

(2013) 11 MAD CK 0177

In the Madras High Court

Case No : C.M.A. No. 2806 of 2010 and Cross. Obj. No. 78 of 2013

Metropolitan Transport Corporation Ltd.

APPELLANT

Vs

N. Usha and B. Nagarajan
N. Usha and B. Nagarajan
Vs Metropolitan Transport Corporation Ltd.

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2014) 1 LW 650 : (2014) 3 MLJ 460

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : S. Swaminathan in C.M.A. No. 2806 of 2010 and Mr. Mohan Choudary in Cross. Obj. No. 78 of 2013, for the Appellant; V. Mohan Choudary in C.M.A. No. 2806 of 2010 and Mr. S.S. Swaminathan in Cross. Obj. No. 78 of 2013, for the Respondent

Final Decision : Partly Allowed

Judgement

P.R. Shivakumar, J.—The respondent before the Motor Accident Claims Tribunal (IV Judge, Small Causes Court), Chennai in M.C.O.P. No. 620 of 2004 has brought forth this appeal u/s 173 of the Motor Vehicles Act, 1988 challenging the award of the Tribunal not regarding fixation of the liability but regarding quantum alone. The petitioners before the Motor Accident Claims Tribunal (IV Judge, Small Causes Court), Chennai have filed Cross-objection seeking enhancement of compensation. For avoidance of confusion, the parties are referred to in accordance with their ranks in the appeal. For the death of N. Surendar, his parents, namely the respondents herein had preferred a claim against the appellant Transport Corporation for a sum of Rs. 5,00,000/- as compensation under the structured formula in accordance with the schedule relying on Section 163A of the Motor Vehicles Act, 1988. On 07.10.2003, at about 16.15 hours, when the deceased Surender was travelling as a passenger in the bus bearing Registration No. TN01-N-2919, he fell down from the bus and sustained multiple injuries leading to his subsequent death. Though the deceased would have travelled in the bus standing near the footboard and was thrown out in the

turning, the respondents had claimed that the accident took place solely due to the rash and negligent driving of the said bus belonging to the appellant transport Corporation by its driver. However, not intending to take the risk of proving negligence on the part of the driver of the bus, the respondents chose to make the claim u/s 163A of the Motor Vehicles Act, since the claimants making such claim under the said provision need not plead that the accident took place due to the fault of the respondent and they will not be called upon to prove such a fault on the part of the respondent.

2. The claim was resisted by the appellant Transport Corporation contending that the deceased had acted with negligence and invited the accident and that there was no negligence on the part of the driver of the bus in which he was travelling. Besides such a stand, the appellant transport Corporation also questioned the reasonableness of the amount claimed as compensation.

3. The Tribunal, after trial, chose to hold that the accident took place due to the rash and negligent driving of the bus belonging to the appellant Transport Corporation by its driver. It took age of the deceased to be 16 years and without showing the manner in which it arrived at the figure had simply awarded a sum of Rs. 2,50,000/- towards pecuniary loss caused to the respondents on account of the death of their son Surendar. To the said amount a sum of Rs. 20,000/- towards loss of expectation of life, Rs. 40,000/- towards loss of love and affection and Rs. 10,000/- towards funeral expenses were added to bring the total amount of compensation to Rs. 3,20,000/-. Ultimately, the Tribunal passed an award directing the appellant Transport Corporation to pay Rs. 3,20,000/- together with an interest on the said amount at the rate of 9.5% per annum from the date of numbering of the M.C.O.P. till the date of deposit and also costs. The said award of the Tribunal is challenged in this appeal by the appellant Transport Corporation challenging the finding of the Tribunal regarding negligence and also reasonableness of the amount awarded as compensation including the rate of interest.

4. The points that arise for consideration in this appeal are:

1) Whether the finding of the Tribunal that the driver of the bus belonging to the appellant Transport Corporation was rash and negligent in driving the vehicle is liable to be set aside as erroneous?

2) Whether the amount awarded by the Tribunal as compensation is unreasonable requiring reduction?

5. The arguments advanced by Mr. S. Swaminathan, learned counsel for the appellants and by Mr. V. Mohan Choudhary, learned counsel for the respondent are heard.

6. At the outset, this Court wants to point out the fact that the Tribunal proceeded to decide the question of negligence on an erroneous assumption that the claim was made u/s 166 of the Motor Vehicles Act rather than Section 163A

of the said Act or that even in respect of a claim made u/s 163A of the Motor Vehicles Act, the award of compensation depends on the proof of fault. Such an erroneous assumption has made the Tribunal to embark upon unnecessary consideration regarding whether there was any fault on the part of the driver of the bus belonging to the appellant Transport Corporation for mulcting the liability on the appellant. When a claim is made u/s 163A of the Motor Vehicles Act, 1988 and the claimants are found to be entitled to avail the said benevolent provision, then the claimants need not plead and need not prove that the accident took place due to any fault on the part of the respondent in the M.C.O.P. or a servant or agent of the respondent in the M.C.O.P., namely the owner of the vehicle. When such a claim is made u/s 163A, it is nothing but a claim based on yet another form of "No-fault liability" subject to an exception that when such a claim is made u/s 163A, the claimant shall not be entitled to seek interim award u/s 140 of the Motor Vehicles Act as both Section 140 and 163A are mutually exclusive. The facts necessary to be established are:-

- 1) There was an accident involving the vehicles in question;
- 2) It resulted in death or permanent disability; and
- 3) The claimants comes within the category of persons eligible to rely on the schedule and to claim compensation on the structured formula.

