
(2015) 07 TP CK 0076
In the Tripura High Court
Case No : MAC App. 116 of 2011

Aparna Bhowmik

APPELLANT

Vs

Swapan Deb and Others

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 163-A, 163A(1), 165

Citation : (2015) 07 TP CK 0076

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : B.N. Majumder and D.J. Saha, for the Appellant; P. Gautam, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J—This appeal by the claimant is directed against the award dated 31.05.2011 passed by the learned Motor Accident Claims Tribunal (MACT), Court No. 3, West Tripura, Agartala in T.S. (MAC) 373 of 2009, whereby he dismissed the claim petition filed by the claimant solely on the ground that since she was a married sister of the deceased she was not entitled to any compensation.

2. Briefly stated the facts are that deceased Biswajit Das, who was a bachelor sustained injuries in a motor vehicle accident involving Canter Truck No. TR-01-E-1849 and Bus No. TRS-0702. The Canter Truck was insured with the National Insurance Company and the bus was insured with the New India Assurance Company. The claimant who is the married sister of the deceased filed the claim petition in which she also arrayed as proforma respondents her sisters Smt. Soma Dhar, Smt. Kalpana Bardhan and Smt. Anjali Chanda all of whom are also married. The learned Tribunal held that the claimant has not proved the survival certificate on record and therefore, it cannot be said with certainty that the claimants are the only legal heirs of the deceased. He further held since none of the sisters were dependent on the deceased, they were not entitled to any

compensation.

3. On both counts, the learned Tribunal was absolutely wrong. The Presiding Officer of the Motor Accident Claims Tribunal is an officer of the rank of District Judge. It is shocking that such an officer should say that because survival certificate has not been produced he cannot ascertain who are the legal heirs. In civil proceedings he has to decide who are the legal heirs, on the basis of the evidence led before him and therefore, I am of the considered view that this finding of the learned Tribunal is wrong.

4. With regard to lack of dependency, reference may be made to the judgment of the Apex Court in *Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another*, (2007) 2 ACC 365 : (2007) ACJ 1279 : AIR 2007 SC 1474 : (2007) 5 JT 78 : (2007) 146 PLR 611 : (2007) 5 SCALE 193 : (2007) 10 SCC 643 : (2007) 4 SCR 590 , wherein the Apex Court held as follows:-

"13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

14. Section 165 of the Act also throws some light on the controversy. The Explanation includes the liability under Sections 140 and 163-A.

15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned Amicus Curiae."

5. The Apex Court held that even if the legal heirs, who filed the claim petition were not dependants, they could not be awarded compensation less than that payable under Section 140 of the Act. The judgment of the Apex Court was rendered in the context of Section 166 and 140, I am of the view that in fact the payment which is payable to the claimants cannot be less than that payable under Section 163A of the Motor Vehicles Act. It would be a travesty of justice if in a case where the claimants proved negligence. They are awarded an amount lesser than the amount payable under Section 163A where claimants are not required to prove negligence.

6. Reference may also be made to Section 163A(1) of the Motor Vehicles Act, which reads as follows:-

"163A. Special provisions as to payment of compensation on structured formula basis.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be."

7. A bare reading of Section 163A(1) shows that compensation can be paid to the legal heirs of the victim. There is no concept of dependency under Section 163A because compensation has to be paid as per the structured formula which forms part of Schedule II of the Motor Vehicles Act.

8. As far as the present case is concerned, there is no manner of doubt that all the sisters were married. They were living with their husbands and there is really no evidence on record to show that they were dependant on the deceased. However, as held by me above, the amount of compensation cannot be less than the amount payable under Section 163A. The deceased was a lathe mechanic and his income could not have been less than 40,000/- per annum. Since he was 34 years of age, as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , the relevant multiplier would be 16 and compensation works out to Rs. 6,40,000/- out of which one-third has to be deducted for the personal expenses of the deceased which comes to Rs. 4,26,700/-. In addition thereto, as per the Schedule, the claimants are entitled to funeral expenses of Rs. 2,000/- and loss of estates Rs. 2,500/- i.e. total compensation works out to Rs. 4,31,200/- (Rupees Four lakh thirty one thousand two hundred). On this amount, the claimant shall be entitled to interest @ 7.5% per annum from the date of filing of the claim petition till payment of the awarded amount.

9. There were two vehicles involved. None of the drivers appeared in the witness box and therefore both are held liable. The vehicles were duly insured. Therefore the two insurance companies are liable to pay the compensation in equal shares. This amount shall be payable to all the 4(four) sisters in equal shares. Both the insurance companies are directed to deposit 50% of the amount of compensation along with interest in the Registry of this Court within 4(four) months from today.

10. The appeal is disposed of in the aforesaid terms.

11. Send down the lower court records forthwith.