
(2002) 07 BOM CK 0087

In the Bombay High Court

Case No : First Appeal No. 3 of 1999

Jaibunbi Gulambeg and Another

APPELLANT

Vs

Kamal Prabhakar Renge and Another

RESPONDENT

Date of Decision : 11-07-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(1), 165, 166, 168

Citation : (2003) 1 ACC 484 : (2004) ACJ 364 : (2002) 4 ALLMR 779 : (2003) 1 BomCR 686

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : M.S. Gupta and Ravikumar Shrivastava, for the Appellant; Y.B. Sawal and V.B. Bohra for Respondent No. 1 and A.M. Bapat, for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—The first appellant is the mother while the second appellant, who is a minor is the brother of one Nazirbeg, who died in an accident on 6th December, 1997. The deceased was employed as a driver with the first respondent on a monthly salary of Rs. 2,000/-. An accident took place at midnight, between the night of 6th and 7th December, 1997 when the deceased was proceeding from Aurangabad to Nagpur in a motor vehicle bearing Registration No. MH-31/5869. The accident took place at village Undri within the jurisdiction of the Police Station of Amdapur in the District of Buldana. The vehicle which was being driven by the deceased is stated to have turned turtle, as a result of which, the driver sustained head injuries which resulted in death. The deceased was 25 years of age when he expired.

2. A claim for compensation in the total amount of Rs. 5,00,000/- was made before the Motor Accident Claims Tribunal, Nagpur, u/s 166 of Motor Vehicles Act, 1988. An application for payment of compensation on account of no fault liability was also preferred u/s 140 of the Act. By the impugned order dated 25th September, 1998, the Claim Tribunal dismissed the claim petition u/s 166 of Act.

The record and proceedings has been called for and after inspecting the record, both the learned Counsel are agreed in stating before the Court that though an application was made for the payment of compensation on account of no fault liability u/s 140 of Act, the application remained to be disposed of and was not dealt with by the Tribunal. The impugned order has been passed without notice to the Insurance Company. The Tribunal held that since the liability to pay compensation under the Act is founded on an action in negligence and since in the present case the deceased was himself driving the vehicle which turned turtle, no other person being involved in the accident, the deceased himself was responsible for the accident. The Tribunal was, therefore, of the view that the deceased was at fault, there being no involvement of any other vehicle. All these findings were arrived at without evidence being adduced in the claim petition. The claim petition was dismissed by the impugned order.

3. On behalf of the appellants, it has been urged that the Tribunal was clearly in error in not considering the application u/s 140 of Motor Vehicles Act, 1988, which admittedly was filed on behalf of the appellants. The liability u/s 140, it was urged is not founded in negligence. Consequently, once it is established that the death had occurred from an accident arising out of the use of a motor vehicle, the liability u/s 140(1) would stand fastened. Moreover, it was urged that the Tribunal without holding an inquiry as contemplated by section 168 of the Act, dismissed the main petition instituted u/s 166 of Motor Vehicles Act, 1988 without notice to the insurer and without granting to the claimants an adequate opportunity of being heard which would include an opportunity to lead evidence.

4. On the other hand the learned Counsel appearing on behalf of the respondent has made an effort to sustain the dismissal of the application u/s 166 by contending that unless there is an accident within the meaning of sections 165 and 166, the application u/s 166 could not be entertained.

5. The learned Counsel have fairly stated before the Court that it is an admitted position that an application for the grant of compensation u/s 140 of the Act had been filed by the appellants, but that it was not dealt with by the Tribunal at all. Section 140 deals with a case where death or permanent, disablement of any person results from an accident arising out of the use of a motor vehicle. In such a case, the owner of the vehicle is liable to pay compensation in accordance with the provisions of the section. In sub-section (3), it is clearly laid down that in a claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the vehicle or of any other person. Moreover, sub-section (4) provides that the claim for compensation under sub-section (1) is not liable to be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made. Similarly, even the quantum of compensation that is recoverable cannot be reduced on the basis of the share of such person in the circumstances which

caused his death or permanent disablement.

