

(2012) 04 DEL CK 0152
In the Delhi High Court
Case No : MAC.APP. 384 of 2009

Iffco Tokio General Insurance Co. Ltd.	APPELLANT
Vs	
Nisha Bai Arvind Devedekar and Others	RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

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

Citation : (2012) 04 DEL CK 0152

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Shantha Devi Raman, for the Appellant; Nemo, for the Respondent

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 10,18,000/- awarded for the death of Dewadekar Arvind who died in a motor accident which occurred on 21.07.2007. Although the Claim Petition was filed u/s 166 of the Motor Vehicles Act (the Act), the Motor Accident Claims Tribunal (the Claims Tribunal) converted the same u/s 163A of the Act to grant relief to the Respondents (the Claimants) as negligence on the part of the driver of the offending vehicle DL-6CG-7842 was not proved.

2. It is urged by the learned counsel for the Appellant that in a Petition filed u/s 163A of the Motor Vehicles Act, the compensation has to be awarded as per the structured formula given in the Second Schedule and there is a cap of Rs. 40,000/- in such cases.

3. I am supported in this view by the reports of the Supreme Court in The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, and Oriental Insurance Company Limited v. Meena Variyal (2007) 5 SCC 428.

4. In Oriental Insurance Company v. Hansrajbhai v. Kodala (supra), it was held as under:

15. In this context if we refer to the Review Committee's Report, the reason for enacting Section 163A is to give earliest relief to the victims of the motor vehicle accidents. The Committee observed that determination of cases takes a long time and, therefore, under a system of structural compensation, the compensation that is payable for different classes of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of a minor, loss of income on account of loss of limb etc. can be notified and the affected party can then have option of their accepting "lump sum" compensation under the Scheme of structural compensation or of pursuing his claim through the normal channels. The Report of the Review Committee was considered by the State Governments and comments were notified. Thereafter, the Transport Development Council made suggestions for providing adequate compensation to victims of road accidents without going into long drawn procedure. As per the objects and reasons, it is a new pre-determined formula for payment of compensation to road accidents victims on the basis of age/income, which is more liberal and rational. On the basis of the said recommendation after considering the Report of the Transport Development Council, the Bill was introduced with "a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational", i.e. Section 163A. It is also apparent that compensation payable u/s 163A is almost based on relevant criteria for determining the compensation such as annual income, age of the victim and multiplier to be applied. In addition to the figure which is arrived at on the basis of said criteria, the Schedule also provides that amount of compensation shall not be less than Rs.50,000/-. It provides for fixed amount of general damage in case of death such as (1) Rs.2000/- for funeral expenses (2) Rs.5000/- for loss of consortium, if beneficiary is the spouse (3) Rs.2400/- for loss of estate (4) for medical expenses supported by the bills, voucher not exceeding Rs.15000/-. Similarly, for disability in a non-fatal accident Para 5 of the Schedule provides for determination of compensation on the basis of permanent disability. Para 6 provides for notional income for those who had no income prior to an accident at Rs.15000/- per annum. There is also provision for reduction of 1/3rd amount of compensation on the assumption that the victim would have incurred the said amount towards maintaining himself had he been alive. The purpose of this Section and the II Schedule is to avoid long drawn litigation and delay in payment of compensation to the victims or his heirs who are in dire need of relief. If such affected claimant opts for accepting the lump-sum compensation based on structured formula, he would get relief at the earliest. It also gives vital advantage of not pleading or establishing any wrongful act or neglect or default of the owner of the offending vehicle or vehicles. This no-fault liability appears to have been introduced on the basis of the suggestion of the Law Commission to the effect that "the expanding notions of social security and social justice envisage that liability to pay compensation must be "no-fault liability" and as observed by this Court in Ramanbhai's case (Supra), "in order to meet to some extent the responsibility of the society to the deaths and injuries caused in road

accidents." However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs.40,000/- which is the highest slab in the II Schedule which indicates that the legislature wanted to give benefit of no-fault liability to a certain limit. This would clearly indicate that the Scheme is in alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay compensation without there being any long drawn litigation on an predetermined formula, which is known as "structured formula" basis which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever increasing motor vehicles accidents in a "fast moving" society. Further, the law before insertion of Section 163A was giving limited benefit to the extent provided u/s 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on "structured formula" basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles."

5. This Court in *New India Assurance Co. Ltd. v. Pitamber & Ors.* (MAC.APP. No.304/2009 decided on 23.01.2012) and *Pitamber & Ors. v. Nirdosh Kumar & Anr.* (MAC.APP. 345/2009 decided on 23.01.2012) while relying on the earlier mentioned judgments of the Supreme Court has taken a view that there is a cap of Rs. 40,000/- on the income if one approaches the Court for compensation u/s 163A of the Act.

6. The deceased was aged about 28 years on the date of the accident. In the circumstances, the loss of dependency on the income of Rs. 40,000/- per annum comes to Rs. 4,79,999/- rounded off to Rs. 4,80,000/- ($40,000/- \times \frac{2}{3} \times 18$).

7. Award of compensation for the loss of love and affection is not permissible u/s 163A. Only a sum of Rs. 9,500/- can be awarded under the non-pecuniary heads if one chooses to approach the Court u/s 163A of the Act.

8. Thus, the award of compensation towards Loss of Consortium, Funeral Expenses and Loss to Estate would be Rs. 5,000/-, Rs. 2,000/- and Rs. 2,500/- respectively.

9. The compensation comes to Rs. 4,89,500/-. The overall compensation is thus reduced from Rs. 10,18,000/- to Rs. 4,89,500/-.

10. The excess amount of Rs. 5,28,500/- along with the proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company. Rest of the amount shall be released/held in fixed deposits in favour of the Respondents (the Claimants) in

terms of the Claims Tribunal's order.

11. The Respondents (the Claimants) shall get interest @ 8% per annum on the awarded amount from the date of institution of the Petition till the date of deposit of the compensation in this Court as granted by the Claims Tribunal.

12. The Appeal is allowed in above terms.

13. The statutory amount of Rs. 25,000/- shall also be returned to the Appellant Insurance Company. Pending applications also stand disposed of.