

(2011) 07 CAL CK 0036

Calcutta High Court

Case No: C. O. No. 3922 of 2009

Smt. Josi Mandi and Others

APPELLANT

Vs

The New India Assurance
Company Ltd.

RESPONDENT

Date of Decision: July 21, 2011

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Hon'ble Judges: Raghunath Bhattacharya, J

Bench: Single Bench

Advocate: Krishanu Banik and Aftafuddin, for the Appellant; Sanjay Paul, for the Respondent

Judgement

Raghunath Bhattacharya, J.

The revisional application is directed against the order No. 26 dated 01.12.2009 passed by the learned A.D.J., First Court, Paschim Medinipore in M.A.C.C . Case No. 276 of 2006 whereby the learned Trial Court rejected the application for amendment dated 01.12.2009 filed by the Petitioner / claimant on the ground stated in the application.

2. Heard learned Lawyer for the both side.

3. It appears that claimant / Petitioner filed an application u/s 166 of M.V. Act 1988, as amended praying for compensation to the tune of Rs. 2,50,000/- on account of death of Ganesh Mandi, husband of Petitioner No. 1. In the said application the Petitioner initially stated that monthly income of her husband was Rs. 70/- per day and total claim was Rs. 2,50,000/-. By way of amendment the Petitioner wanted to introduce that the income of her husband was Rs. 120/- instead of 70/- and wanted to enhance the claim from Rs. 2,50,000/- to 5,00,000/-.

4. The said amendment was strongly opposed by the New India Assurance Company Ltd. After hearing both side the learned Trial Court had rejected the prayer for

amendment of the claim by the Petitioner on the ground that the application was filed after lapse of three years and there is not explanation whatsoever to justify the delay and source of income of the deceased has not been disclosed.

5. On careful scrutiny of the order passed by the learned Court below and after giving patient hearing adduced by the learned Counsel for the both side namely Mr. Banik and Paul respectively, it appears to me that there is no document whatsoever to justify the income of the Ganesh Mandi, the deceased. It was now more or less a settled principles of law that in absence of any document regarding the income the court should take into consideration of Rs. 100/- per day as notional income of the deceased victim. In my opinion whatever may be stated in the amendment application in absence of any document it can be presumed that the Court will take Rs. 100/- per day as the notional income of the victim. Thereafter going on disposing the instant application as per law. Though the learned Counsel appearing for Insurance Company Mr. Paul has argued at length and submitted that after the judgment of Hon"ble Apex Court learned Lawyer for the Petitioner have clearly filed the amendment application before the Court below so that the Petitioners will get more compensation than what actually applied for.

6. However, in my opinion the submission made by the learned Counsel for the opposite party though quite convincing yet is based on surmise and conjecture. Admittedly the Petitioners had no scrap of paper to show the income of the victim so it is the duty upon the Court either the accept the income of the Petitioner as Rs. 70/- per day as stated in the claim application or Rs. 100/- per day as notional income of the victim.

7. In view of aforesaid discussion I do not find any reason to reject the instant revisional application.

8. The revisional application being C.O. No. 3922 of 2009 is hereby allowed. The order passed by the learned Court below is hereby set aside. The learned Court below is further directed to hear the amendment application afresh in the light of the observation made in the body of the judgment and passed a reasoned order within a month from the date of communication of the order.

9. There is no order as to costs.

10. Urgent photostat certified copy, if applied for, be handed over to the parties as early as possible.