
(2008) 11 DEL CK 0038

In the Delhi High Court

Case No : MAC App. No. 530 and C.M. No. 15020 of 2008

Cholamandalam MS General Insurance Co. Ltd.

APPELLANT

Vs

Smt. Kamlesh and Others

RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Motor Vehicles (Amendment) Act, 1994 — Section 140

Motor Vehicles Act, 1988 — Section 140, 149(2), 163A, 170, 173

Citation : (2009) 3 AD 310

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Joy Basu and Madhurendra Kumar, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Present appeal u/s 173 of the Motor Vehicles Act, 1988 (for short as "Act") has been filed by the appellant-Insurance Company against the award dated 20th August, 2008 passed by Sh. Pradeep Chaddah, Judge, MACT (for short as Tribunal").

2. The brief facts of this case are that on 24th June, 2006 deceased Gotam Prasad was driving his two wheeler scooter No. DL-G-5808 and between Sector 245 and 25 near Deep Vihar, a Scorpio car bearing No. DL-4C-NB-0307 which was being driven rashly and negligently came from behind and it hit the scooter. Gotam Prasad fell down and sustained grievous injuries all over his body. He was taken to the hospital but there he was declared dead.

3. Vide impugned judgment, Tribunal awarded a sum of Rs. 1,82,800/ - as compensation along with interest @8% p.a. from the date of institution till date of deposit.

4. Being aggrieved with the order passed by the Tribunal, the appellant-Insurance Company has filed the present appeal.

5. It has been contended by the learned Counsel for the appellant that the insured/owner of the offending vehicle had appeared in the witness box and stated before the Tribunal that his vehicle was not involved in the alleged accident and also he had lodged complaint before the Senior Police Officers regarding false implication of his vehicle in the alleged accident. The driver as well as the appellant in their respective written statements, had denied the involvement of the offending vehicle but the Tribunal had totally overlooked the contentions of the driver, owner and the Insurance Company in this regard.

6. The Tribunal had erred in relying upon the charge sheet filed by the police in the connected criminal case. As per the versions of the police and investigating team, no eye witness was present either on the spot of the accident or in the hospital where the deceased died. Thus, the said charge sheet was itself unreliable as it had been filed on the basis of the statement of a concocted eye witness to the accident who was made to make a statement before the police by none other than the claimant themselves and that also after a gap of two months after the date of the accident and lodging of the FIR in the present case.

7. Other contention of the learned Counsel for appellant is that the Tribunal has gone beyond the confines of Second Schedule of the Act and has granted an excessive and impermissible award of compensation u/s 163A of the Act.

8. It is further contended that the Tribunal has erred in deducting 1/4th instead of 1/3rd on account of personal expenses from the income of the deceased.

9. Lastly, it is contended that Section 170 of the Act is not applicable, as large number of cases are being considered by a larger bench of Apex Court.

10. Learned Counsel for the appellant has relied upon the decision of the Apex Court in United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, in support of its contentions.

11. As regards to the contention of involvement of the vehicle, respondent No. 7, the driver in its written statement took preliminary objection that no accident took place on the alleged date between the car driven by him and the deceased and the claimants have failed to disclose the basis of allegations of his or Scorpio car bearing No. DL 4CN-B-0307 involvement in the accident.

12. On merits he states that even if it is assumed without admitting that the accident took place, he is in no way connected with the accident as he was not present at the spot when the accident in question took place. The accident took place on 24.06.06, it was a Saturday and the vehicle was standing in the parking of Sh. R.S. Chaudhari at his residence throughout the day.

13. Appellant in its written statement took preliminary objection that since the vehicle is not registered in the name of J.K. Industries and the current owner Mr. R.S. Chaudhari is not insured, therefore, appellant is not liable to pay compensation.

14. Sh. R.S. Chaudhari in his evidence by way of affidavit has stated that he is the registered owner of the offending vehicle. He denied the factum of the accident and stated that the allegation of involving the vehicle is totally false and on the date and time of the alleged accident, the offending vehicle was parked his residence at Noida throughout the day. With regard to the number plate, he stated that there was no question of the number plate of his car being found at the spot, as the original number plate was intact on his car. He also stated that he had also made a complaint to the senior police officers regarding false implication of his vehicle.

15. He has further stated that on 24.06.06, respondent No. 8 herein was the registered owner of the offending vehicle and it was insured with the appellant at that time. The car was transferred on 07.08.06, and the appellant had transferred the insurance in his name on the same day.

