

(2009) 07 CAL CK 0079

Calcutta High Court

Case No: F.M.A. No. 839 of 2005

Marium Bibi and Others

APPELLANT

Vs

United India Insurance Co. Ltd.
and Others

RESPONDENT

Date of Decision: July 10, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (2010) ACJ 1796

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

Bench: Division Bench

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

Judgement

Bhaskar Bhattacharya and Prasenjit Mandal, JJ.

This appeal is at the instance of the claimants in a proceeding u/s 166 of Motor Vehicles Act and is directed against an award dated 19.5.2005 passed by Motor Accidents Claims Tribunal and Additional District Judge, Tenth Court, Alipore in M.A.C. Case No. 332 of 2002 thereby disposing of the said application by awarding a sum of Rs. 6,42,000 as compensation for the death of the victim.

2. There is no dispute as regards the involvement of the victim in the accident resulting in death and the fact that the offending vehicle is covered by the insurance of United India Insurance Co. Ltd.
3. The only dispute involved in this appeal is as regards the quantum of compensation fixed by the learned Tribunal below.
4. In arriving at the sum of Rs. 6,42,000, the learned Tribunal below has applied the multiplier of 16 on the basis of the annual income of Rs. 60,000 earned by the victim.

5. It appears from record that at the time of death, the victim was an income tax assessee holding permanent account number. It also appears from record that the accident occurred in February 2002 and in the advance tax deposit in the month of December 2001, victim himself deposited a sum of Rs. 2,040 as advance.

6. However, after the death of the victim, his widow submitted the income tax return thereby showing that income of the victim from the business was Rs. 90,000 and the actual tax payable was Rs. 7,000 and odd.

7. As no return for any earlier year was placed before the learned Tribunal below, the learned Tribunal below decided not to rely upon the said return, which was filed by the widow of the victim after the death.

8. The learned Tribunal below accepted the position that the victim was an income tax assessee and thus considered his annual income to be Rs. 60,000.

9. After hearing the learned Counsel appearing for the parties and after going through the materials on record, we find that the victim himself having deposited Rs. 2,000 and odd in the month of December, 2001 as advance tax, we can presume that the said amount was 60 per cent of the total tax payable for the year and thus, if he was alive, he would have paid about Rs. 4,000 as income tax for the said year. On that basis, the taxable income should be Rs. 75,000 per annum for the said financial year. If the taxable income comes to Rs. 75,000 per annum, in that case, the actual income payable should be at least Rs. 90,000, if we take into consideration the benefit of various deductions and future prospect.

10. It appears that at the age of 36, he was an income tax assessee. Therefore, in our opinion, we should calculate the amount on the basis of the income of Rs. 90,000 and by applying the multiplier of 16, the amount will come to Rs. 9,28,000. We make it a round figure of Rs. 9,30,000.

11. The appellants are also entitled to get interest on the said amount at the rate of 8 per cent per annum from the date of filing of claim application till the actual deposit of the amount. It is needless to mention that running of interest on the amount already deposited by the insurance company should stop running from the date of such deposit.

12. The insurance company is directed to pay the balance amount before learned Tribunal below within a month from today by issuing three different cheques of equal amount in the name of three appellants. The amount payable to the minor appellant should be invested in any nationalised bank in a fixed deposit and should not be withdrawn till she attains majority.

13. The award impugned is, thus, modified to the extent indicated above.

14. With the aforesaid observation, the appeal is allowed accordingly.

15. The photostat certified copy 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.