(2008) 03 CAL CK 0056

In the Calcutta High Court

Case No : F.M.A. No. 635 of 2004

Debanshu Guha Roy and Another APPELLANT

Vs

National Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 06-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)
Motor Vehicles Act, 1988 — Section 140, 166, 166(1), 173

Citation : (2008) ACJ 2014

Hon'ble Judges : Rudrendra Nath Banerjee, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Krishanu Banik and Sandeep Pal Chowdhury, for the Appellant; Anit Panda, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988, is at the instance of the claimants and is directed against an order dated 24.1.2003, passed by the Motor Accidents Claims Tribunal, Second Court, Hooghly in M.A.C. Case No. 28 of 2001 thereby rejecting the application u/s 166 of the Act filed by the appellants.

2. Appellant No. 1 is the only surviving brother and the appellant No. 2 is the nephew of the victim who died bachelor. They filed application u/s 166 of the Act thereby claiming compensation for the death of the victim on the allegation that on 27.11.2000 the victim was knocked down by a trailer bearing No. WB 11 -8382 due to rash and negligent driving. The victim died on the spot and the applicants claimed compensation of Rs. 2,00,000.

3. The insurance company contested the claim application. According to the insurance company, the application was not maintainable, as the applicants had no locus standi to file the claim application.

According to the insurance company, the victim was not an employee of Math and claimants were not residing in the family of the deceased and, therefore, neither the victim nor the applicants were dependent upon either of them.

4. The learned Tribunal came to the conclusion that none of the appellants were dependent upon the deceased and the claimants had also failed to prove that the deceased, immediately before his death, was having any income or that the appellants were deriving some sort of financial benefit from the deceased and in the absence of any dependency, the application was not maintainable.

5. The Tribunal, however, held that it was established from the materials on record that the victim died due to an accidental death on the road being knocked down by the offending vehicle due to rash and negligent driving and such vehicle was insured by the insurance company.

6. In view of the finding that the claim application was not maintainable at the instance of the appellants, the Tribunal rejected the application.

7. Being dissatisfied, appellants have come up with the present appeal.

8. After hearing the learned Counsel for the parties and after going through the materials on record, we find that the appellant No. 1 is the brother of the victim and it has come in evidence that other brothers are already dead. Such being the position, the only surviving brother must be held to be an heir of the victim according to the Hindu Succession Act, We, thus, find that the appellant No. 1 was definitely the sole heir and legal representative of the victim and at his instance, the application was maintainable. However, we find substance in the contention of the learned advocate for the insurance company that the appellant No. 2 being nephew cannot have any right when his uncle, the appellant No. 1 was alive at the time of death of the victim.

9. An application u/s 166 of the Act can be maintained by a legal representative of the deceased. As pointed out by the Supreme Court in the cases of Hafizun Begum v. Md. Ikram III (2007) ACC 591 and Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, , in terms of Section 166(1)(c) of the Act any of the legal representatives of the deceased can maintain an application and if all the legal representatives do not join, the other legal representatives not filing application should be made parties to the proceedings. It is the duty of the Tribunal to decide the amount of compensation and specify the person or persons to whom the compensation should be payable. In that context, it was further held that the term ''legal representative'' would mean the person as defined in Section 2(11) of the Code of Civil Procedure, i.e., it stipulates that a person, may or may not be the legal heir competent to inherit the property, but can nevertheless represent the estate of the deceased. It includes heirs as well as persons who represent the estate even without title as either executor or administrator in possession of the property. According to the Apex Court, there are three stages while assessing the question of entitlement. First, the liability of the person who is liable and the person who is to indemnify the liability, if any, is to be ascertained. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. It was further pointed out that the liability u/s

140 of the Act does not cease because of absence of dependency.

10. The next question is, what will be the amount of compensation in the case before us?

11. It is true that the exact amount of income of the victim was not available although the case of the appellant was that he was getting a remuneration of Rs. 1,500 to Rs. 2,000 a month.

In our view, in such a situation, the Tribunal at least ought to have proceeded as if the victim had a notional income of Rs. 15,000 a year and he being aged 42 years, the court by applying the multiplier of 15 ought to have held that the appellant No. 1 was entitled to get compensation of Rs. 1,54,500.

12. We, thus, set aside the order impugned and direct the insurance company to pay the amount of Rs. 1,54,500 along with interest at the rate of 8 per cent per annum from the date of filing the claim application till the date of deposit of the amount to the appellant No. 1 alone as the vehicle was undisputedly covered by the insurance at the relevant point of time and the victim being a third party, his legal representative was entitled to have compensation for death. Amount be deposited within a month from today. The appeal, thus, is allowed to the extent indicated above.

13. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

14. I agree.

