
(2013) 05 CAL CK 0037
In the Calcutta High Court
Case No : F.M.A. No. 62 of 2013

Nandlal Shaw and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Citation : (2013) ACJ 2203

Hon'ble Judges : Mrinal Kanti Sinha, J;J. Bhattacharya, J

Bench : Division Bench

Advocate : Amit Ranjan Roy, for the Appellant;K.K. Das, for the Respondent

Judgement

1. Bhattacharya and Mrinal Kanti Sinha, JJ.—While considering the appellants' application for expeditious hearing, we were requested by the learned advocates of both the parties to dispose of the appeal itself on merit after hearing them. Accordingly, the appeal itself is taken up for hearing. Since the owner of the offending vehicle did not contest the claim ease before the Tribunal, requirement of service of notice of appeal upon the owner of the offending vehicle is dispensed with on the prayer of the learned advocate appearing for the appellants. Thus, the appeal is treated as ready as regards service upon the respondents.

2. This appeal is directed against the judgment and/or award dated 17.9.2011 passed by the learned Motor Accidents Claims Tribunal, 2nd Court, Asansol, Burdwan in M.A.C. Case No. 53 of 2009 at the instance of the claimants-appellants.

3. The claimants' application u/s 163-A of Motor Vehicles Act, 1988 was allowed in part. Since the claim of the claimants was not allowed in its entirety, the claimants are aggrieved. Hence they have come before this court with this appeal.

4. Let us now consider the merit of the instant appeal in the facts of the instant case.

5. One Asha Devi died in a motor accident occurred on 30.1.2009. At the time of such accident, the deceased was aged about 30 years. She was a housewife. Her husband was a daily labourer. Since the deceased had no independent income of her own, the learned Tribunal assessed the compensation amount payable to the claimants by taking note of the income of her husband. The learned Tribunal held that since an unskilled labourer could have earned Rs. 100 per day, the income of the husband of the deceased could be presumed as Rs. $3,000 \times 12 =$ Rs. 36,000 per annum. Thus, the learned Tribunal held that the yearly income of the deceased was Rs. 12,000, i.e., 1/3rd of her husband's annual income and assessed the compensation at Rs. 1,36,000 by using multiplier of 17 into 2/3rd of the deceased's income amounting to Rs. 12,000 and further granted a sum of Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to estate and thereby total compensation amount was calculated as Rs. 1,40,500 and further amount of Rs. 5,000 was allowed to the petitioner No. 1 towards loss of consortium.

6. Thus, the learned Tribunal awarded a sum of Rs. 1,45,500 in total to the petitioners as compensation together with interest at 6 per cent per annum from the date of filing of this application till its realization.

7. In our view calculation of the learned Tribunal does not appear to be correct and as such we propose to recalculate the compensation amount to be awarded to the appellants afresh in the following manner.

8. If the daily income of the husband of the deceased is accepted as Rs. 100 then the monthly income of the deceased would be Rs. 3,000 and his annual income would be Rs. 36,000.

9. If 1/3rd is deducted from the earnings of her spouse as per provision of Sl. No. 6(b) of the Second Schedule to the Motor Vehicles Act, 1988, then the annual income of the non-earning spouse would be Rs. 12,000. As the deceased was aged about 30 years as per the post-mortem report, the appropriate multiplier as per the structured formula will be 17.

10. Thus, if the annual loss of dependency of the claimants of Rs. 12,000 is multiplied by 17, then the total loss of dependency of the claimants would be Rs. 2,04,000. We further hold that in addition to the said sum of Rs. 2,04,000, the claimants are also entitled to get a further sum of Rs. 9,500 on account of statutory compensation. Thus, if the said sum of Rs. 9,500 is added to the said amount of Rs. 2,04,000, then the total compensation payable to the claimants-appellants would be Rs. 2,13,500.

11. Admittedly, claimants have already received a sum of Rs. 1,45,500 together with interest in pursuance of the direction passed in the impugned award.

12. Accordingly, we direct the insurance company to pay the balance amount of compensation amounting to Rs. 68,000 to the claimants-appellants together with simple interest at the rate of 8 per cent per annum on the entire compensation amount from the date of presentation of the claim petition before the Tribunal up

to the date of actual payment thereof, less the interest amount already paid. Such payment should be made to the claimants-appellants in equal share within thirty days from the date of communication of this order by following the same mode of payment as prescribed in the impugned award.

13. We further clarify that the direction for investment of the minors' share in the compensation which was given by learned Tribunal in the impugned award will also be followed so far as the investment of the minors' shares in compensation and/or interest are concerned to be paid in terms of the direction passed hereinabove.

14. We further make it clear that the payment as per the direction of this court will be made by the insurance company to the claimants by account payee cheques to be deposited in the Tribunal.

15. The impugned award is thus modified to the above extent. Both the application for expeditious hearing and the appeal are thus disposed of. Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocate for the appellants immediately.