
(2015) 01 AHC CK 0031

In the Allahabad High Court

Case No : First Appeal From Order No. 1196 of 2011

National Insurance Co. Ltd.

APPELLANT

Vs

Mohammad Nasseem and Others

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

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

Citation : (2015) 1 ADJ 219

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : Surendra Pal Singh, for the Appellant; C.P. Pandey, Satya Narain Yadav and Shobha Ram Pandey, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Shri Surendra Pal Singh, learned counsel for the appellant, learned counsel for the respondents and perused the record.

Facts in brief of the present case are that on 26.10.2003 at about 3.00 p.m., Mohd. Naseem was going to Nigoha from Bachranwa taking passengers from his Tempo bearing No. UP 44-8381 and as soon, he dropped the passenger near Gram Sherpur Dakhina, a Maruti Car having registration No. U.P. 70 AA-2202 dashed the said tempo due to rash and negligent driving on the part of its driver as a result of which he sustained grievous injuries and admitted in hospital for medical treatment. In order to get the compensation arising out of the said accident, he filed a Claim Petition No. 172 of 2004 "Mohd. Naseem v. Khalid Hasan Khan and another" before the Motor Accident Claim Tribunal/Special Judge, P.C. Act, Lucknow, allowed by judgment and award dated 14.9.2011 thereby awarding compensation of Rs. 1,53,000/- alongwith interest @ 6% p.a. from the date of filing of the claim petition, challenged in the present appeal.

2. Shri Surendra Pal Singh, learned counsel for the appellant while challenging the impugned judgment submits that in an accident in question, F.I.R. was

lodged and from the content of the F.I.R., it is clearly established that accident has not taken place due to rash and negligence driving on the part of driver of Maruti Car, but the Tribunal has not considered the said fact and passed the impugned judgment thereby awarding the compensation to the claimant. Hence, the same is contrary to facts on record.

3. The next argument advanced by learned counsel for the appellant is that the Tribunal has illegally awarded a sum of Rs. 1,53,000/- by way of compensation to the appellant without considering the fact of partial temporary disability on the certificate issued by the medical officer which has not been proved before the Tribunal. Hence, the impugned judgment is liable to be set aside.

4. I have heard learned counsel for the parties and perused the record.

So far as the submission made by learned counsel for the appellant in respect of non-consideration of the F.I.R. by the Tribunal is concerned, the same has got no force because Hon"ble the Apex Court in the case of Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, , after placing reliance on the judgment in the case of M.S. Sheriff Vs. The State of Madras and Others, has held as under:

"32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein." As per dictum of Hon"ble Apex Court, the standard of proof required in the civil and criminal proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein.

5. So far as the argument advanced by learned counsel for the appellant that the Tribunal has wrongly awarded a sum of Rs. 1,53,000/- as a compensation to the claimant is concerned, in order to decide the matter in regard to award of compensation, the Tribunal has framed issue No. 4 which reads as under:

6. Further, on the basis of the material on record, the Tribunal has come to the conclusion that the disability which has been suffered by the claimant due to accident in question is 30% on the basis of the medical certificate issued by the competent authority and after taking into consideration, the age of the appellant is 30 years and his monthly income Rs. 3,000/-, after making a standard

deduction of 1/3 from the annual income, multiplying the same by multiplier of 17 as provided under Section 163-A of the Motor Vehicle Act, awarded 1,36,000/- as a compensation and awarded Rs. 12,000/- towards the medical expenses incurred on the basis of the vouchers/medical receipts on record.

7. In addition to the said compensation, a sum of Rs. 5,000/- was also awarded as a mental agony which he suffered grievous injuries arising out of an accident in question. Thus, the total compensation of Rs. 1,53,000/- as awarded by the Tribunal is perfectly valid.

8. Hon"ble the Apex Court in the case of Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , has observed as under:

"We think that the law laid down in Minu B. Mehta v. Balkrishna Ramchandra Nayan, was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which" the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle. (See Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, " Hon"ble the Apex Court in the case of Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, , held as under:

"46. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured-formula basis. Sub-section (1) of Section 163-A contains non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Sub-section (2) of Section 163-A is in pari materia with sub-section (3) of Section 140 of the Act.

47. Section 163-A does not contain any provision identical to sub-section (5) of Section 140 which is also indicative of the fact that whereas in terms of the latter, the liability of the owner of the vehicle to give compensation or relief under any other law for the time being in force continues subject of course to the effect that the amount paid thereunder shall be reduced from the amount of compensation payable under the said section or Section 163-A.

48. By reason of Section 163-A, therefore, the compensation is required to be determined on the basis of a structured formula whereas in terms of Section 140 only a fixed amount is to be given. A provision of law providing for compensation is presumed to be final in nature unless a contra-indication therefor is found to be in the statute either expressly or by necessary implication. While granting compensation, the Tribunal is required to adjudicate upon the disputed question as regards age and income of the deceased or the victim, as the case may be. Unlike Section 140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding under Section 163-A of the Act.

51. The scheme envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set-off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000 or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society."

Thus, I do not find any illegality or infirmity in the impugned judgment given by the Tribunal.

For the foregoing reasons, the appeal lacks merit and is accordingly dismissed.