

(2003) 10 CAL CK 0003

Calcutta High Court

Case No: F.M.A. No. 217 of 2001

Sursati Devi Yadav and Others

APPELLANT

Vs

New India Assurance Co. Ltd.
and Another

RESPONDENT

Date of Decision: Oct. 31, 2003

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 166

Citation: (2005) ACJ 2117

Hon'ble Judges: S.K. Gupta, J; Aloke Chakrabarti, J

Bench: Division Bench

Advocate: Krishanu Banik, for the Appellant; K.K. Das, for the Respondent

Final Decision: Allowed

Judgement

Aloke Chakrabarti and S.K. Gupta, JJ.

This appeal arises out of a judgment in a proceeding u/s 166 of the Motor Vehicles Act. The relevant facts are that on 20.4.1999 while one Ram Avtar Yadav was standing for supervision of the loading of stone chips, all of a sudden the offending lorry came there at a high speed without giving any signal or blowing any horn and defying all traffic rules and dashed and knocked the said victim who thereby suffered severe injuries and was declared dead when he was brought to the hospital.

2. Learned Tribunal passed an award of Rs. 89,500 directing adjustment of amount earlier paid u/s 140 of the Motor Vehicles Act.

3. Mr. Banik learned Counsel appearing for the claimants-appellants first contended that the victim was having an income of Rs. 4,000 per month and in support of such contention reliance was placed on the documents produced before the learned Tribunal, said to be a copy of the return filed by the victim during his lifetime showing a total income of Rs. 37,450. The document though was made exhibit, was

not accepted by the Claims Tribunal. On perusal of the document as we had doubt, direction was given to the Income Tax Officer to produce the original records on the basis of the particulars available from the document being Exh. 2. The concerned Income Tax Officer accordingly has filed an affidavit disclosing that from the Demand & Collection Register as mentioned by the claimants-appellants, did not show the necessary recording as claimed by the appellants. The signature of Income Tax Officer shown as Exh. 2 has also been said to be not a signature of any Officer of the Department. On perusal of the said affidavit affirmed by Subhransu Mitra, who is holding the charge of Income Tax Officer, Ward-32 (4), Kolkata, wherein Income Tax Officer, Ward-20 (7), Kolkata has been merged, there is reason to conclude that the Exh. 2 produced by the appellants cannot be relied upon. In absence of any material we find no reason to disbelieve the statement as made in the affidavit which has been sworn by a responsible government officer.

4. With regard to the income of the victim, we also find that the uncorroborated testimony of the claimants without giving any particulars does not enable us to come to a conclusion regarding the income of the victim, as claimed by the claimants. In such circumstances, the decision of the Tribunal to calculate the compensation on the basis of notional income appears to be correct.

5. The second contention of Mr. Banik is that according to the finding of learned Tribunal as regards age of the victim at the time of death, the multiplier should be 11 and not 8 as applied by the Tribunal. The judgment of the Tribunal shows that finding was recorded therein that the victim was aged 55 years old at the time of death. The Second Schedule shows that for a victim in the age group of above 50 years but not exceeding 55 years multiplier should be 11. Therefore, the Tribunal's finding in that respect appears to be wrong and the claimants are entitled to get compensation applying 11 as multiplier.

6. The next contention of the claimants as regards payment of interest during pendency of the proceedings also appears to be justified as no reason is available why the claimants could not be getting interest during the pendency of the proceedings.

7. So the total amount of compensation which is to be paid by the opposite parties to the claimants comes to $(Rs. 15,000 - \text{V3rd of Rs. 15,000}) = Rs. 10,000 \times 11 = Rs. 1,10,000$. In addition to that claimants are also entitled to a sum of Rs. 9,500 for funeral expenses, loss of consortium and loss to estate. So the total amount of compensation to which claimants are entitled, comes to Rs. 1,19,500. The opposite party insurance company is directed to pay the said amount of Rs. 1,19,500 after making adjustment of any amount which has been paid u/s 140 of Motor Vehicles Act. The said amount will carry interest at the rate of 9 per cent per annum from the date of the filing of the claim application till the deposit is made. The opposite party is directed to deposit the said amount in the name of the appellant No. 1 who will receive the same on behalf of the claimants subject to their filing no objection

before the Tribunal. In case of default of such deposit by the insurance company, the claimants will be entitled to recover the said amount in accordance with law with further interest at the rate of 9 per cent per annum till realisation.

8. Let this copy of the judgment along with the records be sent down to the Tribunal forthwith.