(2005) 03 CAL CK 0008

In the Calcutta High Court

Case No : F.M.A. No. 243 of 2001

Maili Biswakarma — APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:
Motor Vehicles Act, 1988 — Section 110

Citation : (2006) 1 ACC 198 : (2005) ACJ 1758

Hon'ble Judges : P.K. Samanta, J;Maharaj Sinha, J

Bench : Division Bench

Advocate : Saidur Rahaman, for the Appellant;Kamal Krishna Das, Gopa Das (Mukherjee), Subir Banerjee and Jayanta Banerjee, for the Respondent

Final Decision : Allowed

Judgement

P.K. Samanta, J.—This miscellaneous appeal involves a vexed question as to whether a married sister is entitled to a compensation under no fault liability as per the provisions of Section 140 of the Motor Vehicles Act, 1988 (hereinafter called as ''the said Act'') on the death of her brother in a motor accident.

2. The claim petition was filed u/s 140 of the said Act by the married sister of the deceased. Her case in short is that her brother, namely, Kancha Biswakarma was taking water from a roadside tap on the right side of N.H. 31. At that time the offending vehicle coming from Siliguri at a very high speed hit her brother who died on the spot.

3. The respondent insurance company contested the claim case by filing written statement. Although in the said written statement the respondent insurance company denied the fact of accident taking place on the alleged date, time and place but at the hearing of the aforesaid claim case only question raised was as to her entitlement to compensation as being the legal representative of her deceased brother who died in the said motor accident. The learned Claims Tribunal upon consideration of various decisions of different High Courts as well

as the Supreme Court was of the view that the claimant being the married'' sister of the deceased must prove her dependency on the deceased so as to be entitled to a compensation on his death in a motor accident. The Claims Tribunal, accordingly, dismissed the said petition as the dependency of the claimant on her deceased brother was not established in her evidence.

4. The above judgment has been challenged by the claimant in this miscellane ous appeal on the ground that she being the legal representative her claim petition should not have been dismissed as the same was u/s 140 of the said Act, the provisions of which do not make it necessary to establish any loss of dependency of the claimant.

5. In dealing with the above question it may be first noticed that Section 140 fixes the liability upon the owner or the owners of the vehicle, as the case may be, to pay compensation jointly and severally in respect of death or disablement arising out of the use of motor vehicle(s) of the said owner or owners. Section 165 provides for adjudication of a claim for compensation in a motor accident causing the death of or bodily injury to persons arising out of the use of motor vehicles. Such claim as per the provisions of Section 166 may be made by all or any of the legal representatives of the deceased or by any agent duly authorised by all or any of the legal representatives of the deceased, as the case may be, where death has resulted from the accident. Proviso to Sub-section (1) of Section 166 says that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and legal representatives who have not joined shall be impleaded as respondents to the application. Again 168 of the said Act provides as under:

"168. Award of the Claims Tribunal.--(1) 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 and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the

date of the award.

(3) When an award is made under this Section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

Section 168 of the said Act casts upon the Claims Tribunal not only a duty to make an award determining the amount of compensation which is just and proper, but at the same time to specify the person or persons to whom such compensation shall be paid. The later duty relates to the entitlement to a compensation by a person who claims for the same.

6. Upon conjoint reading of the aforesaid provisions it appears that a claim application for compensation for being maintainable, must have to be made in the case of death in an accident by all or any of the legal representatives and in the case of injury by the person who has sustained the injury or by any agent duly authorised by the person injured. The whole process for awarding compensation has two distinct parts. First criteria is the eligibility and/or entitlement of the person to get an award of compensation in his favour and then comes the question as to the determination of just compensation. The question therefore necessarily arises as to whether or not the adjudicating Tribunal is required to decide the question as to the entitlement of the claimant, who may be a legal representative, to a compensation. Plain reading of Section 168 does not give an impression for an answer in the negative. Because if that be so then question would not have arisen for specifying the person or persons to whom compensation shall be paid, as provided u/s 168 of the said Act. In a given case, there may be different classes of heirs and legal representatives who may vie for such compensation being declared in their respective favours. Such a kind of situation would necessarily require the adjudicating Tribunal to specify the person to whom such compensation shall be payable. This would obviously give rise to the question what should be the criteria for specifying the person and/or the persons who shall be paid the compensation.

7. In this regard there are divergent views expressed by different High Courts of our country. One branch of decisions proceeds on the basis that once the claimant is an heir either a class I or class II under the Hindu Succession Act, then he would be entitled to compensation, The other branch proceeds on the basis of loss of dependency.

8. I do not think it necessary to discuss all those judgments here as a very recent Division Bench judgment of our court in Manjuri Bera Vs. Oriental Insurance Co. Ltd. and Another, , has taken note of relevant judgments in this regard. It is observed that the dependency of the legal representatives is one of the factors which is required to be taken into account. It is not that all legal representatives would be entitled to compensation. It is a compensation for the loss. The loss may arise from various factors. It is not only dependency but also

loss of association or company. But, this loss of association is not an independent question, which is only one of the factors in arriving at the quantum of the compensation. Question of loss of association would arise only when it is found that person claiming loss of association was dependent on the victim. Unless this dependence is found, there is no question of compensation for loss of association. Even if the proposition that without dependence, one is entitled to compensation on account of loss of association, is accepted, then also it has to be proved that the victim was in association with the claimant.

