(2008) 07 AHC CK 0047

In the Allahabad High Court

The New India Assurance Company Ltd. APPELLANT

Vs

Smt. Kamal Devi and Others RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2009) 1 AWC 196

Hon'ble Judges : Vedpal, J;Amitava Lala, J

Bench : Division Bench

Judgement

Amitava Lala, J.—This appeal has been preferred by the Insurance Company challenging the judgement and order dated 2nd April 2008 passed by the concerned Motor Accident Claims Tribunal, Fatehpur awarding a sum of Rs. 2,57,000/- as compensation along with interest @ 6% thereon.

2. The only one issue has been raised before us by the Insurance Company that there was no evidence with regard to the income of the deceased for a sum of Rs. 6,000/- as accepted by the Tribunal. It appears to us that the claim petition was filed by the claimants u/s 166 of the Motor Vehicles Act, 1988. The Court had arrived at such figure of compensation of Rs. 6,000/- on the basis of oral testimony and after the deduction of Rs. 2,000/-, on being 1/3rd deduction of Rs. 6,000/-, arrived at figure of Rs. 4,000/- and the compensation was awarded for Rs. 2,40,000/- along with the funeral expenses etc. It is specifically recorded in the judgement itself that there was no denial or rebuttal on the part of the Insurance Company. The Insurance Company has relied upon a judgement delivered by the Supreme Court reported in 2003(3) TAC 569 (State of Haryana v. Jasbir Kaur) and said that when there is no material before the Tribunal to arrive at monthly income for the purpose of considering "just" compensation, it cannot be estimated.

3. We are of the view that the argument, as advanced by the learned Counsel appearing on behalf of the appellant, suffers from misconception. The Supreme Court has categorically held that what would be "just" compensation is a vexed

question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. The Supreme Court held that the determination should be rational, to be done by a judicious approach and not outcome of whims, wild guesses and arbitrariness. The gentleman, who expired in the case before the Supreme Court, had the agricultural income as well as business with regard to milk etc. But the difference between such case and this case is that there was no material and the present case there was some material even being oral evidence but can not be overlooked. Therefore, when there is some material available before the Court, the Court would construe and come to an appropriate finding particularly in a situation when there is no denial or rebuttal. This distinguishing feature should not be escaped from the notice of the Court in arriving at a conclusion.

4. Being so, we cannot interfere with the judgement and order impugned before us. Therefore, we are of the view that the appeal will be treated to be dismissed at the stage of admission. Accordingly, it has been done, however, without imposing any cost.

5. However, it is open for the insurance company to make any application for recovery of the compensation in the tribunal in the self same proceeding when upon giving notice and adequate opportunity of hearing Court will consider the issue either way. But under no circumstances, the amount which has been directed to be paid to the claimants would be stalled.

6. Incidentally, the appellant-insurance company prayed that the statutory deposit of Rs. 25,000/- made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust the same with the amount of compensation to be paid to the claimants, however, such prayer is allowed.

