
(2011) 06 CAL CK 0010
In the Calcutta High Court
Case No : F.M.A. No. 800 of 2005

Sedak Ali

APPELLANT

Vs

Divisional Manager, The Oriental Insurance Company Ltd.

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 171

Citation : (2012) 2 CHN 197

Hon'ble Judges : Tarun Kumar Gupta, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Subir Banerjee, Jayanta Banerjee and Ruxmini Basu Roy, for the Appellant; P.K. Pahari for the Insurance Co., for the Respondent

Judgement

Amit Talukdar, J.—By the judgment and order under appeal passed by the learned Motor Accident Claims Tribunal, Uttar Dinajpur in connection with Motor Accident Claim Case No. 109 of 1999 on 12.3.2003 an award of Rs. 1,75,000/- (Rupees one lakh seventy-five thousand only) after deducting rupees Twenty-five thousand paid u/s 140 of the Motor Vehicles Act, 1988 (hereinafter, referred to as the said Act) was passed in favour of the claimant/ appellant who was the injured victim himself. After passing the award the learned Tribunal further directed that in the event the amount is not paid within a period of two months it will carry an interest @ 9% p.a. from the date of institution of the case till realization. Shri Banerjee for the appellant has questioned the award on the ground that although the amount of earning was shown by the evidence of the appellant (P.W. 1) as Rs. 3,000/- p.m. from selling of green vegetables, the learned Tribunal did not discuss the capacity of earning of the appellant and concluded on a notional basis a sum of Rs. 1,75,000/- without any cogent materials in support of the said conclusion.

2. Shri Banerjee further submitted that in the eye of specific evidence in this regard that P.W. 1 had an income of Rs. 3,000/- p.m. from his business of selling green vegetables which has been corroborated by P.W. 2, an eye-witness the

lump sum assessment made by the learned Tribunal cannot be sustained as the said calculation did not contain any basis. Furthermore, Shri Banerjee submitted that there is no cross-examination on this point. In respect of the deposition of both P.W. 1 and P.W. 2 with regard to the evidence of the appellant running the business of green vegetable.

3. He further submitted that although the learned Tribunal directed payment of interest, in default of the amount is not being paid within a period of two months in view of section 171 of the said Act, it was mandatory to have passed the award of interest on and above the claim amount on regular basis.

4. Opposing the submission of Shri Banerjee on behalf of the Insurance Company Shri Pahari has submitted that there is no proof with regard to the income of the appellant that he earned Rs. 3,000/- p.m. He also referred to the finding of the learned Tribunal in this regard that there is no supporting documents either with regard to the age or with regard to the income. As such, the assessment made by the learned Tribunal was quite proper. Shri Pahari further submitted that the accident took place in October 1997 and keeping in mind the price index of the relevant time the amount was assessed by the learned Tribunal cannot be said to be inadequate. He has prayed for dismissing the Appeal.

5. After we have heard Shri Banerjee and Shri Pahari for the respective parties and have perused the evidence and materials on record and have also gone through the judgment and order under appeal, we find the following salient features of the proceedings are undisputed;

Firstly, the accident took place by an act of rash and negligent driving of the offending vehicle of opposite party No. 2, who did not contest the case.

Secondly, rash and negligent conduct of the offending vehicle has been proved and has been accepted by the learned Tribunal.

Thirdly, on account of the said accident the appellant suffered permanent incapacitation of his right leg which we find from the strength of the disability Certificate to the tune of 60% (Ext. 3) and the unchallenged evidence of both P.W. 1 and P.W. 2 that he was engaged in selling of green vegetables and further the evidence of P.W. 1 that he had an income of Rs. 3,000/- p.m. could not be discredited even in cross-examination.

Lastly, the age of the injured/appellant being around 35 years at the time of deposition also goes uncontroverted.

6. After we have apprised ourselves of the basic features of the appeal in the light of the submissions made at the Bar, we find that there is substance in the submissions of Shri Banerjee to the effect that the assessment of the income has been done on a random basis. We have noted the objection of Shri Pahari for the Insurance-Company that the principle of notional income should be applied. We are unable to accede to the same in this situation simply for the fact that the position is now well-settled that where there is even slightest mention of income

the. person cannot be classified in the "no income group" or notional income.

7. That way we have found the income of the appellant has been Rs. 3,000/-from the sale of green vegetables. This has been the persistent evidence which has been borne out from the record and practically there is no challenge in cross-examination and whatever little contradiction was sought for neither of the two witnesses - P.W. 1 and P.W. 2 could be discredited from their said version. As such, we have no hesitation to accept that the Appellant had an earning of Rs. 3.000/- p.m.

8. Now, if we take the question of disability, as reflected from the Certificate (Ext.3) which is shown as 60%, then as submitted by Shri Banerjee, 40% deduction from the amount of Rs. 3,000/- would take us to Rs. 1,800/- which we will accept as monthly income of the appellant in such situation. If the same amount is multiplied by 12 for the whole year we would have Rs. 21,600/- as the annual income of the appellant.

9. This would bring us to the question of application of correct multiplier. We have found that the age of the appellant being 35 years at the time of deposition has also been proved on a wholesome basis; although there is discrepancy in regard to the mention of his age both in the claim petition and in the head of the recording evidence. But we will go by the substantive evidence which has proved uncontroverted. In that case the correct multiplier would be 18 as the appellant would be in the age group of 29-30 years. As such, he will be entitled to a compensation of Rs. 3,88,800/ - after application of the said multipliers.

10. After we have modified the award to the aforesaid extent, we find that the appellant was in the prime of his youth when he was practically rendered motionless on account of the accident, as reflected from the physically handicapped disability Certificate (Ext.3). Obviously, this has interfered with his normal avocation which we have found from his evidence he has to support a family consisting of his wife and two children from the earning of selling green vegetables which obviously goes down her to slow pace on account of the said accident. This requires consideration of future loss of his income which we feel in the present circumstance should be Rs. 50,000/- on a consolidated basis- After we have modified the award to the aforesaid, amount, we find that the learned Tribunal except applying the default clause for payment of interest in the event the claim amount is not settled within two months from the date of passing of the Order no other order in respect of payment of interest over the claim amount was passed.

11. This is snow a well-settled position by virtue of the Division Bench decision of Kohinur Begum & Ors, vs. New India Assurance Co. Ltd. & Anr. reported in 2008(2) T.A.C. 711 (Cal). Accordingly, we would direct that the award would carry an interest of 9% p.a. from the date of filing of the claim application till the modified compensation amount is finally paid.

12. With this modification in the appeal, the same stands disposed of.

13. The total amount would be deposited within four weeks by the Insurance Company before the Tribunal whereupon after proper identification the amount would be disbursed in favour of the appellant in the manner as directed before the learned Tribunal.

14. Be it recorded, as Shri Pahari has submitted that the award has already been paid less the no claim dispute u/s 140 of the said Act the same amount of Rs. 1,75,000/-would be adjusted. No order as to costs.