(2008) 06 CAL CK 0053

In the Calcutta High Court

Case No : F.M.A. No. 171 of 2005

Susana Dasgupta and Another APPELLANT

Vs

Paul Sarai and Another RESPONDENT

Date of Decision : 03-06-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2009) ACJ 366

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

Bench : Division Bench

Advocate : Hemendra Guha Roy and Sujoy Guha Roy, for the Appellant;P.K. Pahari, for the Respondent

Judgement

B. Bhattacharya and R.N. Banerjee, JJ.—This appeal is at the instance of the claimants in proceeding u/s 166 of the Motor Vehicles Act and is directed against an award dated 27.7.1998, passed by the Motor Accidents Claims Tribunal (Sixth Court of learned Additional District Judge), Alipore, 24-Parganas in Motor Accident Claim Case No. 10 of 1996 thereby disposing of the said proceeding by directing the insurance company to pay a sum of Rs. 4,40,000 to the applicants as compensation out of which Rs. 50,000 had already been paid in a proceeding u/s 140 of the said Act.

2. Being dissatisfied, the applicants have come up with the present appeal.

3. There is no dispute that predecessor-in-interest of the appellants, the victim, was a typist employed in the Reserve Bank of India and he died in an accident wherein the offending vehicle was covered by the insurance of the respondent No. 1. There is also no dispute that at the time of death, the victim was aged between 40 and 41 years. It appears from the salary certificate proved in the proceeding that his gross monthly income was Rs. 8,559 and out of the said amount Rs. 800 a month was payable as income tax and Rs. 75 a month was payable as professional tax. It further appears that a sum of Rs. 100 was payable to him as conveyance allowance.

4. Learned Tribunal below on consideration of the materials on record came to the conclusion that it was well established that victim died due to rash and negligent driving of the offending vehicle and that the same was insured by the concerned insurance company.

5. While assessing the amount of compensation, the learned Tribunal below, however, was influenced by the fact that after the death of the victim, the widow, the appellant No. 1, was given employment on compassionate ground and that she was also getting family pension payable under the relevant service rules of the victim. On taking into consideration those two aspects, the learned Tribunal below ultimately held in the fact of the present case, it was of the view that the family of the victim had lost dependency to the tune of Rs. 3,000 only and considering the age of the victim and uncertainty of life, it was of the opinion that multiplier of 12 would be adequate standard of computation for the loss of dependency of the family of the victim and thus, a sum of Rs. 4,40,000 was awarded as the total amount of compensation.

6. Being dissatisfied, the appellants have come up with the present appeal.

7. After hearing the learned Counsel for the parties and after going through the materials on record, we agree with the learned advocate appearing on behalf of the appellants that the approach of the learned Tribunal below was totally erroneous in view of the Supreme Court decisions in the cases of Lal Dei v. Himachal Road Trans. Corporation 2008 ACJ 1107 (SC) and Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, . In those two decisions, it has been pointed that while assessing compensation on the death of a person, the fact that his family had been receiving family pension was immaterial. Similarly, the fact that the widow has been given compassionate appointment is also immaterial for the purpose of considering the total amount of compensation. The widow is getting her salary after giving her labour in such service and, therefore, such fact cannot be taken into consideration while assessing compensation. She might work even in a different concern after the death of her husband.

8. In our view, in the fact of the present case, while assessing the actual amount of income of the deceased, we should deduct a sum of Rs. 800 paid towards income tax, Rs. 75 paid towards professional tax and Rs. 100, he used to receive as conveyance allowance and thus, his total income should be treated to be Rs. 7,574. We, however, propose to treat it as Rs. 7,500 by way of round figure.

9. The victim having died at the age between 40 and 41 years, the applicable multiplier should be 15 in accordance with the Second Schedule to the Motor Vehicles Act and, therefore, the total amount of compensation will come to Rs. 9,00,000. In addition to the said amount, a further sum of Rs. 9,500 should be added towards funeral expenses, loss of consortium and loss to estate. Therefore, the total amount comes to Rs. 9,09,500 out of which a sum of Rs. 50,000 has already been paid by insurance company in terms of Section 140 of

the Act. Therefore, the total amount payable by the insurance company comes to Rs. 8,59,500.

10. The appellants will also be entitled to get interest from the date of filing of the application, that is to say, 4.4.1996 till actual payment. In our view, having regard to the prevailing rate of bank interest, the appellants should be entitled to get interest at the rate of 12 per cent per annum from the date of filing of the application, that is to say, 4.4.1996 till 31.12.1999 and at the rate of 8 per cent per annum from 1.1.2000 till actual payment.

11. We are given to understand that the insurance company has already paid a sum of Rs. 3,90,000 apart from the amount of Rs. 50,000 paid in terms of Section 140 of the Act. Therefore, the interest on the aforesaid amount of Rs. 4,40,000 will stop running on the date of deposit the said amount of Rs. 3,90,000.

12. The insurance company is directed to pay the balance amount within a month from today before the learned Tribunal below. The money should be released in the same manner as directed in the award impugned.

13. The appeal is, thus, allowed to the extent indicated above.

14. In the facts of the case, there will be no order as to costs.

15. Let the lower court records be sent down immediately.

Urgent xerox certified copy of this order, if applied for, be given to the parties within a week.