
(2004) 04 GAU CK 0019
In the Gauhati High Court
Case No : MAC Application No. 101 of 2003

Bina Pd. Sonari

APPELLANT

Vs

Manager, United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 07-04-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163, 163A, 163B, 166

Citation : (2006) ACJ 1180 : (2004) 3 GLR 677 : (2005) GLT 149 Supp

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : P.D. Gogoi and M. Deka, for the Appellant; S.S. Sarma, for the Respondent

Judgement

I.A. Ansari, J.—This appeal is u/s 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as "the said Act") against the award, dated 27.06.03, passed by the learned Ad-hoc Additional District Judge No. 2 and Member MACT, Kamrup, Guwahati, granting, in favour of the appellant, compensation to the tune of Rs. 1,30,000.00, including the amount of non-fault liability, with interest at the rate of 9 percent per annum from the date of passing of the award till realisation of the amount so awarded, the awarded amount being recoverable from the insurer, namely, M/s united India Insurance Company Ltd.

2. The material facts and various stages, which led to the present appeal, may be summarised as follows :-

(i) The claimant/appellant made an application u/s 166 of the Motor Vehicle Act, 1988, seeking compensation for the death of her unmarried son, Gautam Prasad Sonari, a handiman of truck, who used to earn Rs. 2,500 P.M. as salary, the case of the claimant being that on 10.01.2001, when the said deceased was travelling in the said truck toward Karimganj from Guwahati, the truck met with an accident on the National Highway at Bhandar, District Karimganj. The deceased having breathed his last at the very spot of the accident, the claimant sought for an amount of Rs. 5 lacs as compensation.

(ii) The respondent No. 2 herein, who is the registered owner of the said truck, filed his written statement, wherein he admitted the said accident, the death of the said deceased and the fact that the said deceased was employed as had been mentioned by the claimant. The respondent No. 2, however, claimed that the truck, in question, was insured with the respondent No. 1, namely, M/s United India Insurance Company Ltd. The respondent No. 1 too contested the claim on various grounds.

(iii) After recording the evidence adduced by the claimant and as no evidence was adduced by the respondents, the learned Tribunal held that though the deceased was claimed to have been earning Rs. 2,500 P.M., the fact remains that as per the admission of the claimant herself, she used to receive Rs. 1,000 per month from her said son. As the said deceased was unmarried and aged about 22 years and as the age of the claimant was 50 years, the appropriate multiplier, according to the learned Tribunal, would be 10. Thus, using 10 as the multiplier, the learned Tribunal calculated the compensation amount to the tune of Rs. 1,20,000. To the compensation amount, so determined, a sum of Rs. 10,000 was added by the learned Tribunal as expenses for carrying the dead body of the said deceased to Guwahati and also for performing the religious rites. The learned Tribunal accordingly determined that the claimant was entitled to receive, as compensation, an amount of Rs. 1,30,000 with interest at the rate and from the date as already indicated hereinabove. Feeling aggrieved, the claimant has preferred the present appeal.

3. I have perused the materials on record including the impugned award. I have heard Mr. P.D. Gogoi, learned counsel for the appellant, and Mr. S.S. Sharma, learned counsel for the respondent No.1.

4. Presenting the appeal on behalf of the appellant, Mr. Gogoi, learned counsel, has submitted that the learned Tribunal erred in law in using the multiplier as 10, though the multiplier used ought to have been as much as 17 in terms of the Second Schedule, prepared u/s 163A of the said Act. Mr. Gogoi has placed reliance, in support of his submission, on *Kaderkundu and Another Vs. Maheswaran Pada Nair and Others*, To further strengthen his submission, Mr. Gogoi has submitted that since annual income of the deceased was below Rs. 40,000 and no issue with regard to the negligence on the part of the driver of the said vehicle was framed, the learned Tribunal dealt with the matter as if it was a proceeding u/s 163A and having so proceeded, the learned Tribunal ought to have used 17 as the multiplier, which would have been consistent with the requirements of the Second Schedule prepared in terms of the provisions of Section 163A of the said Act.

