(2009) 05 CAL CK 0041

In the Calcutta High Court

Case No : F.M.A.T. No. 26 of 2009

Narayan Chandra Paul alias Narayan Chandra and Another APPELLANT

Vs

The National Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A

Citation : (2009) 05 CAL CK 0041

Hon'ble Judges : Tapan Kumar Dutta, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Subir Banerjee, Jayanta Banerjee and Rukmini Basu Roy, for the Appellant;P.K. Pahari, for the Respondent

Final Decision : Allowed

Judgement

1. Instead of disposal of the application for stay, we propose to take up the appeal itself by treating it as on day''s list.

2. This appeal is at the instance of claimants in a proceeding u/s 163A of the Motor Vehicles Act, and is directed against an award dated 28th January, 2008, passed by the Motor Accident Claim Tribunal and the learned Additional District Judge, Second Court, Nadia, in M.A.C. Case No. 632 of 2005, thereby disposing of the said proceeding by awarding a sum of Rs. 1,17,500/- as compensation. In arriving at such figure, the learned tribunal below applied the notional income of the victim to be Rs. 15,000/- per annum and by applying the multiplier of 11 it arrived at the said figure.

3. Mr. Banerjee, the learned Advocate appearing on behalf of the appellants by placing strong reliance upon the observation of the Supreme Court in the case of Lata Wadhwa and Others Vs. State of Bihar and Others, contended before us that the learned tribunal below should have assessed the income of the victim to be Rs. 3,000/- a month having regard to the services she rendered to the family.

4. As pointed out by the Supreme Court in the said decision, in the absence of

any evidence as regards the income of a housewife between the age group of 34 and 59, her income should be treated to be Rs. 3,000/- a month having regard to the services she renders to her family provided she is active in life. In the case before us, the victim was aged 50 years and it is not the evidence of the insurance Company that she was not active.

5. We, therefore, set aside the award impugned by treating the income of the victim to be Rs. 3,000/- a month and by applying the multiplier of 11 in accordance with the second schedule of the Motor Vehicles Act, the amount, thus, comes to Rs. 2,73,500/- with interest at the rate of 8% per annum from the date of filing of the application, i.e., 23rd December, 2005 till the actual payment. We, accordingly, allow this appeal by modifying the award to the extent indicated above.

6. The Insurance Company is directed to deposit the balance amount within a month from today.

7. It is needless to mention that running of interest on the deposited amount will stop from the date of deposit of the amount by the Insurance Company.

8. The appeal is, thus, disposed of with the above observation.

