

(2016) 04 DEL CK 0032

In the Delhi High Court

Case No : MAC. APP. No. 674 and 685 of 2010

National Insurance Co. Ltd.

APPELLANT

Vs

Nidhi Arora

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Citation : (2016) AAC 1736 : (2017) ACJ 688 : (2017) 1 ALLMR 26

Hon'ble Judges : R.K. Gauba, J.

Bench : Single Bench

Advocate : Mr. Pankaj Seth and Mr. Shoumik Mazumdar, Advocates, for the Appellant; Mr. A.K. Soni, Proxy for Mr. D.K. Sharma, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

R.K. Gauba, J.(Oral)—Both these appeals arise out of judgment dated 26.03.2010 of the motor accident claims tribunal (tribunal), commonly passed on two separate claim petitions (MACT case Nos. 80/2009 & 81/209, previously 258 & 259/2000) that had been preferred on account of deaths of Sangita Arora and master Lakshya Arora. Since identical questions of law arise in the context of special provision contained in Section 163-A of Motor Vehicles Act, 1988 (MV Act), against common background factual matrix, both have been taken up and heard together and are being decided through this common judgment.

2. On 19.01.1998, at about 8.30 a.m., Rajiv Arora, the registered owner of Maruti Car no. UP 14 E 6054 (the car) was driving it on a public road in the area of GT Road, near Hotel Dadupur, Karnal, Haryana, when it came to be involved in a collision with a truck bearing registration no. MP 063186 (the truck). In the car, besides the driver/owner, members of his family including wife Sangita Arora and minor son Lakshya Arora were also travelling. As a result of the collision all three of them suffered injuries and died in the consequence.

3. It appears that three accident claim petitions came to be preferred one of which concerned the death of Rajiv Arora. Though inquiries were made of the

parties with regard to the status of the said case, the learned counsel for the appellant (National Insurance Company Ltd.) and for the fourth respondent (United India Insurance Company Ltd.) who only are participating in the hearing on these appeals expressed ignorance. Be that as it may, the two appeals at hand relate to the claim petitions which were preferred on account of deaths of Sangita Arora (38 years old) and Master Lakshya Arora (3 years old).

4. Before proceeding further, certain basic facts need to be noted. The claim petition concerning death of Sangita Arora (MACT case No. 80/2009) was preferred for and on behalf of Nidhi Arora (10 years old daughter), Kshitij Arora (8 years old son), Rakesh Arora (father-in-law) and Maya Rani (mother-in-law). The latter two claimants (father-in-law and mother-in-law), however, died before proceedings before the tribunal could conclude and, thus, their names were deleted from the array of parties. The claim case on account of death of master Lakshya Arora (MACT case No. 81/2009) was preferred simultaneously, again for and on behalf of Nidhi Arora and Kshitij Arora, they being the elder siblings of the deceased.

5. In both the claim cases, as initially presented on 15.04.2000, National Insurance Company Ltd. was impleaded as the solitary respondent with clarificatory remarks to the effect that Rajiv Arora, the driver (also the registered owner and insured in respect of the vehicle) had died, the insurance company having admittedly issued an insurance policy covering third party risk in respect of the car for the period in question in his name. In the original pleadings, it was merely stated that the car had met with an accident resulting in death of six persons which would include three above mentioned members of the same family. Both the petitions (with which one is concerned in these appeals) invoked the special provision contained in Section 163-A of the MV Act praying for award of compensation.

6. The two claim petitions were amended in May, 2004 whereby Raj Singh, (the owner of the truck) and M/s United India Insurance Company Ltd. (the insurer of the truck) were also impleaded as parties (second and third respondents in the respective cases) with pleadings added to the effect that the accident had occurred due to collision between the car and the truck and, therefore, all the three respondents (which would now include the insurer of the car, the owner of the truck and statedly the insurer of the truck respectively) were liable to pay the compensation under Section 163-A of the MV Act. Later, by similar amendments incorporated in October 2005, Saravjeet Singh, son of Raj Singh described as the driver of the truck, was also added as a party (fourth respondent in each case before the tribunal).

7. In spite of notice, neither the owner (Raj Singh) nor the driver (Saravjeet Singh) of the truck, appeared before the tribunal and they, thus, were set ex-parte. It may be added here that the said parties, impleaded as respondents in the appeals at hand (third and fifth respondents respectively), despite notice, have opted to remain away, not putting in any contest whatsoever.

