

(2006) 09 MP CK 0071
In the Madhya Pradesh High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Manju and Others		RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 166
Penal Code, 1860 (IPC) — Section 304A

Citation : (2008) ACJ 359

Hon'ble Judges : P.K Jaiswal, J;A.K. Gohil, J

Bench : Division Bench

Judgement

P.K. Jaiswal, J.—This appeal is directed against the award dated 18.3.2004 passed by the Second Additional Motor Accidents Claims Tribunal, Morena in Claim Case No. 66 of 2002.

2. Brief facts of the case are that the deceased Girish Singh, owner of truck No. UP 80-4-9161 was travelling in the aforesaid truck which was coming from Dhaulpur to Agra. At village Barotha truck No. MP 06-E 4250 was stationary in the midst of the road without any indication-neither dipper nor parking lights were on. Due to that truck bearing No. UP 80-4-9161 which was driven by respondent No. 6 dashed against the stationary truck No. MP 06-E 4250. The deceased Girish Singh received severe injuries and due to the aforesaid injuries he died on the spot. The matter was reported to the police station, vide Crime No. 125 of 2002 and a case u/s 304A of Indian Penal Code was registered against the driver of the offending vehicle. Both the trucks were seized. The respondent No. 4 is the owner of truck bearing registration No. MP 06-E 4250 and respondent No. 5 was the driver of the said truck. The respondent Nos. 1 to 3 are legal heirs of the deceased Girish Singh.

3. Respondent Nos. 1 to 3 filed a claim petition u/s 163A of the Motor Vehicles Act, 1988 (in short "the Act"), claiming the compensation amounting to Rs. 15,68,000 on the ground that the income of the deceased was Rs. 2,00,000 per annum. The respondent No. 6, Anek Singh, AW 2, who was driving the truck No.

UP 80-4-9161, in his statement stated that respondent No. 5 had parked the truck No. MP 06-E 4250 on the highway without any dipper nor parking lights were on to indicate that the truck was parked. He also stated that truck was not parked on the side of the road and due to aforesaid reason when he was coming from Dhaulpur to Agra at village Barotha, his truck dashed against the stationary truck. Girish Singh who was sitting in the truck, died on the spot. He further stated that accident had occurred due to rash and negligent driving of the vehicle by the respondent No. 5. The respondent No. 4 is the owner of the truck No. MP 06-E 4250. The truck was insured by the appellant National Insurance Co. Ltd. The Claims Tribunal with the above evidence came to the conclusion that due to wrong parking of truck No. MP 06-E 4250 the accident had occurred and respondent Nos. 4 and 5 and appellants are liable to pay the amount of compensation.

4. Manju, the respondent No. 1, in her statement stated that her husband (Girish Singh) was doing transport business. He was owner of two trucks and his monthly income after meeting the expenses came to Rs. 5,000 per truck. Tribunal on the basis of above evidence came to the conclusion that the deceased was earning Rs. 90,000 per annum from his transport business. At the time of death, the deceased was 35 years of age. As per Second Schedule on the age between 35 and 40, the multiplier of 16 will be applicable and, therefore, applying the multiplier of 16 and on the basis of $40 \times 9/4 = 90$ applied the formula of $\text{Rs. } 60,000 \times 9/4 = \text{Rs. } 13,50,000$, the amount of compensation was assessed to Rs. 13,50,000 and after deducting 1/3rd towards personal expenses of the deceased, the compensation comes to Rs. 9,00,000 (rupees nine lakh). The Claims Tribunal also awarded Rs. 2,000 towards funeral expenses, Rs. 5,000 for loss of consortium and Rs. 2,500 for loss of property. The total amount of compensation, therefore, awarded at Rs. 9,09,500 to the respondent No. 3.

5. The only point urged by the learned Counsel for the appellant is that since the income of the deceased was found to be beyond Rs. 40,000 and since the award was made u/s 163A of the Act, considering the maximum ceiling of the income as provided in Second Schedule, the respondent Nos. 1 to 3-claimants are entitled for compensation on the basis of income of Rs. 40,000 per annum which is the maximum as per the Second Schedule framed u/s 163A of the Act.

