

(2010) 04 CAL CK 0019

Calcutta High Court

Case No: F.M.A. No. 779 of 2006 and C.A.N. No. 773 of 2009

Rita Ghosh and Others

APPELLANT

Vs

United India Insurance
Co. Ltd. and Another

RESPONDENT

Date of Decision: April 6, 2010

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 166

Citation: (2011) ACJ 442

Hon'ble Judges: Prasenjit Mandal, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Krishanu Banik, for the Appellant; Pallab Kumar Chakraborty and Sandipan Mitra, for the Respondent

Judgement

Bhaskar Bhattacharya and Prasenjit Mandal, JJ.

We propose to hear out the appeal itself by treating it as on day"s list.

2. This appeal is at the instance of the claimant in a proceeding u/s 166 of the Motor Vehicles Act and is directed against an award dated 29.11.2005 passed by the Motor Accidents Claims Tribunal, Additional District Judge, First Court, Paschim Medinipur thereby disposing of the said proceeding by awarding a sum of Rs. 3,53,012, out of which a sum of Rs. 25,000 had already been received in an earlier proceeding u/s 140 of the Motor Vehicles Act.

3. Therefore, in this proceeding u/s 166 of the Act, the insurance company was directed to deposit the balance amount of Rs. 3,28,012 as compensation within a month from the date of the award with further direction that in default, the amount would carry interest at the rate of 7 per cent per annum.

4. Being dissatisfied, the claimant has come up with the present appeal.

5. There is no dispute as regards the death of the victim in an accident and it has been further established from evidence on record that the death occurred due to rash and negligent driving of the driver of the offending vehicle. It has also been established that United India Insurance Co. Ltd. is the insurer of the said vehicle.

6. The only dispute raised in this appeal is as regards the amount of compensation awarded by the learned Tribunal.

7. It appears that the victim was an employee of West Bengal State Electricity Board at the relevant point of time and was aged 51 years and he could have completed further nine years of service. The gross income of the victim has been found to be Rs. 7,066, but the learned Tribunal below while assessing the amount of compensation decided to calculate the same on the basis of the net income of Rs. 4,471.

8. Mr. Banik, learned advocate appearing on behalf of the Appellants contends that the learned Tribunal below should have simply deducted a sum of Rs. 45 out of Rs. 7,066 as professional tax and other deductions were for contribution of the victim towards the general provident fund and thus, that amount was the savings of the victim.

9. Mr. Chakraborty, learned advocate appearing on behalf of the insurance company, does not dispute the aforesaid submission of Mr. Banik.

10. We, therefore, modify the award impugned by reassessing the same on the basis of the monthly income of Rs. 7,000 as round figure with the multiplier of 9 as 9 years of service was still left and on that basis, by applying Second Schedule of the Act, the amount will come to Rs. 5,04,000.

11. We, thus, set aside the impugned award and enhance the same to Rs. 5,04,000, out of which a sum of Rs. 25,000 having already been paid in an earlier proceeding u/s 140 of the Act. The insurance company is directed to pay the balance amount of Rs. 4,79,000 with interest at the rate of 8 per cent per annum from the date of filing of the claim application till actual deposit of the amount within a month from today before the learned Tribunal below. It is needless to mention that running of interest will stop from the date of deposit of the award amount by the insurance company.

12. With the aforesaid observation, the appeal is, thus, disposed of.

13. In view of disposal of the appeal itself, the connected application has become infructuous and the same is disposed of accordingly.

14. Xerox certified copies of this order, if applied for, be given to the learned Counsel appearing for the parties within a week from the date of filing of the application.