

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

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMAT (MV) 59 Of 2022

Pratima Sahoo

Versus

Cholamandalam MS General Insurance Co. Ltd. &

Anr.

For the appellant : Mr. Subhankar Mandal, Adv.

For the Ins. Co. : Mr. S. Ganguli, Adv.

Heard on : 05.09.2023

Judgment on : 27.09.2023

Ajay Kumar Gupta, J:

1. The instant appeal has been filed by the appellant/claimant against the judgment and award dated 20.02.2020 passed by the learned Additional District and Sessions Judge -cum- Motor Accident Claims Tribunal, 2nd Court, Tamluk, thereby the learned Tribunal awarded a sum of Rs. 2, 09,746/- along with interest at the rate of 6% per annum from the date of filing of the claim application i.e. on and from 12.02.2014 till the date of realization on contest against respondent no.1/Insurance Company and ex parte against respondent no.2/the owner of the offending vehicle. The said award was passed by the learned Tribunal in a case of injuries suffered by the victim/appellant under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the said Act”).

2. Brief facts of the appellant’s case is that he had filed a claim application to the effect that on 16.10.2013 at about 4.30 PM, when the appellant/claimant was waiting at Jianda bus stand for bus, at that material point of time, one Maruti van bearing no. WB 30L/8844 was coming from Panskura and proceeding towards Kolaghat at a very high speed with rash and negligent manner endangering human life and safety and suddenly dashed the appellant/claimant as a result appellant/claimant sustained multiple severe injuries on her person. She was immediately removed to New Mother Teresa Nursing Home at

Dakshin Mechogram and thereafter she was further admitted to Labbyek Medical Center Pvt. Ltd. at Kolkata for better treatment.

3 It is further averred that the accident was caused due to rash and negligent driving on the part of the driver of the offending vehicle Maruti van. It caused severe injuries on her person, who was housewife aged about 37 years old. The appellant/claimant claimed her income as Rs. 4000/- per month on the date of accident and after the accident she suffered permanent disablement to the extent of 50%. She is unable to move freely from one place to another and her walking capacity has been restricted. She lost her future earning capacity and also suffered mental pain, agony and shall suffer throughout her life due to disability.

4. The appellant has impleaded the respondent No. 1/Insurance Company as well as the respondent no. 2/owner of the offending Maruti van as respondents. However, the owner of the offending vehicle did not contest the case from the very beginning. Insurance company has contested the case by filing written statement denying and disputing all the material contentions and allegations levelled by the appellant. It was also taken a plea that the offending vehicle was not involved in the said accident and finally prays for dismissal of the claim application.

5. During trial, the appellant has examined herself as P.W. 1 and one Tapas Dalui, Supervisor of Labbyek Medical Center Pvt. Ltd. as P.W. 2 and one Sanjit Biswas, authorised representative of Manager (Admn.), Labbaik Medical Centre Pvt. Ltd. as P.W. 3 and one medical officer of District Hospital, Purba Medinipur as P.W. 4 to substantiate her claim that the accident was due to the rash and negligent driving of the driver of the offending vehicle as well as to prove the medical bill and the disable certificate issued by the Medical Board.

6. It is submitted by the Ld. Advocate appearing on behalf of the appellant that the appellant feeling aggrieved and dissatisfied with the findings of the learned Tribunal with regard to less compensation awarded under the heading pain and suffering of Rs. 5000/- and the loss of income and future income for only 10 years and 10 months though the disability certificate issued by the Medical Board is to that extent of 50%. Hence, she files this appeal seeking for enhancement of the compensation.

7. It is further vehemently argued the learned Tribunal also erred in accepting the income of victim, who was housewife, at the time of accident as Rs. 3000/- per month as notional income without any justification though the claim of the victim was that her income was Rs. 4000/- per month. Accordingly, the judgment and award passed by the Ld. Tribunal

required to be modified by enhancing the compensation towards pain and suffering as well as under the heading of loss of income and future income considering her actual income as Rs. 4000/= per month.

8. On the other hand, learned counsel appearing on behalf of the respondent no. 1/insurance company submitted that when claimant fails to prove the actual income of the victim and no document produced before the learned Tribunal to substantiate her claim, the learned Tribunal has rightly considered her income as 3000/- per month as a notional income. Learned counsel further contended that the disability certificate issued by the Medical Board is for only 10 years. Disable certificate itself reflects the nature of injury is temporary in nature. Accordingly, the learned Tribunal has rightly assessed the loss of income for such period which she suffered and came to final conclusion that she is only entitled to get compensation to the tune of Rs. 1, 95,000/- towards loss of income and future income. The learned Tribunal has also assessed 5000/- as mental pain and suffering. So, there is no need to interfere with the judgment and award dated 20.02.2020 passed by the learned Tribunal. In alternatively, he further submitted if this Court would consider the disability as a permanent disability, then it should be 25% in a whole because she can perform her day-to-day household work without any hindrance.