16. The Tribunal on this count held that;

Coming to back to the facts of the case in hand, it is true that owner of the offending vehicle made complaint to senior police officers but nevertheless we cannot overlook the fact that police after due investigation chose to proceed against the offending vehicle. It had found broken number plate of the offending vehicle at the spot. Even mechanical inspection report of the offending vehicle indicates that front bumper and the body had been scratched from the front lower side. It would indicate that it was vehicle No. DL 4CN-B-0307 which had caused the accident.

17. In the charge sheet filed against respondent No. 7, the investigating officer conducted investigations and he met people who had witnessed the accident. 10 was informed that accident had been caused by vehicle No. DL 4CN-B-0307. Amit Kumar Sharma, eye witness of accident produced one piece of broken number plate of DL-4C WB-03 and stated that the accident was caused by rash and negligent driving the offending vehicle.

18. It is true that no eyewitness of the accident was produced at the trial. But the chargesheet filed by the police speaks for itself.

19. Further, respondent No. 7 i.e. driver of the offending vehicle has not appeared in the witness box to corroborate his defence taken in the written statement. Thus, the inference has to be drawn against him.

20. There is nothing on record to show that the claimants had any enmity with the driver of offending vehicle so as to falsely implicate him in this case.

21. In Ranu Bala Paul and Others Vs. Bani Chakraborty and Ors., the Gauhati High Court has observed as under;

In deciding a matter Tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a criminal case in order to have conviction, the

matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim before the Motor Accidents Claims Tribunal the standard of proof is much below than what is required in a criminal case as well as in a civil case. No doubt before the Tribunal, there must be some material on the basis of which the Tribunal can arrive or decide things necessary to be decided for awarding compensation. But the Tribunal is not expected to take or to adopt the nicety of a civil or of a criminal case. After all, it is a summary enquiry and this is a legislation for the welfare of the society.

22. In *N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others*, the Supreme Court has observed as under;

Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their "neighbour". Indeed, the State must seriously consider no fault liability by legislation.

23. Thus, this contention of the appellant is rejected.

24. Regarding excessive compensation u/s 163A of the Act, it is relevant to reproduce the section herein.

25. Section 163A of the Act reads as under;

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.

Explanation.- For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

26. In *Rukmani Devi v. New India Assurance Co. Ltd. and Anr.* 3 (2008) ACC 68 this Court has observed as under;

The provisions with regard to the no fault liability were inserted having regard to the fact that road accidents in India have reached an alarming proportion and in many of the cases it could be noticed that the victims were being deprived of the compensation amount in the absence of proving rash or negligent driving due to inability in producing any independent witness. To come to the rescue of such victims, earlier Section 140 was brought on the Statute book whereby the provision was made to pay a fixed sum of Rs. 50,000/- (through an amendment by Act 54 of 1994 to substitute the amount of Rs. 25,000/- by Rs. 50,000/-) in respect of the death of any person and a fixed sum of Rs. 25,000/- (through an amendment by Act 54 of 1994 to substitute the amount of Rs. 12,000/- to Rs. 25,000/-) is payable in respect of the permanent disablement of any person on the principle of no fault liability. This right given u/s 140 of the Motor Vehicles Act was in addition to the right to claim compensation in respect of any such death or permanent disablement under any other provisions of Act or of any other law for the time being in force. Section 163-A was introduced in the Act again by way of a social security scheme. It would be evident from the objects and reasons of the Motor Vehicles (Amendment) Act, 1994 that after the enactment of 1988 Act several representations and suggestions were made by the State Governments, transport operators and members of public in relation to certain provisions thereof and after taking note of the said suggestions made by the various Courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a Review Committee. The Review Committee appointed by the Government in its report made the following recommendations:

The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability cases. It also provides for payment of compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31.3.1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as the Insurance Company if a system of structured compensation can be introduced. Under such a system

of structured compensation that is payable for different clauses of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels.

The General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for settlement of claims on "fault liability" in respect of third party liability under Chapter XI of M.V. Act, 1988. They have suggested that the claimants should first file their Claims with Motor Accident Claims Tribunals and then the insurers may be allowed six months" time to confirm their prima facie liability subject to the defences available under Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time.

