

(2008) 08 DEL CK 0007

In the Delhi High Court

Case No : MAC App. No. 420 of 2004

National Insurance Company Limited

APPELLANT

Vs

Smt. Rajbala and Others

RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 163A(3), 163B, 166

Citation : (2008) 08 DEL CK 0007

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; Anil Aggarwal and Sanjay Mishra for respondents 1 to 6, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The present appeal u/s 173 of the Motor Vehicles Act, 1988 (for short as the "Act") has been filed by the Insurance Company/Appellant against the award dated 06.08.04 passed by Ms. Neena Bansal Krishna, Judge, Motor Accident Claims Tribunal (for short as the "Tribunal").

2. Brief facts of the case are that on 16.11.001, Sh. Babu Lal was going on a scooter bearing No. DL-7S-E-4657 from his house, Motia Khan to his place of work at Rajinder Nagar Industrial Area. When he was taking turn to enter into the industrial area, the offending vehicle bearing No. UP-14N-5383, being driven by Respondent No. 7 herein, came in a rash and negligent manner from Ghaziabad side and hit the scooter, as a result of the same, Babu Lal fell on the road and sustained grievous injuries. He was taken to Narender Mohan Hospital and thereafter, he was shifted to Guru Teg Bahadur Hospital at Shahadra, where he died on 22.11.01.

3. The claimants i.e. his parents, wife and three children filed the claim petition claiming compensation of Rs. 15,00,000/- along with the interest @ 24% per annum against the Respondent No. 7 being the driver of the offending vehicle,

Respondent No. 8 being the owner of the offending vehicle and the Appellant as the offending vehicle was insured with them.

4. The petition was originally filed under Sections 140 & 166 of the Act but subsequently was converted into u/s 163A of the Act.

5. Respondent Nos. 7 & 8 in their written statement took a preliminary objection that the accident occurred due to rash and negligent act of the deceased himself and thus, they are not liable to pay the compensation.

6. On merits, all averments contained in the petition were denied. It is stated that Respondent No. 7 has been falsely implicated in this case. The deceased himself did not follow the traffic rules and was driving his scooter in a rash and negligent manner at a fast speed and while taking the turn, he could not control himself and hit into the motor cycle of Respondent No. 7.

7. The Appellant in its written statement took the preliminary objections that it is not liable to pay the compensation, if the driver of the offending vehicle was not having a valid licence or if the owner of the vehicle has violated the terms and conditions of the insurance policy.

8. On merits, averments contained in the petition were denied, though it is admitted that the offending vehicle was insured vide policy No. 6203857 and cover note No. 0631242 valid from 23.03.01 to 22.03.02.

9. Vide impugned judgment, the Tribunal awarded the compensation of Rs. 5,07,500/- along with interest @ 9% per annum from the date of filing of the petition till the date of its realization to the Claimants.

10. It has been contended by Ld. Counsel for the Appellant that the claimants had claimed the income of the deceased at Rs. 4,800/- per month in the claim petition and thus, the annual income would be over Rs. 40,000/- per annum. Even the Tribunal, while calculating the compensation, has taken the monthly income of the deceased at Rs. 3,888/- which comes to Rs. 46,656/- per annum. Where the income of the deceased is more than Rs. 40,000/- per annum, the Tribunal has no jurisdiction to pass an award u/s 163A of the Act. Therefore, the proper remedy for the claimants was to claim compensation u/s 166 of the Act.

11. It is further argued that while passing the award u/s 163A of the Act, the Tribunal has to strictly apply the provisions of Second Schedule of the Act without considering the future prospects of the income of the deceased. There was no evidence on record to suggest that the income of the deceased would have doubled in due course. The Tribunal has therefore taken the future income without any basis and mainly on conjectures. Thus, the Tribunal has made a jurisdictional error in the present case and passed an exorbitant award in favour of the claimants and as such the same is bad in the eyes of law and is liable to be set aside.

12. Ld. Counsel for the Appellant has relied upon United India Insurance Co. Ltd.

v. Kaushalya Devi and Ors. III (2007) ACC 105 and Ponnumany alias Krishnan and Another Vs. V.A. Mohanan and Others, in support of its contentions.

13. On the other hand, it is contended by Ld. Counsel for the Respondent that the Tribunal has rightly taken the income of the deceased after applying minimum wages. Further, u/s 163A(3) of the Act, the Central Government may amend the Second Schedule, from time to time keeping in view the cost of living but till date no amendment has taken place. Thus, the Tribunal has rightly awarded the compensation.

14. Ld. Counsel for the Respondent has relied upon Rukmani Devi v. New India Assurance Co. Ltd. and Anr. III (2008) ACC 68 in support of its contentions.

15. Before delving on the contentions raised by the parties, it would be appropriate to reproduce the following provision of the Act so as to properly appreciate the controversy involved in the present appeal.

