

(2007) 11 KAR CK 0026
In the Karnataka High Court
Case No : M.F.A. No. 6627 of 2007

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Gurumallamma and Amithabh Nahata

RESPONDENT

Date of Decision : 19-11-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163 A

Citation : (2008) ACJ 1116 : (2008) ILR (Kar) 996 : (2008) 6 KarLJ 160

Hon'ble Judges : V.G. Sabhahit, J;Jawad Rahim, J

Bench : Division Bench

Advocate : A.N. Krishna Swamy, for the Appellant; G.K. Sreevidya, for T.N. Vishwanatha, for C/R1, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal by the insurance company is directed against the judgment and award passed by " the XVI Addl. Judge & Member, M.A.C.T. Bangalore City, in M.V.C. 982/06 dated 29.11.2006, being aggrieved by the passing of the award under the Section 163-A of the Motor Vehicles Act (hereinafter referred to as the Act, for short) and awarding compensation of Rs. 4,68,300/- with simple interest at 6% p.a. from the date of petition till the date of realisation.

2. We have hoard the learned Counsel for the appellant and the learned Counsel for the respondent.

3. The learned Counsel for the appellant-insurance company submitted that the claim petition is filed by the mother of one Nagaraj who died due to injuries sustained in a motor accident that occurred on 14.12.2005 while he was travelling in an autorickshaw bearing No. KA-05-A-4240 due to rash and negligent driving of a car bearing No. KA-02-And-4605. The petition was filed u/s 163-A of the Act. The learned Counsel submitted that the order sheet shows that the petition was filed u/s 166 of the Act and not u/s 163-A, and the Tribunal was not justified in taking the age of the deceased as 22 years; according to him, the

Tribunal ought to have taken the age of the claimant-mother which is 40 years, while ascertaining loss of dependency as per Second Schedule for calculating compensation in a petition filed u/s 161-A of the Act.

4. In support of his contentions, the learned Counsel for the appellant-insurance company has relied on the decision of the Hon'ble Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, wherein the Hon'ble Supreme Court, while deciding the said case on 6.1.1993, held that the age of the claimant or deceased whichever is higher has to be taken into account. It is further submitted that in the case of Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, , the Hon'ble Supreme Court has held in paragraph 49 as follows:

Decisions rendered by this Court are galore where computation as regard the amount of compensation has been related to multiplier method involving ascertainment of loss of dependency and capitalising the same by appropriate multiplier. The structured formula provided for in the Second Schedule also provides for similar concept as regard determination of the amount of compensation.

The learned Counsel relied on the observations made by the Hon'ble Supreme Court in Deepal Soni's case and submitted that the observations made in Susamma Thomas's case have been approved by the Supreme Court in Deepal Soni's case, and therefore, the age of the claimant or victim, whichever is higher has to be taken into account for calculating compensation in a petition u/s 163-A of the Act, though it is under the structured formula as per the Second Schedule to the Act.

5. The learned Counsel for the appellant relied on another decision of the Hon'ble Supreme Court in H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another, . wherein also the Hon'ble Supreme Court has laid down that the age of the claimant or deceased, whichever is higher, has to be taken for the purpose of selecting the appropriate multiplier for ascertainment of loss of dependency.

6. On the other hand, the learned Counsel for the respondent submitted that the petition was filed u/s 163-A of the Act and compensation has been awarded as per the structured formula under the Second Schedule to the Act, and the age of the victim-deceased has to be taken into account and not the age of the claimant. Therefore, she contends that the judgment and award does not call for interference in this appeal.

7. We have considered the contentions of the learned Counsel for the parties in the light of the decisions relied on by the learned Counsel for the appellant.

