

(2005) 07 CAL CK 0027

Calcutta High Court

Case No: F.M.A. No. 688 of 2005

Manju Devi and Another

APPELLANT

Vs

New India Assurance Co. Ltd.
and Another

RESPONDENT

Date of Decision: July 19, 2005

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (2005) 4 ACC 381 : (2006) ACJ 275

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

Bench: Division Bench

Advocate: Krishanu Banik, for the Appellant; Gopa Das Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

P.K. Samanta and S.P. Talukdar, JJ.

This is an appeal by claimant-appellant against the judgment and order on disposal of the claim petition filed u/s 166 of the Motor Vehicles Act, 1988 on the death of a minor child of the claimant-appellant in a motor accident. The said accident occurred on 31.1.1998. The involvement of the offending vehicle being a Maruti van having registration No. WB 02-B 6886 in the said accident was proved in evidence before the learned Claims Tribunal. It was further proved that the cause of the accident was the rash and negligent driving of the same by its driver. The learned Claims Tribunal held that the said minor child was not an earning member on the date of the accident and as such on her death, the claimants-appellants were not entitled to any compensation whatsoever u/s 166 of the said Act. this Court in the case of [Suniti Mondal Vs. New India Assurance Co. Ltd. and Others](#), has held that in case of death of a minor child in a motor accident who may not have any income at the time of his death, the claimant parents would be entitled to a lump sum compensation of Rs. 1,50,000 unless there are special circumstances for

determining the amount of compensation either at lower or higher value. In view of the aforesaid decision, we set aside the impugned judgment and award and hold that claimants-appellants are entitled to total compensation of Rs. 1,50,000 on the death of their minor child in the said accident. The aforesaid amount will carry interest at the rate of 9 per cent per annum from the date of filing of application till payment.

2. In view of payment of Rs. 50,000 under no fault liability by the insurance company to the claimants-appellants, we direct the respondent insurance company to pay the balance sum of Rs. 1,00,000 along with the interest at such rate for the aforesaid period within a period of 8 weeks from date. Such payment shall be made by drawing 2 account payee cheques in equal shares in favour of the claimant-appellant Nos. 1 and 2 and by depositing the same with the concerned Claims Tribunal within the aforesaid period. The learned Tribunal upon receipt of the said cheques will hand over the same to the claimants-appellants immediately thereafter upon proper identification and receipts.

3. The appeal is allowed in part as indicated above.

There will be no order as to costs.