5. Controverting the submissions made on behalf of the appellant, Mr. S.S. Sharma has pointed out that the claimant mentioned in her claim petition that her claim for compensation was u/s 165 of the said Act. In view of the fact that the claimant, at the same time, also made an application u/s 140 of the said Act seeking payment of non-fault liability amount, the implication, according to Mr.

Sharma, was that the said claim application had been actually made u/s 166 of the said Act and when an application seeking compensation is made u/s 166, the provisions of Section 163A and/or structured formulae contained in the Schedule aforementioned could not have been applied. Mr. Sharma has also pointed out that since the claim application was an application u/s 166 of the said Act, the deceased was unmarried, it is the age of the mother of the deceased, which was required to be taken into consideration for the purpose of determining the multiplier applicable to the case. Since the claimant was 50 years old, the learned Tribunal could have, candidly contends Mr. Sharma, used 13 as the multiplier, for, in a case of a deceased aged about 50 years, the appropriate multiplier is, as per the Second Schedule aforementioned, 13. It is further pointed out by Mr. Sharma that one-third of the standard deduction, as personal expenses of the deceased, would apply only when the deceased is married and the claimants are dependants of the deceased; but in a case in which, the deceased is unmarried, the deduction should be two-third of his total income inasmuch as the deceased could not have, on his marriage, continued to pay to his mother for her expenses what he would have paid her before his marriage. In support of his submissions, support is sought to be derived by Donat Louis Machado and Others Vs. L. Ravindra and Others,

6. While considering the present appeal, it is important to bear in mind that Section 165 of the said Act does not provide for making any application for compensation; rather, section 165 is the Section under g which the Government constitutes Motor Accident Claims Tribunals. An application for compensation can be made either u/s 166 or u/s 163A of the said Act. If the application is u/s 163A, the question of proving the negligence on the part of the driver of the offending vehicle does not arise at all; rather, in a case, wherein compensation is claimed u/s 163A, on proof of the accident, age of the deceased, the income of the deceased and the relationship of the claimant with the deceased, the structured formulae, contained in the Second Schedule framed u/s 163A, would be applied. However, when the claim application is made (as is the case at hand) u/s 166, the claimant has to prove negligence on the part of driver of the offending vehicle and only on such a proof being made available to the Tribunal, the Tribunal can determine the amount payable to the claimant as compensation and for determining the amount of compensation, the structured formulae may be used as the guide. For applications made u/s 166, the provisions for payment of non-fault liability amount has been made u/s 140 of the said Act. Section 140 is, thus, applicable only if the compensation is claimed u/s 166. That no-fault liability amount cannot be made available to an applicant u/s 163A is clear from the provisions of Section 163B inasmuch as Section 163B gives every claimant the opinion to either make an application under c Section 140 for no-fault liability amount pending determination of the compensation claimed u/s 166 or lodge a claim for determination of compensation, as a whole, u/s 163A, by using the structured formulae contained in the Second Schedule. Thus, the question of applying for payment of no-fault liability amount u/s 140 does not arise at all if

the claim application is u/s 163A.

7. In short, Section 163B gives option to -every claimant to apply for compensation either u/s 140 or u/s 163A and not under both. Section 140 gives interim relief in the case of applications made u/s 166, for, the determination of compensation u/s 166 takes some time for disposal and in such a case, negligence, dependency, etc. are required to be proved. When, however, the application is made u/s 163A, the provisions for granting of interim relief u/s 140 do not apply, for, all that the claimant is required to prove, in an application u/s 163A, are the factum of accident, death, age of the deceased and of the claimant so as to enable the tribunal to apply appropriate multiplier and there is no need to prove negligence of the driver. As relief u/s 163A is prompt, at fixed rates and with less hassels of protracted enquiry than what is required in applications u/s 166, the provisions of interim relief u/s 140 have not been made available to claimants in the proceedings brought u/s 163A.

