(2005) 04 GAU CK 0021

In the Gauhati High Court

Case No : First Appeal No. 137 of 1998

Narayan Debnath and Another — APPELLANT

Vs

Sukumar Roy and Others — RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 173

Citation : (2005) 3 GLR 286

Hon'ble Judges : I.A. Ansari, J;A.B. Pal, J

Bench : Division Bench

Advocate : A.C. Bhowmick, for the Appellant; A. Gonchoudhury, for the Respondent

Judgement

I.A. Ansari, J.—This is an appeal made u/s 173 of the Motor Vehicles Act, 1973, against the judgment and award, dated 30.5.1998, passed in TS (MAC) No. 176/1994, by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala, awarding a sum of Rs. 50,000 only as compensation to the claimants, who are parents of deceased Nemai Debnath, who died in a motor vehicular accident, on 29.7.1994, at the age of 6 years. Challenging the compensation awarded as inadequate, the appellants have preferred this appeal.

2. We have heard Mr. A.C. Bhowmick, learned counsel for the appellants, and Mr. A Gonchoudhury, learned counsel for the insurer-respondent.

3. The limited question, which has been raised in this appeal, is the quantum of compensation, which should have had been awarded to the claimants-appellants. In Oriental Insurance Co. Ltd. v. Shri Josua Halam and Ors., decided on 9.2.2005, a Division Bench of this Court (to which one of us, A.B. Pal, J, was a party), while dealing with the principles governing fixation of amount of compensation in respect of a four years old child, observed as follows:

In C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, the son of the plaintiffs, aged about 8 years, died in a motor accident. On the issue regarding correct method of calculation of compensation, the Apex Court made significant observation in para 13 of the judgment, the relevant portion of which is quoted below:

In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the Appellate Court should be slow in disturbing the findings reached by the Courts below, if they have taken all the relevant facts into consideration.

Since this important observation in 1969, the legal fraternity has waited long for a concrete guidelines in assessing the damages while excluding all considerations of matters, which rest in speculation or fancy and the long wait ended when in Second Schedule to the MV Act a structured formula was formulated. Though the formula is meant to apply only in cases covered by Section 163A of the Act, it undoubtedly provides guidelines for making reasonably correct assessment without depending much on any sort of speculation or fancy in assessing the compensation against the claim u/s 166 of the Act.

4. Though material distinctions exist between the factors, which govern the determination of the amounts of compensation under sections 166 and 163A of the MV Act, 1988, and there are distinct advantages as well as disadvantages in claiming compensation u/s 166 vis-a-vis Section 163A of the MV Act, 1988, the guidelines given in the structured formula, framed u/s 163A, may be applied, in an appropriate case, while determining compensation in a claim arising u/s 166 of the said Act.

5. According to the structured formula given u/s 163A of the MV Act, the notional income of a person up to the age of 15 years may be taken to be Rs. 15,000. In the present case, since the said deceased was of the age of 6 years at the time of his death, it will not be unreasonable to treat his notional income as Rs. 15,000 and if l/3rd of this notional income is deducted and 15 is applied as the multiplier, the compensation works out to the tune of Rs. 1,50,000, To this amount needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss of the estate. So calculated, the compensation, in all, comes to an amount of Rs. 1,54,000.

6. In the result and for the foregoing reasons, this appeal succeeds. The insurer-respondent is hereby directed to make payment of the said compensation amount of Rs. 1,54,000 within a period of three months with interest @ 9% per annum with effect from the date of filing of the claim petition until realisation of the entire compensation amount deducting, however, therefrom any amount(s), which might have already been paid to the claimant-appellants.

7. With the above observations and directions, this appeal shall stand disposed of.

8. However, there shall be no order as to costs.