6. In the present case, the Tribunal ought to have disposed of the application u/s 140 of the Act. The reasons which have weighed with the Tribunal in dismissing the main claim petition cannot possibly be germane to the claim u/s 140 of the Act, which is not founded in negligence. Sub-section (1) of section 140 is attracted where a death has resulted from an accident arising out of the use of a motor vehicle. The case of the appellants is that in the present case there was an accident and that the accident arose out of the use of a motor vehicle. This claim is obviously one which ought to have been considered by the Tribunal in the first instance.

7. Apart from the fact that the Tribunal has not considered the application u/s 140 of the Act, I am of the view that the Tribunal fell into error in dismissing the application u/s 166 without a proper inquiry. Section 168 of the Act provides that on receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties, (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an Award determining the amount of compensation, which appears to it to be just and specifying the person or persons to whom compensation shall be paid. Section 168 also makes certain other consequential provisions. In the present case, the Tribunal has not made a proper inquiry at all.

8. The order of the Tribunal postulates that a claim u/s 166 is founded on negligence and is akin to a tortious liability where an order of compensation is passed against the tort-feasor. There is no dispute about the underlying principle of law. The Tribunal has relied upon the judgment of the Supreme Court in *Minu B. Mehta v. Balkrishna Ramachandra Nayan*, 1977 ACJ 118 . However, the Tribunal appears to have made an a priori assumption that since the vehicle turned turtle and no other vehicle was involved in the accident, the accident must have taken place only due to the negligence of the driver of the vehicles. I am of the view that it was inappropriate for the Tribunal particularly having regard to the stage at which the proceedings were before it to draw such a conclusion without holding an inquiry and without giving a proper opportunity to the parties of being heard. There can be no doubt about the principle that a claim u/s 166 is for compensation for death or injury arising out of an accident as specified under sub-section (1) of section 165. Sub-section (1) of section 165 refers to accidents involving the death of or bodily injury to, a person arising out of the use of a motor vehicle, or of damages to any property of a third party so arising, or both. There can be no general proposition of the law to the effect that unless two motor vehicles are involved, there is no accident within the meaning of sub-section (1) of section 165 or that the claim for recovery of compensation must fail. Similarly, there can be no general or universal assumption that where an accident that has taken place involves only one vehicle, such an accident

must only have taken place due to the negligence of the driver and for no other reason. For instance, in the circumstances of a given case the question may arise as to whether the accident has taken place due to the failure of the owner in maintaining the vehicle in a road worthy condition. Therefore, the facts of each case have to be considered by the Tribunal and that is why section 166 contemplates that an inquiry should be held. In the present case the appellant was shut out of the inquiry at the threshold by the assumption, which was made by the Tribunal that since the accident involved only one vehicle, it must have been caused due to the driver's negligence. The appellant failed to pay the compensation. The approach of the Tribunal has not been proper and the matter has hence to be remanded back to the Tribunal to determine the claim u/s 140 as well as the main claim u/s 166 of the Act.

9. In the circumstances, the first appeal is allowed. The impugned order of the Motor Accident Claims Tribunal, Nagpur, dated 25th September, 1998 is quashed and set aside. Claim Petition No. 102 of 1998 as well as the application filed by the appellants u/s 140(1) of Motor Vehicles Act, 1988 are restored to the file of the Tribunal. The Tribunal is directed in the first instance to dispose of the application u/s 140(1) within a period of four weeks after a certified copy of this order is produced before it by either of the parties.

10. The parties are directed to appear before the Tribunal for obtaining directions in regard to the hearing of the matter on 22nd July, 2002. On the request of the learned Counsel appearing on behalf of the Insurance Company, respondent No. 2 herein it is however clarified that all the rights and contentions of the parties are expressly kept open including on the maintainability of the applications under sections 140 and 166 of the Act.

11. The first appeal is disposed of in the above terms.