8. The two claim petitions arising out of deaths of Sangita Arora and master Lakshya Arora were clubbed for purposes of inquiry by the motor accident claims tribunal (the tribunal) and resulted in common judgment being passed on 26.03.2010. In the said inquiry, United India Insurance Company Ltd. (the fourth respondent in these appeals) took the position that the document purported to be cover note issued by it in respect of the truck was forged and fabricated. The evidence to this effect adduced during inquiry through Rajiv Lochan Gupta (R3W1), development officer, and Ravi Satija (R3W2) remained unchallenged and the claimants made no effort to otherwise prove the liability of the said insurance company vis-a-vis the truck. The tribunal, while passing the judgment dated 26.03.2010, did not elaborately discuss the evidence to this effect but also did not fasten any liability against United India Insurance Company Ltd.

9. It has been fairly conceded at the hearing on these appeals that in absence of proof as to insurance policy having been taken out in respect of the truck for the period in question, liability to pay compensation on account of use of the truck cannot be placed at the door of any insurance company, including United India Insurance Company Ltd. which resultantly has been rightly exonerated.

10. The tribunal by the impugned judgment found that the deaths of Sangita Arora and master Lakshya Arora had indeed occurred as a result of use of the car which was involved in the accident that took place on 19.1.98 wherein there had been a collision between the said vehicle and the truck. This, per the view taken by the tribunal, brought home the case for compensation under section 163-A of MV Act.

11. The tribunal assessed the compensation in the case of death of Sangita Arora in the sum of Rs. 5,75,0000/- calculating it thus:

Loss of dependency

5,40,000/-

Loss of estate

10,000/-

Loss of love & affection

20,000/-

Funeral expenses

5,000/-

Total

5,75,000/-

12. The compensation payable on account of death of master Lakshya Arora was calculated in the sum of Rs. 3,75,000/-, thus:

Loss of dependency

2,25,000/-

Non-pecuniary losses

75,000/-

Loss of future prospects

75,000/-

Total

3,75,000/-

13. The awards of compensation in both the cases were granted with interest from the date(s) of filing of the petitions till realisation excluding the period of certain delay. The awards in each case were apportioned amongst the two surviving claimants with further directions for protection of the corpus in their interest, inasmuch as both of them were minors at the relevant point of time. The appellant insurance company (insurer of the car) was directed to satisfy the awards in each case.

14. By appeals at hand, the insurer of the car has raised question of law contending that a claim petition under Section 163-A of MV Act could not have been maintained against it since the registered owner/insured of the vehicle himself was the driver and, he having perished, the claim petition by his legal heirs, in effect, is a claim by the insurer against himself, which, it is argued, is incongruous. The submission in the alternative is that if a cause of action could be raised against Rajiv Arora, he being the owner of the vehicle involved in the accident, on account of his death his estate would have become liable and since the liability of the insurance company is essentially to indemnify the insured (or his estate) in terms of Section 149 of MV Act, it cannot be called upon to satisfy the award in absence of the estate of the deceased owner/insured from the array of parties.

15. The special provision as to payment of compensation on structured formula basis was incorporated in the MV Act by insertion of Section 163-A by the amending Act no. 54 of 1994, with effect from 14-11-1994. It reads thus:

"163A. Special provisions as to payment of compensation on structured formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the 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 motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. - For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), 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 or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule".

16. The above-quoted special provision has come up for interpretation in a number of cases. The following observations of a bench of three Hon'ble judges of the Supreme Court in *Deepal Girishbhai Soni & Ors. v. United India Insurance Co. Ltd., Baroda* 1 (2004) 5 SCC 385 in its regard, being instructive, need to be noted:

"41. Section 140 of the Act dealt with interim compensation but by inserting Section 163-A, Parliament intended to provide for the making of an award consisting of a predetermined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The amendment was, thus, a deviation from the common law liability under the law of torts and was also in derogation of the provisions of the Fatal Accidents Act. The Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought to be evolved so as to grant a quick and efficacious relief to the victims falling within the specified category. The heirs of the deceased or the victim in terms of the said provisions were assured of a speedy and effective remedy which was not available to the claimants under Section 166 of the Act.

42. Section 163-A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs. 40,000 having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would

require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

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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.

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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."

17. It is trite that the object underlying a statute must be given effect to by applying the principles of purposive construction. In order to enable it to attain its full effect the purport and object of the statute has to be borne in mind and while interpreting it must be read in its entirety. [High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat (2003) 4 SCC 712 : 2003 SCC 1 (L&S) 565 : JT (2003) 3 SC 50; Indian Handicrafts Emporium v. Union of India (2003) 7 SCC 589; Ameer Trading Corpn. Ltd. v. Shapoorji Data Processing Ltd. (2004) 1 SCC 702 : JT (2003) 9 SC 109 : (2003) 9 Scale 713 and Ashok Leyland Ltd. v. State of T.N. (2004) 3 SCC 1 : (2004) 1 Scale 224.

