

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 378 Of 2009

Ajit Kumar Karjee

Versus

Oriental Ins. Co. Ltd. & Anr.

For the appellant : Mr. Saidur Rahaman, Adv.

For the Insurance Co. : Mr. Parimal Kumar Pahari, Adv.

Heard on : 05.09.2023

Judgment on : 27.09.2023

Ajay Kumar Gupta, J:

1. The appellant has assailed the judgment and award dated 16th day of January, 2008 passed by the Learned Judge, Motor Accident Claims Tribunal, 2nd Court, Jalpaiguri in M.A.C. Case No. 128 of 2002, thereby the learned Tribunal only awarded a sum of Rs. 60,000/- towards medical expenses and 10,000/- for pain and suffering in total 70,000/- in favour of the appellant and directed to pay the said compensation within a period of 60 days from the date of judgment failing which the compensation awarded shall carry interest at the rate of 8% per annum from the date of filing of the claim petition in a injury case filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the said Act”).

2. The appellant has filed this appeal praying for enhancement of compensation towards non-pecuniary damages as well as medical expenses to the fact that on 28.12.2001 at about 7.30 hours in the morning the victim Ajit Kumar Karjee was riding by a motorcycle bearing no. WB-72/A-3587 and going towards Jalpesh from Jalpaiguri. At that point of time one another vehicle (truck) bearing No. WB-71/0651 coming with a high speed in a negligent manner and suddenly dashed the victim as a result victim suffered severe injuries on his person. He was removed to Maynaguri Rural Hospital and thereafter he was shifted to Paramount Nursing Home on 28.12.2001 to 29.12.2001 for his treatment. He was

further admitted in National Medical College and Hospital, Calcutta for his better treatment for 30th December, 2001 to 8th January, 2002. He again shifted to Calcutta Heart Clinic and Hospital wherefrom 31.12.2001 to 01.01.2002 and then shifted to Medicure Nursing Home wherefrom 01.01.2002 to 02.01.2002. He was further shifted to Florid Nursing Home from 02.01.2002 to 11.01.2002 and then shifted to Ram Krishna Medical Complex where from 12.01.2002 to 21.02.2002 and lastly admitted on 11.03.2002 at Calcutta Heart Clinic and Hospital and on 12.03.2002 treated privately by Dr. Benerjee and his right hand was amputated by operation at Ram Krishna Medical Centre, Kolkata and he suffered finally 55% of permanent personal disability. The accident was caused due to the sole rash and negligent driving of the driver of the truck in which the victim was suffered.

3. The respondent no. 1/insurance company contested the said case by filing written statement contending therein that the accident was caused due to the fault of the victim. Respondent no. 1 further denied and disputed all material particulars as well as allegations of the appellant/claimant and finally prayed for dismissal of the case. whereas owner of the offending vehicle/respondent no. 2 did not contest the case from initial stage and finally the case was allowed on contest against the Respondent no. 1/insurance company ex parte against the respondent no.

2/owner of the offending vehicle. Ld. Tribunal allowed a compensation to the tune of Rs. 70,000/= only in total. Hence, the instant appeal for enhancement of compensation amount.

4. Mr. Rahaman, Ld. Advocate appearing on behalf of the appellant/claimant strenuously argued and submitted that the learned Tribunal has committed a serious error in arriving at a compensation only to the tune of Rs. 10,000/- for pain and suffering and 60,000/- towards medical expenses though the victim was treated continuously from the date of accident till 12th March, 2002. He was extensively treated in different hospitals like Maynaguri Rural Hospital, Paramount Nursing Home, National Medical College and Hospital, Calcutta Heart Clinic and Hospital, Medicure Nursing Home, Florid Nursing Home, Ram Krishna Medical Complex and finally also treated by the different private doctors. So he has incurred more than 2 lakhs in his treatment. Victim's right hand and finger was amputated. Medical Board has assessed 55% disability to him due to such amputation of right hand and finger. However, the Ld. Tribunal has assessed only 60,000/- towards medical expenses without applying his judicious mind and only awarded Rs. 10,000/- for pain and suffering without any reasonableness. He raised two issues i.e. the Ld. Tribunal miserably fails to assess the actual medical expenses and come to conclusion that the appellant/claimant is

entitled to get compensation to the tune of Rs. 60,000/- towards medical expenses. That amount should be enhanced to Rs. 2 lakhs because he was suffered 55% disability as well as he was extensively treated in seven different nursing homes and hospitals for the period of about three months continuously not only that the learned Tribunal committed serious error in assessing Rs. 10,000/- for pain and suffering. Though the victim had suffered pain, suffering and trauma and loss of expectations of live. Therefore, the amount should be not less than 1 lakhs towards non-pecuniary damages.

5. On the contrary, learned advocate appearing on behalf of the respondent/insurance company submitted that the victim was a government teacher and he was earning a gross salary of Rs. 9227/- and net income was Rs. 8057/- per month but he did not suffer any loss of earning or loss of future earning as he was joined his service after his treatment. Furthermore, he received all his salary for his absence due to medical treatment. Therefore, the Ld. Tribunal rightly not assessed the pecuniary damages under the heading loss of earning during treatment and loss of future earning on account of permanent disability because he was continuing in his service. It is further submitted that though the appellant/claimant has treated in various hospitals and nursing homes but he fails to prove his actual medical expenses by producing the medical

receipts and vouchers. Therefore, the learned Tribunal has rightly assessed the medical expenses and Rs. 60,000/- and pain and suffering Rs. 10,000/-. So, there is no need to enhance any compensation to the appellant/claimant.

