

Manju Devi and anr. Vs. New India Assurance Co. Ltd. and anr.

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SooperKanoon Citation : sooperkanoon.com/883255

Court : Kolkata

Decided On : Jul-19-2005

Reported in : IV(2005)ACC381,2006ACJ275

Judge : P.K. Samanta and ;S.P. Talukdar, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Section 166

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

Appellant : Manju Devi and anr.

Respondent : New India Assurance Co. Ltd. and anr.

Advocate for Def. : Gopa Das Mukherjee, Adv.

Advocate for Pet/Ap. : Krishanu Banik, Adv.

Disposition : Appeal allowed

Judgement :

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

1. This is an appeal by claimant-appellant against the judgment and order on disposal of the claim petition filed under section 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 under section 166 of the said Act. This Court in the case of *Suniti Mondal v. New India Assurance Co. Ltd.*, 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.