18. A bare perusal of the provision contained in Section 163-A of MV Act indicates that the issue of negligence is irrelevant in an inquiry into claim for compensation based on structured formula. The very fact that the provision begins with the non-obstante clause ("Notwithstanding anything contained in this Act or any other law for the time being in force or instrument having the force of law?..") shows that it is intended to over-ride all other provisions governing the grant of compensation in claims arising out of death or injuries suffered in a motor vehicular accident due to use of motor vehicle, should the claimant take resort to the special remedy thereby giving up the right to claim under the fault liability ordinarily available under Section 166 of MV Act.

19. Noticeably, sub-section (1) of 163-A envisages the liability to pay such compensation under this provision to be that of the "owner of the motor vehicle or the authorised insurer". Plainly read and understood, the clause leaves no room for doubt that the liability to pay compensation may be fastened against the owner of the motor vehicle which was in "use" at the time of the accident or against its insurer, and not necessarily on each of them. Of course, in the event the motor vehicle is insured, having regard to the provisions laid down in Chapter XI of the Act, the prime liability to pay would eventually shift onto the insurer. But, there is nothing in the language employed to conclude that the liability has to be "joint and several" of both (owner and insurer). The special provision was brought in with the avowed objective of simplifying the procedure. The use of disjunctive clause, in the opinion of this Court, amply indicates that the presence of the owner as a party respondent is not intended to be sine qua non for liability to be placed at the door of the insurer. To put it differently, a claim under Section 163-A can be maintained either against the owner of the motor vehicle or against the insurer, or against both of them, jointly and severally, there being no obligation to implead each of them in case the vehicle is subject to an insurance policy. The choice and prerogative to proceed against a particular party (owner or insurer) is essentially that of the claimant.

20. The argument of the appellant that a claim under Section 163-A made in these two cases on account of deaths of Sangita Arora and master Lakshya Arora is essentially a case by the insured against himself (on the logic that the claimants are legal heirs of the registered owner/insured after his death) cannot be accepted for the simple reason that the claims here - unlike the third case (the fate of which is not known) where the compensation would have been claimed on account of death of Rajiv Arora - are on account of death of a third party. The claim arising out of deaths of Sangita Arora or master Lakshya Arora cannot be construed, by any stretch of argument, to be a case arising out of death of the person insured (owner) as they were persons/entities distinct from the latter (owner/insured). It may be that the two persons who died (namely Sangita Arora and master Lakshya Arora) would have ordinarily stepped into the shoes of Rajiv Arora, upon his death, they being the wife and son respectively and, consequently, his legal heirs. But, the fact remains that they passed away in the same accident at the same time as Rajiv Arora. In the two claim cases with which these appeals are concerned, the claimants, minor daughter and the minor son of deceased owner/insured Rajiv Arora, were before the tribunal, not for seeking compensation for his death but on account of deaths of their mother and junior sibling which, in the facts and circumstances, cannot be construed anything but a third party claim.

21. Technically speaking, the insurance company may be correct in its submission that the estate of Rajiv Arora (the deceased owner/insured) was a necessary party for a claim for compensation under Section 166 MV Act. Further, it may be a correct argument, albeit with reference to Section 149 of MV Act, that the insurer is a proper party on account of its statutory or contractual duty

to indemnify. But, as observed earlier, the special provision contained in Section 163-A does not require, as an unexceptional rule, that the owner (or his estate) be also made a party before the insurer can be called upon to bear the burden under the indemnity clause. Even if, for the sake of arguments, the contention of the insurer (that a claim for compensation cannot be maintained against the insurer even under Section 163-A, unless the insured is also impleaded as a party and found to be liable to compensate) is accepted, in the fact-situation that obtains here, wherein the owner/insured has died, the impleadment of the estate (to be represented by claimants themselves) as a distinct party-respondent would be nothing but an empty formality - a hyper-technical approach which deservedly need not be taken in this benevolent jurisdiction. After all, with the estate in the array as a party-respondent, the claimants then would be participating in the same proceedings (and responding) in two contrasting capacities; one, as the person seeking compensation and, the other on the opposite side of the divide, as one expected to resist or defend. This is unnecessary - rather undesirable.

22. The grievance of the insurance company in these appeals is also that the owner and insurer of the other vehicle involved (truck) has got away without shouldering its responsibility. The accident had occurred due to use of two motor vehicles; one, the car which was insured by the appellant against third party risk and, the other, the truck whose owner (third respondent) had also been impleaded as a party. As noted earlier, the claimants had indeed made a claim for award of compensation against both, i.e. not only the insurer of the car but also the owner of the truck (there being no insurer in its respect, the case about insurance cover by United India Assurance Company Ltd. having failed). The tribunal, for reasons which cannot be fathomed from the impugned judgment, has fastened the liability for payment of compensation in both the cases only against the insurer of the car. The judgment is conspicuously silent as to why the owner of the truck, which vehicle was also in "use" and involved in the accident, also should not bear (or share) the burden.

