(2008) 08 CAL CK 0024

In the Calcutta High Court

Case No : F.M.A. No. 259 of 2006

Rasaball Chowdhury and Others APPELLANT

Vs

Oriental Insurance Co. Ltd. and Another RESPONDENT

Date of Decision : 18-08-2008

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

Citation : (2008) ACJ 202

Hon'ble Judges : R.N. Banerjee, J;B. Bhattacharya, J

Bench : Division Bench

Advocate : Jayanta Kumar Mondal, for the Appellant; Sanjoy Paul, for the Respondent

Judgement

B. Bhattacharya and R.N. Banerjee, JJ.—Instead of disposal of the application, we propose to hear out the appeal itself by treating it as on day''s list.

2. This appeal is at the instance of the claimants in a proceeding u/s 163A of the Motor Vehicles Act and is directed against an award dated 14.7.2005 passed by the Motor Accidents Claims Tribunal, Uttar Dinajpur in M.A.C. Case No. 100 of 2004 thereby disposing of the same by awarding a sum of Rs. 60,000 in favour of the claimants.

3. Being dissatisfied, the claimants have come up with the present appeal.

4. There is no dispute about the involvement of the offending vehicle or the fact that such vehicle was insured by Oriental Insurance Co. Ltd. According to the claimants, the victim had a business of selling seeds in different markets and had income of Rs. 3,000 a month. Claimants alleged that the victim was aged 44 years at the time of his death.

5. The learned Tribunal below was of the view that in the fact of the present case, the notional income of Rs. 15,000 should be treated to be the income of the victim. The learned Tribunal further held that in the voter list the age of the victim was shown to be 56 years and, therefore, the learned Tribunal proceeded

to apply the multiplier of 8 and arrived at the figure of Rs. 80,000 and thereafter further deducted 1/3rd of the said amount.

6. Learned Tribunal, however, added a sum of Rs. 6,000 for the sorrow, grief and misery and for consortium and the funeral expenditure and arrived at the figure of Rs. 60,000.

7. After hearing the learned Counsel appearing for the parties, we are of the view that the award passed by the learned Tribunal is a perverse one.

8. In this case, no suggestion was given to the widow of the victim to her claim that her husband had an earning of Rs. 3,000 a month.

9. As pointed out by the Hon''ble Apex Court in case of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, , that an unskilled labourer can easily earn Rs. 100 per day. Therefore, the claim of income of Rs. 3,000 cannot be disbelieved when no suggestion was given to the widow by the insurance company disputing the said claim. It was not even disputed that the victim dealt with seeds in different markets.

10. We, therefore, find no justification of applying notional income of Rs. 15,000 to the fact of the present case.

11. As regards the age of the victim, it was the specific claim that he was aged 44 years at the time of his death. The postmortem report, Exh. 2, supports such claim. It appears that the learned Tribunal relied upon the voter list, which was not even marked exhibit at the instance of either of the parties. In view of the opinion of the expert certifying the age of the victim to be 44, there is no justification of relying upon an unexhibited document in arriving at the conclusion that the victim was aged 54 years.

12. Therefore, the applicable multiplier should be 15 on the basis of income of Rs. 3,000. By applying the multiplier of 15, the amount comes to Rs. 3,69,500 in accordance with the Second Schedule to the Motor Vehicles Act. The appellants are also entitled to get interest at the rate of 8 per cent per annum from the date of filing of the application till actual payment.

13. We are shocked to find that the learned Tribunal below by applying notional income of Rs. 15,000, first deducted 1/3rd of the said amount and after multiplying the same with the multiplier again deducted further 1/3rd from the said figure arrived at.

14. We, thus, set aside the impugned award and enhance the same to Rs. 3,69,500. We are conscious that claimants claimed only Rs. 2,00,000 in the application, but as pointed out by the Hon''ble Supreme Court in case of Nagappa Vs. Gurudayal Singh and Others, , if by application of the provision of the Motor Vehicles Act, the just amount of compensation becomes above the amount claimed in the application, such fact cannot be a bar in giving the just amount of compensation.

15. In other words, the strict principle of limiting the claim by the pleading of the parties is not applicable to the proceeding under the Motor Vehicles Act.

16. The insurance company is directed to pay the enhanced amount within one month from today. If the awarded amount has not been paid, the insurance company should pay the entire amount within a month from today.

17. It is needless to mention that the interest on the amount will stop running from the date of deposit of the amount before the learned Tribunal.

18. With the aforesaid direction, the appeal is allowed to the extent indicated above.

19. Lower court records be sent down immediately.

20. Xerox certified copy of this order, if applied for, be given to the learned Counsel appearing for the parties within a week from date.