
(2013) 02 CAL CK 0006

Calcutta High Court

Case No: F.M.A. No. 1246 of 2009

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Tithi Banerjee and Others

RESPONDENT

Date of Decision: Feb. 13, 2013

Citation: (2013) 4 ACC 186 : (2013) ACJ 2681

Hon'ble Judges: Mrinal Kanti Sinha, J; Jyotirmay Bhattacharya, J

Bench: Division Bench

Advocate: Sanjay Pal, for the Appellant; Hemendra Guha Roy, Sujoy Guha Roy and Ms. Sunandita Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

Jyotirmay Bhattacharya and Mrinal Kanti Sinha, JJ.

This appeal is directed against the judgment and/or award dated 28.1.2008 passed by the learned Motor Accidents Claims Tribunal, Eighth Bench, City Civil Court at Calcutta in M.J.C. Case No. 917 of 2006 at the instance of the insurance company. The claimants' claim petition u/s 166 of the Motor Vehicles Act was allowed by the learned Tribunal.

2. Being aggrieved by the said award, the insurance company has preferred this appeal.

3. It is contended by the insurance company that the learned Tribunal while passing the award erred in calculating the compensation by accepting the gross income of the deceased.

4. It is contended by the insurance company that the net income of the deceased ought to have been taken as the basis for calculating the loss of dependency of the claimants.

5. We do not find any force in such contention of the appellant in view of the several judicial pronouncements of the Hon'ble Supreme Court wherein it was held that the

gross income of the deceased should be taken into consideration for assessing the loss of dependency as the perks and the other allowances which the deceased used to earn from his employer should be construed as loss of contribution to his family. As such, we hold that the learned Tribunal did not commit any illegality in assessing the compensation payable to the claimants by accepting the gross income of the deceased.

6. We, thus, find no merit in this appeal.

7. The appeal stands dismissed.

8. We are informed by the learned advocate for the appellant that the entire compensation amount has already been deposited by his client with the learned Registrar General of this court in pursuance of the direction passed by this court earlier and the said amount has already been invested in fixed deposit account.

9. We are also informed by him that 50 per cent of such deposited amount has already been withdrawn by the claimants-respondents.

10. Under such circumstances, we direct the learned Registrar General of this court to disburse the balance deposited amount together with the accumulated interest thereon in favour of the claimants-respondents within one month from the date of compliance of all necessary formalities by the respondents in this regard.

11. Since the appellant has not deposited the interest amount in terms of the direction passed by the Tribunal, we direct the insurance company to deposit the interest amount as per the direction passed by the Tribunal within 30 days from the date of communication of this order.

12. The insurance company is thus directed to deposit such interest amount by account payee cheque to be drawn in the name of the claimants to be deposited with the learned Registrar General of this court which will also be reimbursed in favour of the respondents by the learned Registrar General of this court as expeditiously as possible subject to compliance of all necessary formalities within 30 days from date. Urgent photostat certified copy of this order, if applied for, be given to the parties upon usual undertakings.