
(2003) 03 AHC CK 0167
In the Allahabad High Court
Case No : F.A.F.O. No. 528 of 2003

National Insurance Co. Ltd.	Vs	APPELLANT
Urmila Devi and Others		RESPONDENT

Date of Decision : 04-03-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 167

Citation : (2004) ACJ 1507 : (2003) 5 AWC 3776 : (2003) 97 FLR 530 : (2003) 3 LLJ 178

Hon'ble Judges : S.P. Srivastava, J;M.P. Singh, J

Bench : Division Bench

Advocate : Arvind Kumar, for the Appellant; B.P. Verma, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Heard the learned counsel for the Insurer-appellant and Shri B.P. Verma, learned counsel for the claimants-respondents.

2. The appellant has filed the present appeal u/s 173 of the Motor Vehicles Act feeling aggrieved by the award of an amount of Rs. 4,08,000 determined as just compensation which the dependants of the deceased Shyamvir Singh @ Pappu were found entitled to on account of his untimely death in an accident involving the offending motor vehicle. The deceased Shyamvir Singh @ Pappu was claimed to be the cleaner-driver of the offending motor vehicle which had been insured by the appellant covering the risk.

3. It may be noticed that the application filed by the dependants of the deceased Shyamvir Singh @ Pappu had been filed u/s 163A of the Motor Vehicles Act.

4. The Motor Accident Claims Tribunal vide the impugned judgment and award after carefully considering the evidence brought on record by the parties, had come to the conclusion that on the date of the death Shyamvir Singh @ Pappu was aged about 34 years. It was also found that untimely death of Shyamvir Singh @ Pappu had been caused on account of the accident involving the motor

vehicle which was insured by the present appellant covering the risk. The Tribunal returned a finding against the appellant holding that the deceased was having an income of Rs. 3,000 per month. After calculating the amount of dependency excluding 1/3 of the amount of Rs 3,000 which was found to have been spent by the deceased on himself the annual dependency was held to be Rs. 24,000 per annum. Applying the multiplier of 17, the Tribunal came to the conclusion that the dependants of the deceased were entitled to an amount of Rs. 4,08,000 as compensation which was just.

5. Learned counsel for the appellant has strenuously urged that taking into consideration the nature of the pleadings it was apparent that the deceased had been claiming the compensation on the ground that the deceased had met his death while in the course of employment and consequently the provisions contained in the Workmen's Compensation Act were attracted. The contention is that in such a situation the amount of compensation cannot exceed the amount which a workman can get in the proceedings under the Workmen's Compensation Act.

6. Learned counsel for the claimants-respondents, however, has urged that the Insurer had issued a policy covering the risk after taking a large amount of premium. The learned counsel for the claimants-respondents has produced the cover note issued by the present appellant as well as the insurance policy which shows that an amount of Rs. 4,706 was accepted as premium by the Insurer. This premium covered the risk of both driver and cleaner. It is further urged that there is no provision under the Motor Vehicles Act which can restrict the award of compensation to an amount as admissible under the provisions of the Workmen's Compensation Act.

7. The provisions contained in Section 167 of the Motor Vehicles Act stipulate that notwithstanding anything contained in the Workmen's Compensation Act, 1923 where the death of or bodily injury to, any person gives rise to a claim for compensation under Motor Vehicles Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. It is, therefore, obvious that the option is left to the person entitled to compensation to choose whether he would seek the remedy available under the Motor Vehicles Act or the Workmen's Compensation Act. The provisions contained in Section 168 of the Motor Vehicles Act stipulate that Motor Accident Claims Tribunal has to determine the amount of compensation which appears to it to be just.

8. In the present case the application seeking compensation had been filed specifically u/s 163A of the Motor Vehicles Act. The provisions contained in Section 163A indicates that notwithstanding anything contained in Motor Vehicles 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 authorized 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. The use of the non-obstante clause in Section 163A of the Motor Vehicles Act is quite significant. It shows that the amount of compensation determined in the proceedings under the Motor Vehicles Act which ought to be just cannot be limited to any amount as specified in the Workmen's Compensation Act as the amount contemplated u/s 163A of the Motor Vehicles Act has to be determined notwithstanding anything contained in any other law for the time being in force.

9. In the aforesaid circumstances it is obvious that the jurisdiction of the Motor; Accident Claims Tribunal could not be taken to be abridged or limited in any manner by the provisions contained in the Workmen's Compensation Act.

10. Learned counsel for the claimants-respondents in support of his submissions has placed reliance upon a decision of the Apex Court in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, The aforesaid case also involved a controversy in regard to the claim raised by a workman who had died in the course of employment as a driver of a motor vehicle and the application seeking compensation had been filed under the provisions of Section 163A of the Motor Vehicles Act.

11. The Apex Court in the aforesaid decision in the case of Smt. Rita Devi (supra) reversing the decision of the High Court had upheld the decision of the Motor Accident Claims Tribunal allowing the application of the dependants of the deceased.

12. The ratio of the aforesaid decision also indicates that the jurisdiction of the Motor Accident Claims Tribunal while determining the just compensation is not limited or abridged by the provisions of the Workmen's Compensation Act.

13. There is yet another aspect of the matter which cannot be lost sight of. In the present case the Insurer had not obtained the permission envisaged u/s 170 of the Motor Vehicles Act. The contention of the learned counsel for the claimant-respondent is that his application had been filed for the purpose but had been rejected. A perusal of the memo of appeal indicates that the Insurer has not challenged the order denying permission u/s 170 of the Act. In fact there is no such grievance raised.

14. In the absence of the requisite permission u/s 170 of the Motor Vehicles Act, the claim of the Insurer-appellant against the quantum of compensation determined by the Motor Accident Claims Tribunal is not sustainable in law and this aspect of the matter stands amply clarified from the observations made by the Hon'ble Supreme Court in its decision in Civil Appeal No. 4292 of 2002, National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, The ratio of the aforesaid decision stands squarely attracted in the circumstances of the present case.

15. The learned counsel for the appellant has tried to assail the findings returned

by the Motor Accident Claims Tribunal against it but has not been able to demonstrate that the said findings can be taken to be suffering from any such legal infirmity which may justify an interference by this Court. These findings are amply supported and warranted by the evidence and the material brought on record.

16. This appeal is devoid of merit which deserves to be and is hereby dismissed.

17. The amount of Rs. 25,000/- deposited in this Court by the appellant u/s 173 of the Motor Vehicles Act be remitted to the Motor Accident Claims Tribunal concerned within one month from the date an application is filed by the appellant for the purpose so that it may be adjusted against the amount required to be deposited under this order.