8. The only point for determination in this appeal with regard to the contentions urged are:

In a petition filed u/s 163-A of the Act by the mother of the deceased, the age of the victim or that of the mother has to be taken into account for arriving at compensation on a structured formula as per the Second Schedule to the Act

9. We answer the point by holding that the age of the victim and not of the claimant has to be taken into account while awarding compensation on the basis of the structured formula under the Second Schedule to the Act in a petition filed u/s 163-A of the Act, for the following reasons:

REASONS

10. The decision relied on by the learned Counsel for the appellant in SUSAMMA THOMAS'S case was decided on 6.1.1993 and the provisions of Section 163-A of the Act and Second Schedule has been introduced by Act No. 54/1994 with effect from 14.11.1994. Therefore, the observations made by the Hon'ble Supreme Court in SUSAMMA THOMAS'S case with reference to award of compensation on the basis of structured formula under the Second Schedule to the Act in a petition filed u/s 163-A of the Act. The decision relied on by the learned Counsel in DEEPAL SONI's case is also not helpful to substantiate the contention that the age of the victim-deceased of the claimant, whichever is higher, has to be taken into account in calculation of compensation to be awarded under the structured formula under the Second Schedule to the Act, in a petition filed u/s 163-A of the Act. When the provisions of Section 163-A of the Act and Second Schedule have come into effect from 14.11.1994 by Act No. 54/1994, the question of taking the multiplier on the basis of age of the deceased victim or the claimant does not arise, and compensation has to be awarded on the basis of Second Schedule to the Act.

11. In the case of DEEPAL SONI, the Hon'ble Supreme Court has enumerated the legislative history of Section 163-A of the Act and has held that it has overriding effect and provides for special provisions as to payment of compensation on a structured formula. Sub-section (1) of Section 163-A contains a non-obstante clause in terms of which an owner of a motor vehicle or the authorised insurer is liable to pay, in the case of 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. Sub-section (2) of Section 163-A is in pari materia with Section 163(3) of the Act. In paragraph 47 of the said judgment, it is held that: 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 of the Act." Therefore, the decision in DEEPAL SONI's case clearly lays down that after the introduction of structured formula u/s 163-A and Second Schedule to the Act, compensation has to be awarded as per Second Schedule in an application filed u/s 163-A of the Act.

12. The decision relied on by the learned Counsel for the appellant in AHAMMED HUSSAIN's case is also not helpful in the present case as there is nothing to show in the said decision that applications were filed u/s 163-A of the Act. The learned Counsel is unable to point out that the petition filed in the said case was u/s 163-A and reference made is in respect of selection of appropriate multiplier with reference to the Schedule to the Act. It is well known that even in cases filed u/s 166 of the Act, it is a guide for choosing appropriate multiplier. Therefore, it is clear that the decisions relied on by the learned Counsel for the appellant are not helpful to him in the present case.

13. On the other hand, it is clear from the provisions of Section 163-A of the Act and the observations made by the Hon'ble Supreme Court referred to above that Sub-section (1) of Section 163-A contains a non-obstante clause which provides for awarding compensation in a structured formula as per the Second Schedule to the Act, in respect of fatal accidents and subsections (4) and (5) of Section 163-A deal with awarding compensation in case of personal injury cases, and disability in a non-fatal accident case has to be calculated with reference to the note therein. Therefore, it is clear that the multiplier referred to in the Second Schedule is in respect of ascertaining compensation payable on a structured formula in an application filed u/s 163-A of the Act in a fatal accident and the age of the victim is taken as the criterion for deciding the multiplier. The Full Bench decision of this Court in *Guruanna Vadig and Anr. v. General Manager, K.S.R.T.C.* 6 Ors. M.F.A. 5377/97 disposed of on 10.4.2001) has held that in a petition filed u/s 163 of the M.V. Act, the court cannot apply a multiplier lower than the one permitted under the Second Schedule on the basis of age of the claimants. Therefore, the contention of the learned Counsel for the appellant that the age of the victim or claimant, whichever is higher, has to be taken into account for ascertaining compensation under the Second Schedule to the Act, cannot be accepted as the same would amount to violating the provisions of Second Schedule to the Act, in a fatal accident case.

14. Accordingly, we find no merit in the contention of the learned Counsel for the appellant and answer the point against the appellant.

15. In the result, we pass the following order:

ORDER

The appeal is dismissed. The amount deposited by the appellant shall be transmitted to the Tribunal for disbursement as per the terms of the award.