6. Learned Counsel for the respondent Nos. 1 to 3 has contended that since the income of the deceased was more than Rs. 40,000, the claimants were entitled to be awarded compensation on the basis of the income of the deceased, in proportion of the scale as provided under Second Schedule, without any deduction to the extent of 1/3rd income from the amount of Rs. 40,000. It is also submitted that the learned Tribunal has not committed any error in awarding the compensation calculating income of the deceased more than Rs. 40,000 per annum.

7. I have considered the rival submission and perused the amount awarded. A look at the provisions of Section 163A would show that in the scheme of things,

this provision is an extended version of Section 140 of the Act, inasmuch as u/s 140 only interim award is made on no fault liability basis, while u/s 163A, compensation is awardable up to limits mentioned in Second Schedule on no fault liability basis as final awards. The basic difference between the claim under Sections 163A and 166 is that if the claimant files a claim u/s 166, he is not entitled to get any compensation until and unless he proves the delinquent vehicle to be guilty of negligence, either whole or in part. As against which in claim u/s 163A claimant is not required to even allege or prove any negligence on the part of the delinquent vehicle. The obvious result of this difference is that there may be cases where the claimants may either feel or be aware, either that the delinquent vehicle was not at fault or that the claimant would not be able to prove the negligence on the part of the delinquent vehicle, they may choose to lodge a claim u/s 163A so as to get a specified amount of compensation as to lodge claim u/s 166, they run the risk of refusal of the entire claim in the event of failure to prove negligence.

8. It is in this view of the matter that when claim is lodged u/s 163A, the claimant has not been held entitled by the legislature to the amount of compensation commensurate with his income, in case the income happens to exceed the maximum limit prescribed in the Second Schedule being Rs. 40,000. Therefore, if the claim is filed u/s 163A and income is found to be beyond Rs. 40,000, still the claimants would not be entitled to compensation u/s 163A beyond what has been specified in the Second Schedule in proportion of the scale as provided in the Second Schedule. If claimants want to claim more amount on the basis of the excess income of the victim, then of course they have to go u/s 166, prove negligence of the delinquent vehicle and get award for such amount or such additional, as they may be found entitled to.

9. Accordingly, we are of the view that while dealing with the claim u/s 163A, the award can be made only for such an amount as is payable in accordance with Second Schedule. A look at Second Schedule shows that it gives a structured formula of the amount awardable as compensation in case of death and according to Second Schedule, for the death of the deceased the maximum amount awarded as compensation comes to Rs. 6,40,000.

10. When the Section 163A read with the Second Schedule provides a specific amount to be payable by way of compensation and also provides that the amount of compensation so arrived at in case of fatal accident claim shall be reduced by $\frac{1}{3}$ rd, in consideration of the expenses which the victim would have incurred for maintaining himself had he been alive, no discretion remains with the Tribunal to decline to make such deduction. Thus, we cannot accept the arguments of the claimants that since the income of the deceased is more than Rs. 40,000, therefore, not to deduct the amount of personal expenses from the income of the deceased to the extent of $\frac{1}{3}$ rd as provided in Second Schedule to the Act.

11. A look at the impugned award shows that the learned Tribunal has awarded

the compensation considering that the income of the deceased was Rs. 90,000 per annum, i.e., the income of the deceased was beyond Rs. 40,000 per annum. And a sum of Rs. 9,00,000 was assessed towards compensation plus Rs. 9,500 under other heads whereas as per Section 163A, the maximum amount of compensation comes to Rs. 6,40,000 and after making deduction to the extent of 1/3rd in the income of the deceased which comes to Rs. 2,13,300 thus, the amount of compensation comes to Rs. 4,26,700. The respondent Nos. 1 to 3-claimants are also entitled for Rs. 13,300 towards loss of consortium, loss of love and affection, pain and suffering, funeral expenses, expenses for transportation of dead body from the place of accident, etc. The total amount of compensation comes to Rs. 4,40,000.

12. Accordingly, the appeal is partly allowed, the impugned award is modified in the manner that the amount of compensation for death awarded by the learned Tribunal being Rs. 9,09,500 is reduced to Rs. 4,40,000.

In the result, the appeal filed by the appellant insurance company is partly allowed as indicated above, but without any order as to costs. The parties are left to bear their own costs of the appeal.