9. Having heard the submission of both sides and on perusal of the award and the materials available on record, this Court finds the learned Tribunal has wrongly assessed 3000/- as a notional income of housewife. It is not disputed that she was not a housewife and suffered severe injuries and the Medical Board has assessed 50% disability. However, she claimed her income to the tune of Rs. 4000/- in her claim application and to substantiate her claim she narrated in her examination-in-chief that her income was Rs. 4000/- per month at the time of accident. During cross-examination, insurance company failed to rebut such contention that she was not earning Rs. 4000/- per month. Furthermore, it is unexpected from a housewife to prove her actual income by producing document or salary certificate. So, the learned Tribunal had erred in accepting her income as Rs. 3000/- per month as a notional income as a house wife. A housewife's job requires more contribution than a normal job or service of earning person. She maintains her husband, children, parents and other family members for entire day by way of caring them, cleaning, cooking food and many others as a result her income cannot be equated with earnings of a normal person. Her income cannot be calculated in the form of monthly salary or wages. Even the Hon'ble Supreme Court in a case reported in **Arun Kumar Agarwal Vs. National**

Insurance Co. Ltd.¹, confirmed the income of housewife as Rs. 5,000/= per month observing therein as follows:

“23. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

24. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term `services' is required to be given a broad

¹ (2010) 9 SCC 218

meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.”

10. In this case the claimant herself claims before the learned Tribunal with a clean hand showing her income as Rs. 4000/- per month. Therefore, it cannot be discarded only on the contention that she failed to produce any document in support of her claim. Her oral evidence is sufficient to accept her contention that her income was Rs.4, 000/= per month. There is no dispute that she was not a house wife at the time of accident. Thus, this Court can safely accept her income as Rs. 4,000/- per month.

11. So far as the compensation awarded by the learned Tribunal under the head mental pain and suffering Rs. 5000/- is also in lower side because she suffered severe injuries and Medical Board has given 50% disability for a period of 10 years. The Medical Board has given such period only to re-assess her disability after 10 years. But that does not

mean that she did not suffer any mental pain, agony and suffering. Appellant being a housewife must suffer her pain, agony and suffering. Therefore, compensation amount must be more than Rs. 5000/-. The Ld. Tribunal ought to have awarded more compensation amount under the head of mental pain, agony and suffering because she had been extensively treated in several hospitals. Furthermore, there is no straight jacket formula to consider amount under heading pain and suffering. Accordingly, this court assessed her pain and suffering as Rs. 50,000/- considering the nature of injuries, life span and disability certificate issued by the Medical Board.

12. Now, this Court has to assess whether the Ld. Tribunal has right assessed the loss of income and future income on the basis of disability certificate issued by the medical Board. It is admitted facts that the medical board has issued certificate only for 10 years. It reveals from the award that loss of income and future income has been considered for 130 months including the period of treatment. From the perusal of disable certificate as well as nature of injuries and period of treatment, this court also convince that the period counted for loss of income and future income is correct and there is no need to interfere with the findings of the Ld. Tribunal. This Court has not persuaded the contention that the nature of injury is a permanent disablement. So, this Court does not find any

reasons to interfere with the findings of the learned Tribunal with regard to the loss of income and future income as there is no dispute between the parties that disability certificate issued only for ten years. Consequently, loss of income and future income @ 50% for 130 months as awarded by the Ld. Tribunal shall remain same. However, Future Prospect shall be added with the actual income @ 40% where the victim's age is below the age of 40 years in view of proposition laid down by the Hon'ble Supreme Court in **Pranay Sethi's Case (Supra)**².

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

CALCULATION OF COMPENSATION

| | |
|---|----------------|
| Monthly Income | Rs. 4,000/- |
| Add: Future Prospect 40% | Rs. 1,600/- |
| Total Monthly Income | Rs. 5,600/- |
| Loss of earning and future earning @ 50% 2,800/= X 130 months | Rs. 3,64,000/- |

² (2017) 16 SCC 680

| | |
|--|----------------|
| Medical expenses | Rs. 9,746/- |
| Add: Non-pecuniary damages like pain, suffering and trauma from the accident | Rs. 50,000/- |
| Total compensation | Rs. 4,23,746/- |

14. Thus, the appellant/claimant is further entitled to get enhanced compensation amount comes to Rs. 2,14,000/= (Rs. 4,23,746/- minus Rs. 2,09,746/- compensation awarded by the Ld. Tribunal) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 12.02.2014 till final payment.

15. The respondent no. 1-Cholamandalam MS General Insurance Company Ltd is directed to deposit the enhanced compensation amount i.e. Rs. 2,14,000/= as well as Rs. 2,09,746/= awarded by Ld Tribunal, if not paid earlier to the claimant, together with interest, which shall carry interest @ 6% per annum on the entire amount from the date of filing of the claim application i.e. from 12.02.2014 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.

16. 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 20.02.2020.

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

18. The impugned judgment and award of the learned Tribunal dated 20.02.2020 is modified to the extent only as aforesaid. No order as to costs.

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

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

21. 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.)