
- **VI.** Accordingly if income multiplied by multiplier the amount comes to Rs. 18,14,400/-
- **VII.** Victim entitled 20% of the amount towards partial disablement = 3,62,880/-
- **VIII.** Add reimbursement towards medical expenses 50,000/-
- **IX.** Pain and suffering Rs. 40,000/-.
- **X.** The total compensation amount stands Rs. 4,52,880/-
- **XI.** Insurance company already paid Rs.2,94,200/-
- **XII.** The amount to be paid by the insurance company is Rs. 1,58,680/-

18. In such view of the matter the insurance company namely New India Assurance Company Ltd is hereby directed to pay Rs.1,58,680/- more to the petitioner herein along with simple interest at the rate of 5% per anum from the date of filing of the application, till complete realization. If the petitioner defaulted in making the payment, the claimant /petitioner will be at liberty to initiate execution proceeding for realisation of the awarded sum in accordance with the law.

19. **FMA 21 of 2024** thus stand disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)