(2005) 01 CAL CK 0005

In the Calcutta High Court

Case No : F.M.A.T. No. 2600 of 2004

National Insurance Co. Ltd. APPELLANT

Vs

Nirmala Ghosh and Others RESPONDENT

Date of Decision : 10-01-2005

Acts Referred:

Citation : (2006) ACJ 499

Hon'ble Judges : P.K. Samanta, J;Maharaj Sinha, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

P.K. Samanta and Maharaj Sinha, JJ.—In presence of the learned advocate for the parties, this miscellaneous appeal along with the above application is taken up for disposal.

2. The miscellaneous appeal is directed against the judgment and award dated 19.6.2004 passed in the M.A.C. No. 47 of 2003 (new) & 32 of 2003 (old) by Motor Accidents Claims Tribunal, Burdwan at Asansol. This appeal is by appellant insurance company. The claimants-respondents filed the above claim case on the death of their son in a motor accident occurred on 28.5.2002 while he was travelling in a motor cycle.

3. The learned Claims Tribunal after contested hearing of the above claim case came to a finding that the said victim died because of rash and negligent driving of the offending vehicle. The victim being a non-earning member of the family, his earning was taken as a notional income of Rs. 15,000 per annum and the age of the victim on the date of the accident was found to be 25 years. The learned Claims Tribunal, accordingly, awarded a sum of Rs. 1,74,500 by way of compensation to the claimants-respondents by applying the multiplier of 17 on the basis of the age of the victim on the date of the said motor accident.

4. In this appeal the sole contention raised on behalf of the appellant insurance company is that learned Claims Tribunal acted illegally by applying the multiplier of 17 on the notional income of the victim on the basis of his age. It is by now settled that the claimants-respondents being the parents of the victim, who would suffer the loss of dependency on the death of their son, would be required to be compensated for the remaining period of their lives and not for the period for which the victim would have survived had he been alive.

5. It transpires from the evidence of the father of the victim that on the date of the accident he was aged about 68 years and the mother of the victim was about 59/60 years. Proceeding on the basis of the age of the mother, the multiplier ought to have been applied on the notional income of the victim as 8 instead of 17.

6. Since all other points as decided by the Claims Tribunal have not been disputed by the parties to this appeal, we modify the impugned award by determining the same as Rs. 84,500 instead of Rs. 1,74,500 upon application of multiplier of 8 on the notional income of the victim and further by adding a sum of Rs. 4,500 in the total on account of loss to estate and funeral expenses.

7. Thus claimants-respondents would be entitled to compensation in the sum of Rs. 84,500 in total. Since it is not in dispute that claimants-respondents have already received a sum of Rs. 50,000 under no fault liability, in the meantime, they will be entitled to the balance sum of Rs. 34,500 which will carry an interest at the rate of 9 per cent per annum from the date of filing of the claim petition till payment. The claimants-respondents shall be entitled to withdraw the sum of Rs. 25,000 which was deposited by the appellant insurance company as statutory deposit at the time of filing of this appeal upon-proper identification and receipt. The balance amount shall be paid by the appellant insurance company to claimants-respondents within a period of 4 weeks from date. The above appeal along with the stay application is thus disposed of.

8. If urgent xerox certified copy of this order is applied for by the parties, the same should be given expeditiously.