
(2010) 05 DEL CK 0010
In the Delhi High Court
Case No : Mac App 112 of 2010

National Insurance Co. Ltd.		APPELLANT
	Vs	
Nirmal Kaur and Others		RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0010

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Pradeep Gaur and Amit Kumar Pandey, for the Appellant; B.S. Randhawa, for R-1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—The present appeal has been filed by insurance company assailing an award dated 10th November 2009 passed by learned Tribunal whereby the learned Tribunal granted compensation of Rs. 6,30,000/- with interest @ 7.5 per annum to the claimants.

2. The sole ground of assailing the award is that the claim petition was converted at the request of claimants from one u/s 166 and 140 to Section 163A of Motor Vehicles Act. However, while awarding compensation, the Tribunal has given a complete go-by to Section 163A of the said Act and calculated compensation in accordance with Section 166 of the Act. It is submitted that u/s 163A of the Act, the maximum annual income of a person can be taken as Rs. 40,000/- and compensation can be awarded only in accordance with Schedule specifically made u/s 163A and compensation cannot be awarded taking into account any other parameters.

3. There is no dispute that the claim petition initially filed u/s 166 and 140 was converted u/s 163 and for this reason the learned Tribunal observed that the issue as to whether the offending vehicle was rash and negligent need not be gone into. However, while calculating compensation, the learned Tribunal took

monthly salary of deceased as Rs. 4,906.5/- and applied every parameters as laid down in Smt. Sarla Verma v. Delhi Transport Corporation 2009 ACJ 1298. The Tribunal also awarded Rs. 50,000/- towards love and affection, Rs. 5,000/- towards loss of estate and Rs. 25,000/- towards funeral expenses. Thus, the Tribunal awarded total amount of Rs. 6,30,000/- to the claimants.

4. The Supreme Court in The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., , observed as under:

14. ...It is also apparent that compensation payable u/s 163A is almost based on relevant criteria for determining the compensation such as annual income, age of the victim and multiplier to be applied. In addition to the figure which is arrived at on the basis of said criteria, schedule also provides that amount of compensation shall not be less than Rs. 50,000/-. It provides for fixed amount of general damage in case of death such as (1) Rs. 2000/- for funeral expenses (2) Rs. 5000/- for loss of consortium if beneficiary is the spouse (3) Rs. 2400/- for loss of estate (4) for medical expenses supported by the bills, voucher not exceeding Rs. 15000/-. Similarly, for disability in non-fatal accident para 5 of the Schedule provides for determination of compensation on the basis of permanent disability. Para 6 provides for notional income for those who had no income prior to accident at Rs. 15000/- per annum. There is also provision for reduction of 1/3rd amount of compensation on the assumption that the victim would have incurred the said amount towards maintaining himself had he been alive.... However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs. 40,000/- which is the highest slab in the Second Schedule which indicates that the legislature wanted to give benefit of no fault liability to a certain limit. This would clearly indicate that the scheme is in alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay compensation without there being any long drawn litigation on an predetermined formula, which is known as structured formula basis which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away.

5. Section 163A itself is very clear that compensation under this Section has to be granted as indicated in Second Schedule to the legal heirs and victims. The Second Schedule is a part of Section 163A and cannot be ignored and could not have been ignored by the Tribunal. It is categorically stated in Second Schedule that the amount of compensation arrived at on the basis of this Table has to be reduced by 1/3rd which the victim would have incurred towards maintaining himself had he been alive. I, therefore, consider that the Tribunal went wrong when the Tribunal took into consideration the income of deceased more than Rs. 40,000/- per annum and calculated damages as per this income. The Second Schedule provides the scale of general damages as well. The Courts are bound by Second Schedule and cannot grant damages more than the statutory damages.

6. In view of specific provisions of Section 163A, I find that the award passed by the Tribunal needs to be modified. Even if the maximum income of deceased is taken as Rs. 40,000/- per annum since the mother of deceased was aged 43 years, a multiplier of 15 would apply in accordance with Second Schedule. Thus, the total compensation payable to claimants would be Rs. 40,000 X 15 = Rs. 6,00,000/-. Out of this, 1/3rd has to be deducted for his personal expenses in terms of Second Schedule and also as per Smt. Sarla Verma's case (supra). Thus, the compensation awardable to the claimants would have been Rs. 4,00,000/-. To this, general damages were to be added as Rs. 5,000/- towards funeral expenses. No amount could be awarded towards consortium, since the claimant was not the spouse but the mother. However, Rs. 2500/- towards loss of estate were grantable. No other general damages could have been considered by the Tribunal. Thus, the total amount payable would be Rs. 4,07,500/- along with interest @ 7.5% as against the amount awarded by the Tribunal. Out of this amount, interim compensation, if already received by the claimants has to be reduced.

7. The award of Tribunal is modified. The claimant would be entitled Rs. 4,07,500/- with 7.5% simple interest.

8. The appeal is allowed to above extent.