(2006) 12 CAL CK 0022

In the Calcutta High Court

Case No : F.M.A. No. 870 of 2006

National Insurance Co. Ltd. APPELLANT

Vs

Swapan Mudi and Another RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2007) ACJ 1495

Hon'ble Judges : Subhro Kamal Mukherjee, J;Prabuddha Sankar Banerjee, J

Bench : Division Bench

Advocate : Kamal Krishna Das, for the Appellant; Jayanta Kumar Mondal, for the Respondent

Judgement

Subhro Kamal Mukherjee and Prabuddha Sankar Banerjee, JJ.—Since the owner of the offending vehicle, that is, the respondent No. 2 did not contest the case in the court below, service of notice of the appeal on the respondent No. 2 is dispensed with.

2. Since Mr. Jayanta Kumar Mondal, learned advocate appears for the claimant-respondent No. 1, the appeal is treated as ready for hearing by appearance.

3. Although this is an application for stay, by consent of the parties, we take up the appeal for final hearing.

4. This is an appeal against an award passed by Motor Accidents Claims Tribunal awarding Rs. 2,00,000 to the claimant on account of death of his son. Admittedly, the victim was aged about three years at the time of accident.

5. It is settled law that in case of a victim, who is a minor having no possibility of earning at the material point of time, compensation should be determined on the footing of non-earning person having the notional income as provided in the Second Schedule to the Motor Vehicles Act, 1988 and by following the formula as indicated in the said Schedule. In determining such compensation the multiplier of 15 should be applied.

6. After hearing Mr. Kamal Krishna Das, learned advocate for the appellant and Mr. Jayanta Kumar Mondal, learned advocate for the respondent No. 1, we are satisfied that the learned member of the Tribunal below applied wrong tests in computing compensation.

7. Taking the notional income of the victim as Rs. 15,000 per annum, as the victim was a child aged about three years, and applying the multiplier of 15, we are of the opinion that the Tribunal ought to have awarded Rs. 1,50,000 as compensation.

8. Therefore, the award impugned is modified. The claimant shall be entitled to compensation of Rs. 1,50,000.

9. Mr. Kamal Krishna Das, the learned advocate appearing for appellant invites our attention to the fact that he has already put in Rs. 25,000, as required under Sub-section (1) of Section 173 of the Motor Vehicles Act, 1988 at the time of filing of the appeal.

10. The insurance company is directed to put in the balance sum of Rs. 1,25,000 with interest at the rate of 8 per cent per annum from the date of filing of the application till the actual deposit is made in the Tribunal below by account payee cheque in the name of the claimant within six weeks from this date. Insurance company shall also pay interest at the rate of 8 per cent per annum on Rs. 25,000 from the date of filing of the application for compensation till the date of deposit of Rs. 25,000 in this Court.

11. The office is directed to release payment of Rs. 25,000 in favour of the claimant.

12. With the aforesaid directions the appeal is disposed of.

13. No separate order is required to be passed in connection with the application for stay and as such, the application is disposed of.

14. We make no order as to costs.