
(2005) 01 CAL CK 0010
In the Calcutta High Court
Case No : F.M.A. No. 630 of 2004

Bhola Das

APPELLANT

Vs

National Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2005) 3 ACC 468 : (2005) ACJ 1064

Hon'ble Judges : P.K. Samanta, J;Aniruddha Bose, J

Bench : Division Bench

Advocate : Amit Ranjan Roy, for the Appellant;K.K. Das and Gopa Das (Mukherjee), for the Respondent

Judgement

P.K. Samanta and Aniruddha Bose, JJ.—In presence of the learned advocates for the claimant-appellant and the respondent insurance company this appeal is taken up for disposal along with the application filed by the claimant-appellant for amendment of the claim application by enhancing the claimed amount, as the question involved in this appeal is covered by the Division Bench judgment of this court in Suniti Mondal Vs. New India Assurance Co. Ltd. and Others, .

2. The claim case arose out of a motor accident which happened on 20.3.1998 involving the offending vehicle bearing No. MWU 5036 in which the victim girl, named, Shefali Das, succumbed to the injuries suffered in the said accident. The application for compensation was made u/s 166 of the Motor Vehicles Act, 1988. Involvement of the offending vehicle in the said accident was proved before the Claims Tribunal. The claimant-appellant also led evidence to the extent that the victim girl was minor being aged about one and half years. No evidence, however, was led on behalf of respondent insurance company to prove otherwise. It was further established in evidence before the Claims Tribunal that the said accident occurred due to rash and negligent driving of the offending vehicle.

3. In this state of affairs, the learned Claims Tribunal determined the compensation payable to the claimant-appellant at Rs. 54,500 without disclosing

the reasons on the basis of which the same was determined. It was merely held that in view of the Claims Tribunal, the compensation of Rs. 54,500 would be sufficient to meet the ends of justice. The Claims Tribunal even for the purpose of determination of compensation did not adhere to the structured formula as per the Second Schedule to the Act.

4. The Division Bench of this court in the above reported decision on the question of determination of compensation payable in a death case in the motor accident where the victim is a child below 15 years of age has held as under:

"We are not required to labour much to find out an answer to this question as the Division Bench of this court in a decision in *Fatama Matul Bibi and Another Vs. Oriental Insurance Co. Ltd. and Another*, , after taking into consideration large number of decisions on the point has decided by holding that in case of a victim who is a minor having no possibility of earning at the relevant point of time, compensation should be determined on footing of a non-earning person having the notional income as provided in the Second Schedule to the said Act and by following the structured formula as framed therein. In particular such determination should be made by applying the multiplier of 15 as provided therein to the notional income of Rs. 15,000 per annum wherever the victim is a child below 15 years of age. Although there are other decisions of different High Courts as cited on behalf of the insurer respondent which did not uniformly determine the quantum of compensation by applying the multiplier of 15 in each case of death of a minor below the age of 15 years on the notional income of Rs. 15,000 per annum but we are inclined to follow the decision of the Division Bench of our High Court as cited above.

In this regard, we may further add that unless there are special and some other circumstances which do not reasonably require determination of compensation on such basis, in all cases of death of minors below the age of 15 years having no possibility of earning at the relevant point of time or soon thereafter, there should be determination of compensation on such structured formula basis on the notional income of Rs. 15,000 per annum. We are further of the view that in all such cases a lump sum compensation should Under no circumstances be less than a sum of Rs. 1,50,000. Because such compensation should be granted not purely upon consideration of the factor of loss of dependency, but at the same time upon consideration of various other factors. It is well-known that even earning parents are also entitled to compensation in the case of death of their child in a motor accident. Such compensation is granted by taking into account factors such as that the victim would earn one day and the parents at their old age would have the support of their child in case of need, the loss of association of their beloved child and the severe mental pain and agony through which they will have to spend the rest of their lives. The determination of compensation on such factors would certainly be on a reasonable and balanced speculation over the facts and circumstances of each case. In our view, total compensation in such a case should not be determined in normal circumstances at less than Rs.

1,50,000, unless there are special and particular circumstances to determine such compensation at any higher or lower rate. This is what has been contemplated by the legislature while formulating the Second Schedule to the said Act. It has been specifically provided therein that those who had no income prior to accident, a notional income of Rs. 15,000 per annum should be accounted for, for the purpose of determination of compensation coupled with the stipulation that the multiplier of 15 should be applied in case the victim is aged up to 15 years on the date of accident. No distinction has been made amongst the victims between the age of 15 years or the persons having no income prior to the accident or had not the possibility of earning immediately after the accident."

5. We do not find any material in this case to make a departure from the aforesaid reported decision.

6. We, accordingly, modify the award and determine the same at Rs. 1,50,000 even though the claimant-appellant claimed a total sum of Rs. 1,00,000 by way of compensation in the claim petition, by applying the principle laid down by the Supreme Court in the case in Nagappa Vs. Gurudayal Singh and Others, It has been held therein that there is no restriction that the Tribunal or the court cannot award compensation exceeding the claim amount. The function of the Tribunal or court is to award just compensation, being reasonable on the basis of evidence produced on record. If required, in appropriate cases, court may permit amendment to the claim petition. In the case in hand, the claimant-appellant has also made an application for amendment of the claim petition by enhancing the claimed amount as Rs. 1,50,000.

7. It is not in dispute that the claimant-appellant has already received an amount of Rs. 50,000. We, therefore, direct the insurance company to pay the balance amount as per our above award minus the amount, if any, received in the mean time by the claimant-appellant and interest at the rate of 7 per cent per annum from the date of filing of the application till payment on the balance amount which shall peremptorily be made within a period of four weeks from date.

8. Such payment shall be made by way of depositing the above amount by way of an account payee cheque drawn in favour of the claimant-appellant with the Claims Tribunal. The Claims Tribunal upon receipt of such deposit will handover the same immediately to claimant-appellant upon notice. The lower court records, if received, be sent down immediately.

9. The above appeal along with all pending applications are disposed of.