23. There is nothing in the provision contained in Section 163-A to indicate that the liability is to be fastened under the said special provision against the owner (insured) or insurer of only one motor vehicle. If there are more than one motor vehicles involved, and the accident is shown to have occurred due to use of each of them, it is just and proper that the liability is shared equally by each set of parties (owner and/or insured) of each of such vehicles in equal proportions.

24. For the foregoing reasons, the contention of the insurer of the car that in absence of the owner (or his estate), liability in terms of section 163-A MV Act could not have been fastened on it is rejected but the plea that the liability be apportioned against the owner/insurer of both the vehicles that were involved (i.e. the car and the truck) is upheld.

25. The insurance company also questions the computation of compensation in both the cases submitting that the tribunal has failed to apply the provision

contained in Section 163-A of MV Act strictly in accord with the requirements of the corresponding second schedule to the enactment. It is pointed out that, while calculating the loss of dependency in each case, the need for deduction to the extent of one-third towards personal & living expenses of the deceased persons in terms of first note below the second schedule to MV Act was forgotten. It is also submitted that general damages awarded in the two cases are beyond what is permissible under the said second schedule.

26. On careful consideration of the impugned judgment, and the material on record, this Court finds merit in the grievances raised by the above contentions. The loss of dependency had to be worked out after deduction of one-third towards personal & living expenses. It is at the same time noted that in the case of Sangita Arora, the tribunal wrongly adopted the multiplier of 15. Since she was 38 years, the appropriate multiplier, as per the second schedule to the MV Act, would be 16. As the monthly income was notionally assessed at Rs. 3,000/- per month, upon deduction of 1/3rd, the monthly loss of dependency comes to Rs. 2,000/-. Therefore, in her case, compensation for loss of dependency under Section 163-A comes to $(2,000 \times 12 \times 16)$ Rs. 3,84,000/-. Under the structured formula, the non-pecuniary damages cannot be in the sums awarded by the tribunal. Thus, the amount of Rs. 2,000/- towards funeral expenses, Rs. 5,000/- towards loss of love & affection and Rs. 2,500/- towards loss of estate (total Rs. 9,500/-) are added. In the result, the total compensation in the case death of Sangita Arora is calculated as $(3,84,000 + 9,500)$ Rs. 3,93,500/-, rounded off to Rs. 4,00,000/-.

27. In the case of death of Master Lakshya Arora, the notional income was assumed at Rs. 15,000/- per annum. Upon deduction of 1/3rd towards personal & living expenses, the annual loss would be Rs. 10,000/- and the total loss of dependency in the case comes to $(10,000 \times 15)$ Rs. 1,50,000/-. Adding the non-pecuniary damages as in the other case, the total compensation payable in case of master Lakshya Arora comes to $(1,50,000 + 9,500)$ Rs. 1,59,500/-, rounded off to Rs. 1,60,000/-.

28. It is noted that the tribunal had awarded interest at 7.5% per annum. Following the consistent view taken by this Court [see *Oriental Insurance Co. Ltd. v. Sangeeta Devi & Ors.*]), the rate of interest is increased to 9% per annum. It shall be levied from the date of filing of the petition till realization.

29. In view of the findings on facts recorded in these cases and the conclusions reached above, it is directed that the burden of payment of compensation in both claims shall be shared equally by the insurer of the car (the appellant) and the owner of the truck (third respondent Raj Singh).

30. The awards in the above-mentioned two claim cases are modified accordingly.

31. By order dated 08.10.2010 in MAC Appeal No. 674/2010, the insurer of the car had been directed to deposit the entire awarded amount with the Registrar General of this Court within the period specified and upon the deposit so made,

50% was allowed to be released to the claimants. By similar order dated 11.11.2010 in MAC Appeal No. 685/2010, the insurer of the car had been directed to deposit the entire awarded amount with the Registrar General within the period specified whereupon 50% thereof was allowed to be released to the claimants. The balance of the said deposited amounts in each case is stated to be lying with the Court.

32. The Registrar General shall calculate the amounts payable to the claimants in each case in terms of the awards modified as above and release the balance as per their respective shares to each of them from out of the deposits made by the insurer of the car, refunding the excess lying in deposit(s) with statutory amounts, if paid, to the insurer. In case the deposit made is found to be insufficient, the insurer of the car shall be obliged to make good the deficiency by requisite deposit(s) with the Registrar General within 30 days whereupon the same shall also be similarly dealt with.

33. After having satisfied the awards (as modified above) in each of these cases, the insurer of the car (the appellant) shall be entitled to take out appropriate proceedings before the tribunal to recover, in accordance with law, fifty percent (50%) of the amounts (inclusive of proportionate interest) paid to the claimants from the owner of the truck (third respondent Raj Singh) in each case.

34. The appeals are disposed of in above terms.