40. The recommendations of the Review Committee and representations from public were placed before the Transport Development Council for seeking their views pursuant where to several sections were amended. Section 163A was inserted in the Act to provide for payment of compensation in motor accident cases in accordance with the Second Schedule providing for the structured formula which may be amended by the Central Government from time to time.

27. Under Second Schedule of the Act, the upper limit of the income is Rs. 40,000/- per annum.

28. The claimants have claimed that the deceased was earning Rs. 3,300/- per month. The Tribunal has taken the monthly income of the deceased as claimed by the claimants holding that the amount quoted by the claimants is very modest and so it should not be disbelieved. Even minimum wages for unskilled worker at that time were Rs. 3,271/- per month.

29. Thus, I, do not find any infirmity in the judgment of the Tribunal on this point.

30. It is also contended by the appellant counsel that the Tribunal ought to have deducted 1/3rd from the income of the deceased on account of personal expenses instead of 1/4th.

31. As far as the numbers of dependents on the deceased are concerned, there is no dispute that he had as many as six dependents which included his widow, mother, three daughter and one son.

32. In New India Assurance Co. Ltd. Vs. Charlie and Another, the Apex Court has observed as under;

What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend

upon circumstances of each case. In the instant case the claimant was nearly 37 years of age and was married. Therefore, as rightly contended by learned Counsel for the appellant, 1/3rd deduction has to be made for personal expenditure.

33. It is difficult to visualize that a person getting such a meager salary would spend a major part of it upon himself, leaving his dependents at the verge of starvation. Considering the poor strata of society to which the unfortunate deceased belonged, it must be presumed that he was spending the bare minimum upon himself and utilizing its maximum portion for the upkeep of his family.

34. Thus, taking into consideration number of dependents and the meager salary which the deceased was earning, the Tribunal has rightly deducted 1/4th of the annual income towards personal expenses.

35. Thus, the annual income of the deceased comes to be Rs. 39,600/- and after deducting 1/4th towards the personal expenses, the annual income comes to Rs. 29,700/-.

36. This annual income of Rs. 29,700/- in any case, comes within the prescribed limits, as laid down in the Second Schedule of the Act.

37. Thus, the Tribunal has rightly awarded the compensation on account of loss of dependency as per Second Schedule of the Act.

38. Lastly coming to the contention of appellant's counsel that no permission u/s 170 of the Act is required, it is relevant to reproduce the section herein.

39. Section 170 of the Act reads as under:

170. Impleading insurer in certain cases.-Where in the course of any inquiry, the Claims Tribunal is satisfied that

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has filed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

40. In Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, the Apex Court while dealing with the question as to whether Respondent No. 1-Insurance Company could have filed an appeal in the High Court against the award of the Motor Accidents Claims Tribunal and got the quantum of compensation reduced when the insured had not filed such appeal

and when Respondent No. 1-Insurance Company had not moved the Tribunal u/s 170 of the Act for getting the right to contest the proceedings on merit, held as under;

It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent No. 1- Insurance Company in the Claim Petition but that was done with a view to thrust the statutory liability on the Insurance Company on account of the contract of the insurance. That was not an order of the Court itself permitting the Insurance Company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the facts of the present case, respondent No. 1-Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal.

41. Thus, it is well-settled that when permission of the Tribunal to contest the claim on merits had not been obtained as per requirement, the insurer cannot be permitted to challenge the award on merits.

42. The Insurance Company in appeal is not entitled to challenge the award on merit, i.e., on the question of negligence and quantum, unless the conditions enacted in Section 170 of the Act are complied with.

43. Here, the Appellant has filed the present appeal challenging the award on quantum. Admittedly, no permission u/s 170 of the Act has been obtained by the appellant from the Tribunal.

44. Since no permission u/s 170 of the Act has been obtained, the Appellant i.e. Insurance Company, being the insurer of offending vehicle is thus barred from raising plea with regard to quantum and merits of the claim, in the present proceedings during the course of appeal.

45. In view of the above discussion, I do not find any infirmity or illegality in the impugned judgment passed by the Tribunal.

46. The compensation awarded by the Tribunal is just, fair and equitable.

47. Accordingly, the present appeal filed by the appellant is, hereby, dismissed with costs of Rs. 10,000/ -.

48. Appellant is directed to deposit the costs within four weeks from today, by way of a cross cheque in the name of Registrar General of this Court.

49. List on 15th December, 2008 for compliance.