(2008) 11 CAL CK 0062

In the Calcutta High Court

Case No : F.M.A. No. 75 of 2006 and C.A.N. No. 3880 of 2008

Smt. Sarama Das and Others APPELLANT

Vs

Sri Bhutnath Ghorui and Another RESPONDENT

Date of Decision : 03-11-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2008) ACJ 401

Hon'ble Judges : Rudrendra Nath Banerjee, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Jayanta Kumar Mondal, for the Appellant;Animesh Das for Insurance Company, for the Respondent

Final Decision : Dismissed

Judgement

1. Instead of disposal of the application, we propose to hear out the appeal itself by treating it as on day''s list as a pure question of law has arisen for determination in this appeal.

2. This appeal is at the instance of the claimants in a proceeding u/s 166 of the Motor Vehicles Act and is directed against the award dated 24th January, 2005 passed by the Motor Accident Claim Tribunal, Fast Track, First Court at Chandernagore, Hooghly in MAC Case No. 321 of 2003 thereby dismissing the application on the sole ground that the applicants being the three married sisters were not dependent upon the victim and as such, could not maintain the application.

3. The learned Tribunal, however, found that in the fact of the present case, the actual amount of compensation should be Rs. 1,74,500/-. The learned Tribunal found that in the fact of the present case, the applicable multiplier should be 17 and that the principle of notional income should be applied.

4. After hearing the learned Counsel appearing for the parties and in view of the decision of the Hon''ble Supreme Court in case of Smt. Manjuri Bera v. Oriental

Insurance Company Limited reported in (2007)3 WBLR (SC) 473, we are of the view that the learned Tribunal below committed a blatant mistake in dismissing the application on the ground indicated in the award.

5. It is now settled law, as pointed out in the aforesaid decision for the Hon''ble Supreme Court that the heirs anti legal representatives of the victim can maintain an application u/s 166 of the Act irrespective of the fact that whether they are financially dependent upon the victim.

6. In the case before us, there is no dispute that the victim was bachelor leaving three elder sisters, all married and his parents having pre-deceased him. The victim being a Hindu, according to Hindu Succession Act, his three elder sister will be the sole heirs and legal representatives. All of them having filed the claim application u/s 166 of the Act, we are of the view that in the fact of the present case, the learned Tribunal below ought to have assessed the amount by application of multiplier of 17 as the sisters were in the age group of late 20 or early 30; on the notional income of Rs. 15,000/- per annum, the amount, thus, comes to Rs, 1,74,500/-.

7. The appellants are also entitled to get interest at the rate of 8% per annum from the date of filing of the application till actual payment. Out of the aforesaid sum of Rs. 50,000/- having already been paid in proceeding u/s 140 of Act, the amount payable in this proceeding should be Rs. 1,24,500/- with interest at the rate of 8% per annum from the date of filing of the application till deposit of the said amount. The amount be paid within a month from today by issue of three different cheques of equal amount in the name of three appellants before the learned Tribunal below.

8. With the aforesaid observation, the appeal is, thus, dispose of.

9. In view of disposal of the appeal itself, the connected application has become infructuous and the same is, thus, disposed of.