(2008) 07 CAL CK 0043

In the Calcutta High Court

Case No : F.M.A. No. 275 of 2006

Mitali Sengupta and Others APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2009) ACJ 250

Hon'ble Judges : R.N. Banerjee, J;B. Bhattacharya, J

Bench : Division Bench

Advocate : Jayanta Kumar Mondal, for the Appellant;Parimal Kumar Pahari, for the Respondent

Judgement

B. Bhattacharya and R.N. Banerjee, JJ.—Instead of disposal of the application, we propose to hear out the appeal itself by treating it as on day''s list.

2. This appeal is at the instance of the claimants in a proceeding u/s 166 of the Motor Vehicles Act, 1988 and is directed against the award dated 19.5.2005 passed by the Motor Accidents Claims Tribunal, First Court, Alipore in M.A.C. Case No. 85 of 2003 thereby disposing of the said application by directing the insurance company to pay a sum of Rs. 1,65,500 as compensation for the death in addition to Rs. 15,000 for medical expenditure.

3. Being dissatisfied, the claimants have come up with the present appeal.

4. After hearing Mr. Mondal, learned advocate appearing on behalf of appellants and Mr. Pahari, learned advocate appearing on behalf of the insurance company, we find that the involvement of the vehicle or the fact that the offending vehicle was covered by the insurance are not in dispute.

5. It has also been held by the learned Tribunal below that the victim was aged 38 years at the time of death. The learned Tribunal below, however, disbelieved the claim of the applicants that the income of the victim was Rs. 2,800 as asserted. There is no dispute that the victim was a professional driver of Tata

Sumo car involved in the accident.

6. In our view, there was no justification of applying the notional income of Rs. 15,000 per annum to the facts of the present case. In case of death of a driver of Tata Sumo motor car the income of such a driver should not be less than Rs. 2,500 a month even in the year 2001.

7. Therefore, learned Tribunal below should have proceeded on the basis of the annual income of Rs. 30,000 by applying the multiplier of 16. The amount, thus, comes to Rs. 3,29,500. In addition to the said amount, the learned Tribunal below having further granted a sum of Rs. 15,000 as medical expenditure, we do not find any reason to interfere with such order.

8. Therefore, the amount would come to Rs. 3,44,500. The appellants are also entitled to get interest at the rate of 8 per cent per annum from the date of filing of the application till the actual deposit.

9. The insurance company is directed to pay the balance amount within a month from today before the learned Tribunal. The amount should be equally divided among the claimants. The mother of the victim has not preferred any appeal before this Court, but she is figuring as respondent No. 3. The minor''s share should be kept in fixed deposit in any nationalised bank till attaining the majority.

10. It is needless to mention that the running of interest will stop on the deposited amount from the date of deposit of such amount.

11. The appeal is thus disposed of to the extent indicated above.

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

13. Lower court records be sent down immediately. Xerox certified copy of this order if applied for, be given to the learned Counsel appearing for the parties within a week from date.

