
(2012) 02 DEL CK 0044
In the Delhi High Court
Case No : MAC. APP. 863 of 2011

National Insurance Company

APPELLANT

Vs

Bhagwati and Ors

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A

Citation : (2012) 02 DEL CK 0044

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : S.L. Gupta with Mr. Ram Ashray, for the Appellant; Anshuman Bal, Advocate for Respondents No. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—In a Petition u/s 163-A of the Motor Vehicles Act filed by the Respondents No.1 to 4, compensation of Rs. 4,78,750/- was awarded. The income of the deceased Darshan Singh was alleged and accepted by the Tribunal as Rs. 39,000/- per annum. He was alleged to be 30 years old, but his age was accepted as 40 years.

2. The grievance of the Appellant National Insurance Company is that in a Petition u/s 163-A, there has to be deduction of 1/3 towards personal living expenses. Grant of non-pecuniary damages is limited to Rs. 9,500/- only.

3. It is submitted by the learned counsel for the Respondents No.1 to 4 that the deceased was survived by two minor children and, therefore, the award of compensation cannot be faulted. I would not agree. In a Petition filed u/s 163-A of the Motor Vehicles Act, the compensation has to be awarded as per the structured formula given in the II Schedule. I am supported in this view by the reports of the Supreme Court in The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., , Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, and The Oriental Insurance

Company Limited Vs. Meena Variyal and Others, . In *Oriental Insurance Company v. Hansrajbhai V. Kodala* (supra), it was held as under:

15. In this context if we refer to the Review Committee's Report, the reason for enacting Section 163-A is to give earliest relief to the victims of the motor vehicle accidents. The Committee observed that determination of cases takes a long time and, therefore, under a system of structural compensation, the compensation that is payable for different classes of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of a minor, loss of income on account of loss of limb etc. can be notified and the affected party can then have option of their accepting "lump sum" compensation under the Scheme of structural compensation or of pursuing his claim through the normal channels. The Report of the Review Committee was considered by the State Governments and comments were notified. Thereafter, the Transport Development Council made suggestions for providing adequate compensation to victims of road accidents without going into long drawn procedure. As per the objects and reasons, it is a new pre-determined formula for payment of compensation to road accidents victims on the basis of age/income, which is more liberal and rational. On the basis of the said recommendation after considering the Report of the Transport Development Council, the Bill was introduced with "a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational", i.e. Section 163-A. It is also apparent that compensation payable u/s 163-A 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, the 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 a 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 an 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. The purpose of this Section and the II Schedule is to avoid long drawn litigation and delay in payment of compensation to the victims or his heirs who are in dire need of relief. If such affected claimant opts for accepting the lump-sum compensation based on structured formula, he would get relief at the earliest. It also gives vital advantage of not pleading or establishing any wrongful act or neglect or default of the owner of the offending vehicle or vehicles. This no-fault liability appears to have been introduced on the basis of the suggestion of the Law Commission to the effect that "the expanding notions of social security and social justice

envisage that liability to pay compensation must be "no-fault liability" and as observed by this Court in Ramanbhai's case (Supra), "in order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents." 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 II 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. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever increasing motor vehicles accidents in a "fast moving" society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided u/s 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on "structured formula" basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles.

4. Following these judgments in New India Assurance Co. Ltd. v. Pitamber & Ors. (MAC.APP. No.304/2009 decided on 23.01.2012) and Pitamber & Ors. v. Nirdosh Kumar & Anr. (MAC.APP. 345/2009 decided on 23.01.2012), this Court has also taken this view. In the circumstances, the loss of dependency would be Rs. 3,90,000/- (39,000 X 2/3 X 15). The award of compensation towards loss of consortium, funeral expenses and loss to estate would be Rs. 5,000/-, Rs. 2,000/- and Rs. 2,500/- respectively. The compensation comes to Rs. 3,99,500/-. The overall compensation is reduced from Rs. 4,78,750/- to Rs. 3,99,500/-. I would not interfere with the award on interest granted by the Tribunal @ 8%.

5. The amount shall be released in favour of Respondents No.1 to 4 in the same proportion as awarded by the Tribunal.

6. The excess amount along with the interest, if any, earned during the pendency of the Appeal shall be refunded to the Appellant National Insurance Company.

7. The statutory amount of Rs. 25,000/- shall also be returned.

8. The Appeal is allowed in above terms.