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(2015) 03 CAL CK 0002

In the Calcutta High Court

Case No : F.M.A.T. No. 1052 of 2013 and CAN 5469 of 2014

Lalita Devi and Others APPELLANT

Vs

National Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 3 ACC 592

Hon'ble Judges : Jyotirmay Bhattacharya, J;Samapti Chatterjee, J

Bench : Division Bench

Advocate : Amit Ranjan Roy, for the Appellant; D. Banerjee and T. Sarkar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Jyotirmay Bhattacharya, J—Leave is granted to the learned Advocate for the appellants to correct the cause title of the memorandum of appeal for describing the name of the husband of the appellant No. 1 correctly. The first miscellaneous appeal is directed against the judgment and/or award passed by the learned Motor Accident Claims Tribunal, 2nd Court at Howrah on 10th April, 2013 in Motor Accident Claim Case No. 627 of 2004 at the instance of the claimants/ appellants. There were 2 days delay in filing the instant appeal.

2. The reason for the delay has been sufficiently explained by the appellants in the instant application for condonation of delay.

3. Accordingly, delay in filing the appeal is condoned.

4. The application for condonation of delay thus, stands allowed.

5. Let the appeal now be registered. Re: F.M.A.T. 1052 of 2013

6. Immediately after the delay in filing this appeal is condoned and the appeal is regularised, we are invited by the learned Advocates of the respective parties to dispose of this appeal on merit on the basis of the materials before us. We find

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that the materials available before us are sufficient to dispose of the instant appeal. Accordingly, the instant appeal is taken up for hearing by dispensing with the requirement of filing formal paper books in this appeal.

7. Let informal paper books which are submitted by the appellants in Court today, be kept with the record.

8. Here is the case where we find that the owner of the appellant No. 1 died in a motor accident which occurred on 28th November, 2004 due to rash and negligent driving of the vehicle bearing registration No. WB-15/6861. The victim was a bachelor. He was aged about 21 years at the time of his death. The appellant claimed that he was a serviceman and used to earn a sum. of Rs. 4,800 per month. The appellant, thus, filed an application under Section 166, of the Motor Vehicles Act, claiming compensation to the extent of Rs. 3,00,000 on account of the accidental death of her son. In the claim petition, the father of the victim and the brother and sisters of the victim also joined as applicants along with the mother of the victim.

9. The owner of the offending vehicle did not contest the said claim petition. However, the Insurance Company contested the claim petition by filing a written statement denying the material allegations made therein.

10. The learned Tribunal after considering the materials on record held that the victim died in a motor accident due to rash and negligent driving of the offending vehicle. Such finding of the Court below remains unchallenged.

11. Though the appellants claimed that the victim was a serviceman and he used to earn a sum of Rs. 4,800 per month but they were not able to establish such claim by evidence. The learned Tribunal thus, refused to accept the claimants claim that the victim used to earn a sum of Rs. 4,800 per month.

12. The learned Tribunal assessed the notional income of the victim as Rs. 15,000 per annum and calculated the compensation payable to the claimants by selecting the multiplier of 16 with reference to the age of the mother of the victim. The mother of the victim was within the age group of 35 to 40 years and as such, we are of the view that the learned Tribunal selected the correct multiplier of 16 in the facts of the instant case.

13. While assessing such compensation, the learned Tribunal deducted 1/3rd out of the total income of the victim on account of his personal expenses.

14. After hearing the learned Advocates of the parties and after considering the materials on record, we hold that the learned Tribunal was not justified in assessing the notional income of the deceased as Rs. 15,000 per annum. As such, we draw this conclusion by following the principle as laid down by the Hon''ble Supreme Court in the case of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, (2008) ACJ 1488 : AIR 2008 SC 1858 : (2008) 2 CTC 621 : (2008) 4 JT 637 : (2008) 151 PLR 452 : (2008) 4 SCALE 983 : (2008) 12 SCC 165 : (2008) AIRSCW 2605 , wherein the Hon''ble Supreme Court held that even

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an unskilled labourer could have earned Rs. 100 per diam in 2004.

15. Having regard to the fact that the accident occurred in 2004 and the victim died in the said accident, we hold that the learned Tribunal ought to have assessed the notional monthly income of the deceased as Rs. 3,000.

16. Further having regard to the fact that the victim was a bachelor, we hold that 1/2 of his income should be deducted from his total income on account of his personal expenses.

17. Thus, we hold that the monthly loss of dependency of the appellant/claimant No. 1 was Rs. 1,500 per month (i.e. Rs. 3,000 - 1,500=Rs. 1,500). Thus, the yearly loss of dependency of the claimant will be Rs. 18,000 {i.e. Rs. 1,500 x 12= Rs. 18,000).

18. Since we have held that the learned Tribunal rightly selected the multiplier of 16 in the instant case with reference to the age of the mother of the victim, we calculate that total loss of dependency of the claimant by multiplying the annual loss of dependency of the claimant i.e. Rs. 18,000 with 16 multiplier. Thus, we find that a sum of Rs. 2,88,000 is the total loss of estate {i.e. Rs. 18,000 x 16= Rs. 2,88,000). In addition thereto, the claimant/appellant No. 1 is also entitled to get the statutory compensation of Rs. 4,500. Thus, claimant No. 1 is entitled to get a sum of Rs. 2,92,500 (i.e. Rs. 2,88,000 + Rs. 4,500 = Rs. 2,92,500).

19. We are informed by the learned Advocate appearing for the appellants that his clients have already received the awarded compensation of Rs. 1,64,500 together with interest from the Insurance Company. As such, the balance amount of Rs. 1,23,500 is now payable by the Insurance Company to the claimant/ appellant No. 1. Accordingly, we dispose of the appeal by directing the Insurance Company to pay the said sum of Rs. 1,23,500 together with @ 6% interest from the date of filing of the claim petition till realisation thereof. Such payment will be made by the Insurance Company to the claimant No. 1 alone by an account payee cheque to be drawn in the name of the claimant/appellant No. 1 viz. Lalita Devi and such cheque to be deposited with the learned Tribunal within two months from date.

The impugned order is, thus, modified.

The appeal is thus, disposed off.

Urgent Photostat certified copy of this order, if applied for, be supplied to the learned Advocate for the appellant immediately.

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