National Insurance Co. Ltd. Vs Amesh Mondal and Others

Court: Calcutta High Court

Date of Decision: Sept. 26, 2005

Acts Referred: Motor Vehicles Act, 1988 â€" Section 140, 163A, 166

Citation: (2006) 4 ACC 707 : (2006) ACJ 1706

Hon'ble Judges: S.P. Talukdar, J; P.K. Samanta, J

Bench: Division Bench

Advocate: K.K. Das and Gopa Das Mukherjee, for the Appellant; K. Banik, for the Respondent

Final Decision: Allowed

Judgement

P.K. Samanta and S.P. Talukdar, JJ.
This is an appeal against the judgment and award dated 6.7.2005 passed by learned Motor

Accidents Claims Tribunal, 3rd Court in M.A.C. Case No. 1 of 2005. The backdrop of the present case may briefly be stated as follows:

On 25.7.2003 at about 4.30 p.m. one Debabrata Mondal alias Debu was knocked down by a vehicle bearing No. WMH 5325. Such accident

was caused due to rash and negligent driving of the said vehicle. As a result, the victim sustained serious injuries and succumbed to the same. He

was a boy of 11 years, studying in Class V. Over such accident, the legal heirs and representatives of the victim filed an application u/s 166 of the

Motor Vehicles Act claiming compensation. The said case was resisted by the present the respondent-appellant National Insurance Co. Ltd.

Learned Tribunal after taking into consideration relevant facts and materials by the impugned judgment and award directed the present appellant

insurer to pay an amount of Rs. 1,75,000 to respondents-claimants. Such amount was in addition to the amount of Rs. 50,000 which was earlier

paid to the respondents-claimants in response to an application u/s 140 of Motor Vehicles Act.

2. The only point raised at the time of hearing of the instant appeal by Mr. K.K. Das, learned Counsel for the appellant is that learned Tribunal was

not justified in giving an award in excess of Rs. 1,50,000 in the facts and circumstances of the present case. Mr. Das, learned Counsel, has in fact

referred to the few judgments passed by this Court as well as by the Supreme Court where an award of Rs. 1,50,000 was awarded in case of

death of minor and it was done on the basis of the notional income of Rs. 15,000 per annum.

3. Mr. Das, learned Counsel has sought to further clarify his submission by referring to the fact that the learned Tribunal did not deduct 1/3rd of the

amount of the notional income which was not in tune with the spirit of the chart, that is, the Second Schedule to the application u/s 163-A of the

Motor Vehicles Act.

4. In response, the learned Counsel for the respondents-claimants, Mr. K. Banik submits that though this Court in many cases awarded an amount

of Rs. 1,50,000 as compensation in case of death of a minor boy on the basis of the notional income of Rs. 15,000 per annum, learned Tribunal

cannot be found fault with for not deducting the 1/3rd amount as argued by Mr. Das. It appears that the learned Tribunal took into consideration

the judgment passed by the Apex Court in the case of Manju Devi v. Musafir Paswan 2005 ACJ 99 (SC). In the said judgment, the Apex Court

clearly indicated that award of compensation is required to be made by multiplier method. In the said judgment, the Supreme Court did not ever

mention that the Tribunals are not required to deduct the 1/3rd amount of the annual income which is generally taken into consideration for the fact

that the said amount is ordinarily accepted to be utilised by the victim, in case he would have been alive.

5. The Motor Vehicles Act is a social legislation which certainly does not demand any rigid technical interpretation. It is not possible to quantify the

amount of compensation with any mathematical precision. Every judgment is a decision on the facts of the said case as is the settled position of

law. The Apex Court in the said judgment specifically directed that while awarding compensation the Tribunals are required to apply the multiplier

method and, in fact, the Apex Court has decided the said case following the Second Schedule to Motor Vehicles Act, 1988. In the present case,

we find no reason for not deducting the 1/3rd amount from the annual income for the purpose of computing the exact amount of compensation. It is

expected that this will satisfy the anxiety of Mr. Banik, the learned Counsel for respondents who quite naturally was looking for an answer to the

decision as referred to. The direction of the Supreme Court and the ratio are very clear, while awarding compensation, the Tribunals are required

to apply the multiplier method. Naturally, keeping in mind, the said decision of the Supreme Court and the guidance given therein, we are of the

view that the learned Tribunal was not justified in not deducting the 1/3rd amount as submitted by Mr. Das, Accordingly, the judgment under

challenge is modified to the extent as indicated hereinbelow, taking into consideration that the respondents-claimants are entitled to get the amount

of Rs. 1,50,000 only in view of the fact that the victim was a minor boy of 11 years having a notional income of Rs. 15,000 per annum. This

amount is calculated after deducting 1/3rd amount as shown in the Second Schedule to the Motor Vehicles Act. Admittedly, the amount of Rs.

50,000 has already been paid and received by the respondents-claimants. Thus, the present appellant insurer is directed to pay a further sum of

Rs. 1,00,000 to the claimants-respondents together with interest at the rate of 6 per cent from the date of filing of application till the date of actual

payment. Such amount of Rs. 1,00,000 together with interest at the rate of 6 per cent per annum on the said amount be deposited by the appellant

insurance company before the learned Tribunal within a period of two weeks after Puja vacation and upon such payment, the appellant insurance

company will be at liberty to withdraw the amount of statutory deposit of Rs. 25,000 as made in this Court. The learned Tribunal will disburse the

said amount in favour of the claimants upon proper identification and on receipt.

6. Appeal stands accordingly disposed of. This disposes of the above application for stay of all further proceedings being CAN No. 8024 of

2005.