7. In this case, it is not in dispute that the deceased Surrender, while travelling as a passenger in the bus bearing Registration No. TN01-N-2919 belonging to the appellant Transport Corporation, fell down and sustained fatal injuries leading to his consequential death. The said facts are borne by the evidence of Pws 1 and 2 and the documents Exs. P1 to P4. The first condition for making a claim u/s 163A stands established. As the accident resulted in the death of Surrender, the son of the respondents, the second condition cited above also stands established. Admittedly, the deceased was a school going boy aged about 16 years and had not started earning. He would squarely fall within the category of persons having the annual income not exceeding Rs. 40,000/-. Hence, the third condition making the respondents eligible to sustain their claim u/s 163A of the Motor Vehicles Act stands established. As such, the finding of the Tribunal that the accident took place due to the rash and negligent driving of the bus becomes unnecessary and on that score alone, the said finding is liable to be disturbed. Though the said finding is disturbed, it is made clear that since the respondents herein have substantiated the grounds on which they could make a claim as per the structured formula relying on Section 163A of the Motor Vehicles Act, this Court holds that the respondents are entitled to claim compensation under the structured formula and the resistance by the appellant Transport Corporation based on its contention that there was no negligence on the part of the driver of the bus is bound to be discountenanced.

8. The deceased Surendar, according to the respondents, was aged 16 years. His Date of Birth as per the entry found in the Transfer Certificate, marked as Ex. P6

is 07.06.1988. The accident took place on 07.10.2003. On the date of accident, he had completed only 15 years. When the deceased had completed 15 years and had not completed 16 years, as per the judgment of the three Judge Bench of the Supreme Court in Reshma Kumari and Others Vs. Madan Mohan and Another, , the multiplier shall be 15 irrespective of the fact that the claim has been made either u/s 166 or u/s 163A of the Motor Vehicles Act. Admittedly the deceased was a non-earning member. If at all the claim was made u/s 166 whereupon the claimants would be asked to prove the negligence on the part of the driver of the vehicle, then the Tribunal will not be bound by the schedule. On the other hand, when claim is made u/s 163A of the Motor Vehicles Act, the compensation has to be awarded strictly in accordance with the structured formula provided in the schedule, subject to the correction indicated in Reshma Kumari's case regarding the selection of multiplier. As per the schedule the annual income of the non-earning member shall be fixed at Rs. 15,000/- per annum. The schedule also provides for deduction of 1/3rd towards personal expenses. When the claim has been made u/s 163A, the Tribunal and the High Court shall have to follow the table subject to the modification made by the Judge made laws regarding selection of multiplier. In all other respects, though the amount to be fixed as notional income shall be a meager one and there may not be a justification for allowing deduction towards personal expenses, there is no other option than to follow the table which prescribes the notional income and provides for the deduction of 1/3rd of the annual income towards personal expenses. Accordingly, as per the schedule, the annual income of the deceased Surender is fixed at Rs. 15,000/-. Rs. 5,000/- being 1/3rd of the said amount shall be deducted towards personal expenses and the balance Rs. 10,000/- shall be taken as annual pecuniary loss caused to the respondents, namely the parents of the deceased. If it is multiplied by the selected multiplier, namely 15, the total amount of compensation towards pecuniary loss caused to the respondents due to the death of their son has to be necessarily fixed at Rs. 1,50,000/-. Of course in Rajesh and Others Vs. Rajbir Singh and Others, , another Hon"ble Bench of the Hon"ble Supreme Court has held that the term Funeral Expenses does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery and that considering the expenses to be incurred according to the practices and conventions of the parties at least a sum of Rs. 25,000/- should be awarded as compensation. But in the said case, the claim had been made u/s 166 and not u/s 163A. In fact in Reshma Kumari's case, the Supreme Court has made the following observations:

As regards the cases where the age of the victim happened to be upto 15 years, we are of the considered opinion that in such cases irrespective of 163-A or 166 under which the claim for compensation has been made, multiplier 15 and the assessment as indicated in the second schedule subject to correction as pointed out in column (6) of the table in Sarla Verma should be followed.

It has also been the opinion of the Supreme Court that whenever a claim is made as per the structured formula based on "no fault liability" clause found in Section

163A, excepting the corrections of the mistakes found in the table and application of 15 as the multiplier for persons upto the age of 15 completed years, the other conventional damages should be awarded only in accordance with the table. If at all the table needs any revision, it is for the legislature to amend it and bring it in tune with the present day living costs and escalation of prices. Till then, the Courts have to apply the table in such cases.

9. In case of death, the following general damages have been prescribed in the schedule:

- 1) Funeral expenses - Rs. 2,000/-
- 2) Loss of consortium, if the beneficiary is the spouse Rs. 5,000/-
- 3) Loss of Estate Rs. 2500/-
- 4) Medical expenses - actual expenses incurred before death supported by bills/ vouchers, but not exceeding Rs. 15,000/-.

Clauses 2 and 4 are not applicable to the case on hand, since the claimants are parents of the deceased and there is no evidence to show medical expense incurred before death. Hence, the addition to be made towards conventional damages shall be Rs. 2,000/- towards funeral expenses and Rs. 2,500/- towards loss to estate. In all the total amount to which the respondents shall be entitled has to be fixed at Rs. 1,54,500/- as per schedule.

10. For all the reasons stated above, this Court comes to the conclusion that the amount awarded by the Tribunal is excessive which requires downward revision as indicated supra. In the result, the appeal is allowed in part and the award of the Tribunal is modified by reducing the compensation from Rs. 3,20,000/- to Rs. 1,54,500/-. In all other respects, the award shall stand confirmed. The cross-objection shall stand dismissed. It is brought to the notice of the Court that the entire amount was deposited after levying execution and the respondents have also withdrawn the entire amount. The respondents shall deposit the difference amount to the credit of the M.C.O.P. No. 620 of 2004 within two months and the appellant shall be permitted to withdraw the said amount. There shall be no order as to costs in this appeal.