

(2003) 12 GUJ CK 0052
In the Gujarat High Court
Case No : First Appeal No. 2261 of 2002

Chaudhari Ratnaji Venaji and Another	APPELLANT
Vs	
Hastimal Mohanlal and Another	RESPONDENT

Date of Decision : 20-12-2003

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110B, 110CC
Motor Vehicles Act, 1988 — Section 163A, 166, 167, 168, 171

Citation : (2004) 2 ACC 321 : (2004) ACJ 1337 : AIR 2004 Guj 186

Hon'ble Judges : Bhawani Singh, C.J.; J.N. Bhatt, J

Bench : Division Bench

Advocate : Mohanbhai Desai, for the Appellant; Megha Jani, for the Respondent

Judgement

J.N. Bhatt, J.—Admit. Ms. Megha Jani, learned Advocate, waives notice of admission on behalf of respondent No. 2.

By this appeal u/s 173 of the Motor Vehicles Act, 1988 ("Act"), the appellants-original claimants have raised a very interesting and important question as to from which date the interest could be claimed or directed to be paid by the concerned Tribunal when amount of compensation on account of road mishap awarded in application u/s 163-A of the Act, which is submitted during the pendency of the application for compensation u/s 166 of the Act.

2. The Motor Accident Claims Tribunal (Main) Banaskantha District, Palanpur, on 09-04-2002, in an order below Exh.13, in Motor Accident Claim Petition No.489 of 1996, passed an award of Rs.1,52,000/= in favour of the appellants-original claimants and against the respondents-original opponent Nos.1 and 2, with running interest at the rate of 9% per annum from the date of application under Sec. 163-A of the Act, till the date of payment along with proportionate costs for the untimely and premature demise of bread-earner deceased Rameshbhai Ratnaji Chaudhary, arising out of a vehicular accident which occurred on 01-06-1996 at about 4.30 P.M. on Sachor - Raniwada Road about 13 Kms away in the East from Sachor outpost in Banaskantha District of Gujarat State against

the claim of Rs.1,60,000/= made by the original claimants, who are the heirs and legal representatives of deceased Rameshbhai. One tanker RJC 3789 was involved in the accident, which was owned by original opponent No.1 and insured with original opponent No. 2.

3. The application under Sec.163-A based on the structural formula for compensation came to be filed by the original claimants, on 04-11-1999, claiming interim compensation on the basis of 'no fault liability'. The original claimants had made the application for compensation for the death of bread-earner of the family arising out of the motor accident, before the said Tribunal, being M.A.C.P. No. 489 of 1996, on 01-07-1996. The Tribunal awarded interest w.e.f. the date on making the application under Sec. 163-A, whereas, claimants claimed interest from the date of the application under Sec. 166 on 01-07-1996. Initially, Exh. 13 submitted in the course of the pendency of the claim application under Sec. 166 for interim compensation on the structured formula and on 'no fault liability', was treated as final application, upon withdrawal of the claim application M.A.C.P. No. 489 of 1996 under Sec. 166 by the Tribunal. The Tribunal, also, passed order on 01-09-2002 that in view of the withdrawal pursis, Exh. 32, the application for compensation under Sec. 166 shall stand disposed of without any order as to costs.

4. The Hon''ble Apex Court in The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., held that the amount of compensation on the structured formula and no fault liability under Sec. 163-A is not in addition to the determination of compensation on the principle of fault liability under Sec. 166 r/w Sec. 168. It is clear that it has been propounded in the said case that the application for compensation under Sec. 163-A of the Act is an alternative to the claim application for compensation under Sec. 166. It is, therefore, submitted that the application under Sec. 163-A submitted in the course of pendency of application for compensation under Sec. 166 was, initially, treated and considered as an application for interim compensation but in view of the decision in Oriental Insurance Co.Ltd. (supra), on behalf of the claimants, the option was exercised and an application for compensation under Sec. 166 was withdrawn treating the application under Sec. 163-A as an alternative and not in addition to the determination of compensation on the principle of fault liability under Sec. 166 r/w Sec. 168.

5. The contention that the Tribunal ought to have awarded the amount of interest in such factual situation and profile from the date of making an application for claim under Sec. 166 and not from the date of making an application for compensation under Sec. 163-A of the Act during the pendency of the main application based on fault liability, is quite weighty and deserves to be seriously considered.

