(2009) 07 CAL CK 0054

In the Calcutta High Court

Case No : F.M.A. No. 369 of 2008 and C.A.N. No. 7853 of 2007

Oriental Insurance Co. Ltd.		APPELLANT
	Vs	
Laxmi Basfer and Others		RESPONDENT

Date of Decision : 20-07-2009

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

Citation : (2010) ACJ 1773

Hon'ble Judges : Prasenjit Mandal, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Sanjay Paul, for the Appellant;Jayanta Kr. Mandal, for the Respondent

Judgement

Bhaskar Bhattacharya and Prasenjit Mandal, JJ.—Instead of disposal of the application separately, we propose to take up the appeal and cross-objection together by treating those as on day''s list. It appears that the original file of the cross-objection is not available.

2. Therefore, a copy of cross-objection being C.O.T. No. 46 of 2008 filed by the learned advocate for the cross-objectors be kept with the record and be treated as original, so long the original is not found out.

3. This appeal is at the instance of the insurance company and is directed against an award dated 18.6.2007 passed by the Motor Accidents Claims Tribunal, Raiganj, Uttar Dinajpur in M.A.C. Case No. 29 of 2004 thereby disposing of the proceeding u/s 163-A of the Motor Vehicles Act by awarding a sum of Rs. 3,00,000 in favour of the claimants-respondents with interest at the rate of 12 per cent per annum from the date of filing of the claim application till actual payment.

4. Being dissatisfied, insurance company has preferred the present appeal.

5. The only point advanced by Mr. Paul, the learned advocate appearing on behalf of the insurance company-appellant is that the Tribunal below should not have

awarded interest at the rate of 12 per cent per annum on the awarded sum.

6. Mr. Mandal, learned Counsel appearing on behalf of claimants-respondents fairly concedes that the rate of interest ought to have been 8 per cent per annum which is the consistent view of this Court.

7. In the cross-objection filed by the claimants, the grievance of cross-objectors is that although the Tribunal below itself came to the conclusion that on the basis of income of the victim the just amount of compensation should be Rs. 4,17,500, it erred in law in reducing the compensation to Rs. 3,00,000 simply because the claimants restricted their claim to Rs. 3,00,000 in the application.

8. Mr. Mandal points out that Hon''ble Supreme Court in the case of Nagappa Vs. Gurudayal Singh and Others, has already made the position clear that unlike any other civil litigation, in a proceeding under Motor Vehicles Act, if the Tribunal arrives at a figure to be just compensation, it should not reduce the award from that amount merely because the claimants restricted their claim to an amount which is less than that amount.

9. We respectively follow the said principle and hold that having regard to the finding of the Tribunal that on the basis of income of the victim the amount of compensation should be Rs. 4,17,500, there was no just reason for reducing the amount to Rs. 3,00,000 merely because the claimants restricted their claim to Rs. 3,00,000.

10. We, therefore, dispose of both the appeal and the cross-objection by modifying the award by enhancing the sum to Rs. 4,17,500, but reducing the interest payable on that amount at the rate of 8 per cent per annum from the date of filing of the application till actual payment.

11. It is needless to mention that running of interest will stop running from the date of deposit of such amount.

12. The insurance company is directed to pay the balance amount within a month from today before the Tribunal.

13. After deposit of the entire amount before the Tribunal, insurance company will be at liberty to withdraw the statutory amount deposited before this Court at the time of presentation of the appeal.

14. The appeal and the cross-objection are, thus, disposed of.

15. In view of disposal of the present appeal itself, the connected application being C.A.N. No. 7853 of 2007 has become infructuous and the same is disposed of accordingly.

16. Photostat certified copies of this order, if applied for, be given to the parties within a week from the date of making of such application upon compliance with requisite formalities.