9. Their Lordships summed up the proposition by holding as under in para 5 of the said report:

"Thus, dependency is a prima facie factor for obtaining compensation even though one may be the legal representative of the victim. Unless the dependency is proved, the factors relating to the compensation would not be relevant. Even if it is held to be relevant then also one has to prove that the victim was in association with the claimant."

10. Upon reading in between the lines it appears to me that loss of dependency though has been held to be a prime factor for determining the entitlement to compensation but it has not spelt out categorically that it should be the sole criteria. The concept of loss of dependency has different facets. In a given case there may not be immediate loss of dependency but there would be at a future date. Otherwise how it could be reconciled with the decisions rendered by courts of law awarding compensation to parents on the death of their minor child or a child who is yet to earn. Then again such loss of dependency, be it immediate or in future may not always be pecuniary in nature. For example, can it be said that the Act does not provide for any compensation to the wealthy parents, or otherwise self sufficient parents, who do not have foreseeable financial dependency in future upon any one, on the death of their only child in a motor accident. Rather it is the loss of the very near and dear one in the family; loss of someone for which there will be a permanent vacuum in the family; it is a kind of loss for which the deceased will be felt missing in the hour of need, be it physical or mental or at times financial too, which would entitle the next of kin to a compensation. Likewise a husband is entitled to compensation on the death of his wife who is not an earning member. Substantially, it is the loss of association which is required to be compensated. Gone are the days when a married sister was not entitled to succeed to the property of her father along with her brother in absolute right. In our present form of society it is not very uncommon that a married sister though lives separately from her brother, but her association remains as stronger as before her marriage. Association in the present day context is not like an association of living together or being dependent upon each other, but an association of a family tie, an association of love and affection. It is a kind of association which gives an impression in the mind that there is someone in the blood relation upon whom faith can be reposed or could be dependent upon, in case of need.

11. The Apex Court decision in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, has not been properly appreciated by the learned Claims Tribunal. The Supreme Court in a claim case, arising out of an application filed by the brother of the person who died in a motor accident, u/s 110-A of the Act of 1939 held that the brother of the deceased can maintain an application for compensation if he is a legal representative of the deceased. The Supreme Court approved the Division Bench decision of Gujarat High Court in Megjibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others, , which took into consideration all the decisions of the High Courts in India whereby a cleavage in the opinion, as regards the maintainability of action u/s 110-A of the Act of 1939 by persons other than the wife, husband, parent and child of the person who died on account of a motor vehicle accident, was projected. Before Gujarat High Court the claim petition that was ultimately considered and held maintainable was by the nephews of the deceased. While rendering such decision Gujarat High Court did not go into the question as to the dependency factor of the said nephews upon the deceased. The Supreme Court in approving the above Gujarat decision held as under in para 12 of the said report:

"We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of Torts that every injury must have a remedy. It is for the Motor Accidents Claims Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act [Sic. and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act] amongst the legal representatives for whose benefit an application may be filed u/s 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family the brothers, sisters and brothers'' children and sometimes foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855, which as we have already held, has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicle accidents. We express our approval of the decision in Megjibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others, and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition u/s 110-A of the Act if he is legal representative of the deceased."

12. Upon a careful reading of Gujarat decision, which did not proceed on the basis of dependency factor, and of the Supreme Court decision as above, it does

not appear to me that the Supreme Court has laid down a strict rule of law that unless the dependency factor of the legal representative of the deceased is established, he will not be entitled to compensation under the provisions of the Motor Vehicles Act.

13. The Motor Vehicles Act, 1988 is a species of law of Torts. There cannot be any wrong without any remedy. This is a civil wrong for which the remedy lies in damages. It is at the same time true that determination of compensation for damages for loss of association would depend upon various factors, such as the degree of association, nature of association, etc. However, those would be relevant for the purpose of determination of just compensation under the provisions of Section 166 of the Act. In this case the application having been made u/s 140 of the Act, there is no scope for making any alternation in the quantum of compensation. I am, therefore, of the view that applicant being the married sister would also be entitled to such compensation as provided u/s 140 of the said Act for the loss of association, love and affection on the death of her brother.

14. Upon all such considerations, I set aside the judgment and order of the Claims Tribunal. I accordingly hold that claimant-appellant shall be entitled to a compensation for a sum of Rs. 50,000 only on her application u/s 140 of the Act. Having regard to the facts and circumstances of this case and more particularly in view of the judgment rendered by this Court on the question involved I am not inclined to grant any interest on the above awarded amount. I accordingly direct the respondent insurance company to pay to the claimant-appellant directly by an account payee cheque the above amount or to deposit the same with the Claims Tribunal concerned within a period of four weeks from the date of communication of this order to respondent insurance company. The appeal is accordingly allowed. There will be no order as to costs.