6. Insofar as the legal profile of the relevant provisions is concerned, it may be noted that Sec. 166 provides for an application for compensation. It is an application for claim for award of compensation like corresponding provision of

Sec. 110-A of the Motor Vehicles Act, 1939. Section 167 provides for option regarding claims for compensation in certain cases whereas Sec. 168 of the Act provides for award and empowers the Claims Tribunal for passing an award for compensation in claim application made under Sec. 166. Sec. 168 corresponds to Sec. 110-B of the Motor Vehicles Act, 1939.

7. Sec. 171 of the Act empowers the Claims Tribunal to award interest where any claim for compensation is allowed. This section corresponds to Sec. 110-CC of the Motor Vehicles Act, 1939. Sec. 171 of the Act reads as under:

"171. Award of interest where any claim is allowed - Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

8. Now, it brings into sharp focus the sole interesting contention which is raised on behalf of the original claimants in this appeal under Sec. 173 with regard to the date from which the interest should be awarded. It can very well be seen from the aforesaid provisions of Sec. 171 that when Claims Tribunal passes an award for compensation under the Act, the Tribunal can also direct that in addition to the amount of compensation, simple interest shall be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. The Tribunal has awarded interest at the rate of 9% p.a. from the date of making an application under Sec. 163-A and not from the date of making of application under Sec. 166 of the Act. No doubt, in the award of interest it can be specified and Tribunal can, also, direct the payment of interest from such date and not earlier than the date of making the claim. The expression "not earlier than the date of making the claim" is required to be interpreted liberally and to advance the object of Sec. 171. Since the application making the claim for compensation came to be made under Sec. 166 by the original-claimants by filing M.A.C.P. No.489 of 1996 before the Tribunal on 01-07-1996, the interest would be awarded from that date. It is the date on which the claim came to be made by filing the application under Sec. 166 based on fault liability. However, in view and pursuant to the exposition of the interpretation of the right to claim compensation under Sec. 166, as well as, under Sec. 163-A and the aforesaid decision of the Apex Court, the original-claimants, as an alternative to claim under Sec. 166, opted for the claim under Sec. 163-A based on a structured formula and on "no fault liability" giving up the right of compensation on the basis of fault liability under Sec.166 by withdrawing it and making an application at Exh. 13 in course of proceedings and pendency of the main application for compensation based on fault liability under Sec. 166 of the Act. It is in this context, the Tribunal has committed error in considering, determining and appreciating the expression, "date of making the claim" prescribed in Sec. 171 of the Act. In our opinion, the original claimants could be awarded interest from such date and not from earlier date of making the claim, like that the date

on which the claim application under Sec. 166 came to be made. Simply because, on account of the exposition and interpretation of the provisions of Secs. 166 and 163-A in a judgment of the Apex Court, the withdrawal of the claim application under Sec. 166 and after the passing of award for compensation under Sec. 163-A on a structured formula and on no fault liability, it cannot be said that the claim was not made earlier than the date of making application. The date of making of claim application under Sec. 166 like that, on 01-07-1996, and that the date of making the claim could be only on the date on which the application under Sec. 163-A came to be made in view of the peculiar facts and special circumstances obtainable from the record of the present case. Not only that, it is clear from the provisions of Sec. 171 that the legislature, undoubtedly, intended to confer the powers for finding the award of interest by the Tribunal from such date and not earlier than the date of making the claim. It is, therefore, evident and explicit that the date of making the claim in first in point of time either under Sec. 163-A or Sec. 166 of the Act could be said to be and has to be treated as the date of making the claim and therefore, the Tribunal has committed serious error in not granting the award of interest earlier than the date of making the claim application at Exh. 13 under Sec. 163-A in the course of and during the pendency of the claim petition being M.A.C.P. No. 489 of 1996.

9. The benevolent provisions has to be interpreted liberally so as to advance the object of the provision and the intention of the legislature and favourable to the subject of the objects of the Act, like that the beneficiaries. The sole contention, which has surfaced in this appeal under Sec. 173 of the Act is how the award of interest is required to be accepted and awarded. We, therefore, while allowing this appeal award the same rate of interest as awarded by the Tribunal, not from the date of making an application below Exh. 13, for compensation under Sec. 163-A, but from the date of making of application for compensation under Sec. 166 on and from 01-07-1996. The appeal, therefore, shall stand partly allowed with costs. The impugned award is modified to that extent.