
(2004) 07 CAL CK 0064
In the Calcutta High Court
Case No : F.M.A. No. 665 of 2003

Suniti Mondal

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 15-07-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2005) ACJ 272

Hon'ble Judges : Prabir Kumar Samanta, J; Aniruddha Bose, J

Bench : Division Bench

Advocate : K. Banik and Amit Ranjan Roy, for the Appellant; S.K. Das and Partha Sarkar, for the Respondent

Final Decision : Allowed

Judgement

Prabir Kumar Samanta, J.—An unfortunate mother of the victim is the appellant in this miscellaneous appeal which arises out of the judgment and order dated 18.4.2002 passed in motor accidents claim case thereby dismissing the petition u/s 166 of the Motor Vehicles Act, 1988.

2. The facts are that on 6.11.2000 at about 5 p.m. on G.T. Road the deceased victim who was aged about only four years was standing by the right side of the road. The offending vehicle bearing No. WB 41-A 1978, which was proceeding towards Simlagarh from Pandua in a high speed and being driven negligently by its driver hit the victim who was brought dead to the hospital.

3. The involvement of the offending vehicle in the said accident and rash and negligent driving of the said offending vehicle by its driver have been proved in evidence by an independent witness, namely, PW 2, who was present at the spot of the accident. Such finding of rash and negligent driving of the offending vehicle by its driver has also not been questioned in this appeal by the insurer.

4. The claimant mother has already received a sum of Rs. 50,000 under no fault liability on an application u/s 140 of the said Act. The present application u/s 166

of the said Act has been dismissed only on the ground that the victim was aged about four years only and, therefore, the claimant mother has not suffered any loss of dependency because of such sad demise of her son save and except tremendous mental shock and agony inasmuch as the victim had no possibility of earning soon thereafter had he been alive.

5. Accordingly, a question has cropped up in this case for determination as to what should be the just compensation in case of a death of a minor who had no present income and had no possibility of earning by him within a reasonable period of time, had he been alive.

6. We are not required to labour much to find out an answer to this question as the Division Bench of this court in a decision in *Fatama Matul Bibi and Another Vs. Oriental Insurance Co. Ltd. and Another*, after taking into consideration large number of decisions on the point has decided by holding that in case of a victim who is a minor having no possibility of earning at the relevant time, compensation should be determined on the footing of a non-earning person having the notional income as provided in the Second Schedule to the said Act and by following the structured formula as framed therein. In particular such determination should be made by applying the multiplier of 15 as provided therein to the notional income of Rs. 15,000 per annum wherever the victim is a child below 15 years of age. Although there are other decisions of different High Courts as cited on behalf of the insurer respondent which did not uniformly determine the quantum of compensation by applying the multiplier of 15 in each case of death of a minor below the age of fifteen years on the notional income of Rs. 15,000 per annum but we are inclined to follow the decision of the Division Bench of our High Court as cited above.

7. In this regard, we may further add that unless there are special and some other circumstances which do not reasonably require determination of compensation on such basis, in all cases of death of minors below the age of 15 years having no possibility of earning at the relevant point of time or soon thereafter, there should be determination of compensation on such structured formula basis on the notional income of Rs. 15,000 per annum. We are further of the view that in all such cases a lump sum compensation should under no circumstances be less than a sum of Rs. 1,50,000. Because such compensation should be granted not purely upon consideration of the factor of loss of dependency, but at the same time upon consideration of various other factors. It is well-known that even earning parents are also entitled to a compensation in case of death of their child in a motor accident. Such compensation is granted by taking into account factors such as that the victim would earn one day and the parents at their old age would have the support of their child in case of need, the loss of association of their beloved child and the severe mental pain and agony through which they will have to spend the rest of their lives. The determination of compensation on such factors would certainly be on a reasonable and balanced speculation over the facts and circumstances of each case. In our view,

total compensation in such a case should not be determined in normal circumstances at less than Rs. 1,50,000, unless there are special and particular circumstances to determine such compensation at any higher or lower rate. This is what has been contemplated by the legislature while formulating the Second Schedule to the said Act. It has been specifically provided therein that those who had no income prior to the accident, a notional income of Rs. 15,000 per annum should be accounted for, for the purpose of determination of compensation coupled with the stipulation that the multiplier of 15 should be applied in case the victim is aged up to 15 years on the date of accident. No distinction has been made amongst the victims between the age of 15 years or the persons having no income prior to the accident or had not the possibility of earning immediately after the accident.

8. Thus, we hold that in any event, the claimant mother would be entitled to a total sum of Rs. 1,50,000 by way of compensation for the death of her minor child who was aged about four years only at the time of accident.

9. The impugned judgment and award is thus set aside. The award is modified to the extent that the claimant-appellant would be entitled to receive a balance sum of Rs. 1,00,000 by way of compensation along with an interest at the rate of 9 per cent per annum from the date of filing of the application till payment, for the death of her minor child in the above accident. The insurer respondent is accordingly, directed to make payment directly to the Urgent xerox certified copy of this order, claimant-appellant or to deposit the said if applied for, be supplied to the parties, balance sum with all interest thereon with as expeditiously as possible. the Claims Tribunal within a period of six weeks from date. Appeal allowed.

10. This appeal is accordingly allowed.