6. Having heard the submission of the parties and on perusal of the materials available on the record it appears that the claimant himself filed an application for compensation under Section 166 of the Motor Vehicles Act and prayed for compensation to the tune of Rs. 3, 50,000/- plus interest from the date of filing of the application till realisation. He proves his case. He has examined himself as P.W. 1, Ajoy Roy, an eye witness as P.W. 2 and Dr. Suresh Chandra Bhowmick as P.W. 3 and Arun Bala (BMOH) Maynaguri Hospital as P.W. 4 to prove his case. The learned Tribunal after assessing the evidence both oral and documentary finally came to conclusion that the accident was occurred due to negligence of both the driver of the offending truck as well as cyclist of the motor vehicle both were equally negligent in causing accident and also came to conclusion that the victim was suffered injuries on his right hand resulting undergo treatment in various hospitals and nursing homes for his recovery, who suffered deformity of his right hand and the doctor assessed 55% disability though disability was actually for 10%. There was a condition that the injury may be assessed again after 10 years. The

appellant did not suffer pecuniary damages i.e. loss of earnings during the period of treatment or thereafter. He did not suffer any monetary loss from his job. Even after treatment he joined his service and continued. So, there is no question of loss of earning either during the period of treatment as well as future. Therefore, the learned Tribunal rightly did not award any compensation towards the head loss of earning. However, Ld. Tribunal has assessed Rs. 10,000/- for pain and suffering which apparently appears less considering the nature of injuries, life span of victim and disability. Furthermore, he was extensively treated in various nursing homes and hospitals for a period of about three months. It is true that the appellant/claimant could not produce the entire medical expenses but he must have incurred expenses for his treatment. He has only produced some money receipts but the ld. Tribunal awarded 60,000/- only on the basis of guesswork. Medical expenses ought to have awarded more.

7. Though the appellant/claimant has not suffered loss of injury but he has suffered deformity in his right hand and as per the evidence of P.Ws. 3 and 4. He was treated and finally operation was done and he suffered amputation on the right hand. Therefore, nature of injuries is not simple but a grievous in nature. Person whose right hand amputated, he would definitely suffer pain and suffering for entire life, which cannot be

compensated by a monetary relief. It is true that no loss of earning was suffered by him. It is also admitted facts that no any pecuniary loss has been incurred on account of his earning. It is not undisputed that he has not treated in different hospitals and nursing homes for more than three months extensively. He incurred the medical expenses. He suffered pain, injury, trauma and mental agony during the period of treatment and even after treatment he would suffer pain and suffering in future because his right hand and fingers were amputated and suffered deformity on his right hand. The person who works in any field if his right hand suffered deformity that will definitely affect inconvenience, hardship, discomfort, frustration and mental stress in his life. Therefore, he is entitled to non-pecuniary damages. In view of the decision reported in **R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd.**¹ the Hon'ble Supreme Court held in the said judgment as follows:

12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

¹ AIR 1995 Supreme Court 755

13. This Court in the case of C.K. Subramonia Iyer v. T Kunhikuttan Nair inconnection with the Fatal Accidents Act has observed:

"In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable."

14. In Halsbury's Laws of England, 4th Edn., Vol. 12 regarding nonpecuniary loss at page 446 it has been said:

"Non-pecuniary loss: the pattern.- Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstance of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award.

The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases."

8. In the light of above discussions and considering the nature of injuries suffered by the victim, his age as well as he was treated at least seven hospitals and nursing homes, therefore, I would like to allow at least Rs. 1 lakh towards medical expenses. I further allow Rs. 1 lakh towards pain and suffering because injury suffered by the victim is a permanent.

9. Keeping in mind the above observation, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Loss of earning and future earning	Rs. NIL
Medical expenses	Rs. 1,00,000/-
Add: Non-pecuniary damages like pain, suffering and trauma from the accident	Rs. 1,00,000/-
Total compensation	Rs. 2,00,000/-

10. Thus, the appellant/claimant is further entitled to get enhanced compensation amount comes to Rs. 1, 30,000/= (Rs. 2, 00,000/- minus Rs. 70,000/- (compensation amount awarded by the Ld. Tribunal) which

shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 25.04.2002 till final payment.

11. The respondent no. 1 Oriental Insurance Company Ltd. is directed to deposit the enhanced compensation amount i.e. Rs. 1, 30,000/= as well as Rs. 70,000/= awarded by Ld Tribunal, if not paid earlier to the claimant together with interest @ 6% per annum on the entire amount from the date of filing of the claim application i.e. from 25.04.2002 till final payment by way of cheque before the office of learned Registrar General, High Court Calcutta within a period of 4 weeks from date.

12. Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest as indicated above, shall release the amount in favour of the appellant/claimant upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid, in the manner and mode of payment as stipulated by the Ld. Tribunal in its judgment and award dated 16th January, 2008.

13. With the above observations, the instant appeal stands disposed of.

14. The impugned judgment and award of the learned Tribunal dated 16.01.2008 is modified to the extent only as aforesaid. No order as to costs.

15. Let a copy of this Judgment along with Lower Court records, if received, be sent back to the learned Tribunal forthwith for information.

16. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

17. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)