8. In view of the fact that in the present case, the claimant, admittedly, made an application for interim relief u/s 140, the inescapable conclusion is that the claimant/appellant applied for compensation u/s 166 and, hence, provisions of Section 163A were not applicable.

9. Having made her application for compensation u/s 166 and having sought for and received, u/s 140, no-fault amount, it is not, now, open to the claimant to agitate, for the first time, in the present appeal, that the impugned award shall be treated as an award arising out of an application made u/s 163A. When an unmarried man dies and the claimant are parents, multiplier, which is lower, will be adopted. That is to say, depending upon the age of the parents, multiplier will be determined and not on the basis of the age of the deceased unmarried son. Reference made by Mr. Sharma, in this regard, to the case of National Insurance Co. Ltd. Vs. M/s. Swaranlata Das and others, is not misplaced.

10. Turning to the case at hand, it needs to be noted that since the age of the claimant, as mother of the said deceased, was 50 years, the appropriate multiplier for a person aged 50 years, even in terms of the said Second Schedule, would be 13. Since the learned Tribunal has used 10 as the multiplier, it is clear that the multiplier, so used by the learned Tribunal, was inadequate and needs to be corrected.

11. As regards Mr. Sharma's submission that since the deceased was unmarried, the standard deduction of one-third from the income of the deceased ought not to have been made by the learned Tribunal and that the Tribunal ought to have deducted two-third amount from the total income of the deceased before determining the amount of compensation, it is pertinent to note that legally speaking, when the deceased is unmarried and the claimants are parents, the deduction shall be two-third from the total income of the deceased, the reason being that on his marriage, the deceased would have raised his own family and the quantum of his contribution to his parents would automatically get reduced;

but when the deceased is married, then, the standard deduction, as personal expenses of the deceased, shall be one-third.

12. In the case at hand, the learned Tribunal determined Rs. 1,000 as the amount, which was coming into the hands of the claimant from her said deceased son. On the basis of this amount of rupees one thousand, the learned Tribunal determined the compensation. Since this determination was not challenged by the respondents, I would not like to disturb the findings reached by the learned Tribunal that after necessary deduction, the amount coming to the hands of the claimant was to the tune of Rs. 1,000 per month, though there is considerable force in the submissions of Mr. Sharma that out of the monthly earnings of Rs. 2,500 of the said deceased, two-third amount ought to have been deducted. Similarly, though respondent No. 1 has, now, agitated that the amount of Rs. 10,000 awarded by the Tribunal as the express, for bringing the dead body to Guwahati was unreasonable, the fact remains that since this a amount of Rs. 10,000 fixed under the impugned award was not challenged by the respondents, I would not like to disturb the award of even this amount of money.

13. Thus, what crystallises from the above discussion i.s that the multiplier used, in the present case, ought to have been 12 and if 13 is used as the multiplier, then, in the facts and circumstances of the present case, the amount of compensation comes to Rs. 1,56,000. To this amount, another sum of Rs. 10,000 needs to be added as the expenses for bringing the said dead body to Guwahati and for" performing religious rites. When so calculated, the total amount of compensation comes to Rs. 1,66,000 and to this amount, a sum of Rs. 2,500, as loss of the estate, needs to be added. The total compensation, therefore" payable by the respondent No. 1 to the claimant comes to the tune of Rs. 1,68,500. This amount is payable to the claimant-appellant with interest at the rate of 9 percent per annum from the date of filing of the claim petition and not from the date of the impugned award.

14. In the result, and for the reason discussed above, this appeal partly succeeds. The claimant-appellant is hereby awarded a total sum of Rs. 1,68,500 as compensation for the death of the said deceased with interest at the rate of 9 percent per annum from the date of filing of the claim petition until realisation of the total awarded amount subject to calculation of interest by taking into account the dates on which no- fault liability amount might have been paid to the claimant-appellant

15. With the modifications in the impugned award, as indicated hereinabove, this appeal shall stand disposed of No order as to costs.

16. Send back the LCRs.