16. Section 163A of the Act reads as under;

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.

17. In Rukmani Devi (supra), this Court has observed as under;

The provisions with regard to the no fault liability were inserted having regard to the fact that road accidents in India have reached an alarming proportion and in many of the cases it could be noticed that the victims were being deprived of the compensation amount in the absence of proving rash or negligent driving due to inability in producing any independent witness. To come to the rescue of such victims, earlier Section 140 was brought on the Statute book whereby the

provision was made to pay a fixed sum of Rs. 50,000/- (through an amendment by Act 54 of 1994 to substitute the amount of Rs. 25,000/- by Rs. 50,000/-) in respect of the death of any person and a fixed sum of Rs. 25,000/- (through an amendment by Act 54 of 1994 to substitute the amount of Rs. 12,000/- to Rs. 25,000/-) is payable in respect of the permanent disablement of any person on the principle of no fault liability. This right given u/s 140 of the Motor Vehicles Act was in addition to the right to claim compensation in respect of any such death or permanent disablement under any other provisions of Act or of any other law for the time being in force. Section 163-A was introduced in the Act again by way of a social security scheme. It would be evident from the objects and reasons of the Motor Vehicles (Amendment) Act, 1994 that after the enactment of 1988 Act several representations and suggestions were made by the State Governments, transport operators and members of public in relation to certain provisions thereof and after taking note of the said suggestions made by the various Courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a Review Committee. The Review Committee appointed by the Government in its report made the following recommendations:

The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability cases. It also provides for payment of compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31.3.1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as the Insurance Company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different clauses of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels.

The General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for settlement of claims on "fault liability" in respect of third party liability under Chapter XI of M.V. Act, 1988. They have suggested that the claimants should first file their Claims with Motor Accident Claims Tribunals and then the insurers may be allowed six months" time to confirm their prima facie liability subject to the defences available under Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time.

40. The recommendations of the Review Committee and representations from public were placed before the Transport Development Council for seeking their views pursuant where to several sections were amended. Section 163A was inserted in the Act to provide for payment of compensation in motor accident cases in accordance with the Second Schedule providing for the structured formula which may be amended by the Central Government from time to time.

18. Section 163B of the Act reads as under;

163B. Option to file claim in certain cases.

Where a person is entitled to claim compensation u/s 140 and Section 163A, he shall file the claim under either of the said sections and not under both.

19. The embargo u/s 163B of the Motor Vehicles Act gives an option to file claim petition either u/s 140 or u/s 163A and not under both the provisions, but no such restriction has been placed under the Act in choosing either of the two remedies i.e. u/s 166 of the Motor Vehicles Act or u/s 163A of the Motor Vehicles Act. Section 140 of the Act deals with grant of interim compensation, but Section 163A provides for a situation to grant a pre-determined sum without insisting on a long drawn trial or without proof of negligence in causing the accident. The said Section 163A was a kind of new mechanism evolved by the legislature so as to grant quick and efficacious relief to the victims falling within the specified category, which was not available to the victims u/s 166 of the Act.

20. The object of Section 163A and the Second Schedule of the Act is to avoid long-drawn litigation and to avoid delay in payment of compensation to the victim or his heirs who needs urgent relief, and therefore, the Courts have been permitting the claimants to make application u/s 163A of the Act at any stage of the proceedings, so long as no order is passed on the application u/s 140 of the Act.

21. The object with which Section 163A of the Act has been inserted and the non-obstant clause with which Sub-section (1) of Section 163A of the Act commences clearly indicate that the legislature did not intend to prevent the claimant from getting compensation as per the structured formula merely because in his original claim petition he had prayed for compensation on the basis of "fault liability" principle. There is no prohibition in any provision of the Act against the claimant praying for compensation as per the structured formula after his having filed a claim petition u/s 166 of the Act.

22. Remedy for payment of compensation both under Sections 163A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies there under simultaneously. One thus, must opt/elect to go either for a proceeding u/s 163A or u/s 166 of the Act, but not under both.

23. In the facts of the present case, the Claimants earlier filed claim petition u/s 166 and 140 of the Act and later on converted the same petition into u/s 163A of

the Act. The same was not challenged by the Appellant.

24. As regard the contention to the income of the deceased, Respondent No. 1 i.e. Rajbala as PW2 has deposed that her husband was working as supervisor in R.C. Fabricator at Rajinder Nagar Industrial Area, Mohan Nagar, Sahibabad (U.P.) and was earning Rs. 4,800 per month and was contributing Rs. 4,000/- per month towards the house hold expenses. The salary certificate is Ex.PW2/1.

25. However, during her cross-examination, she has stated that she does not know the name of the company where the deceased was working. She also does not know the nature of the job.

26. The salary certificate has been produced by PW2, but the same has not been proved sufficiently in her evidence. Thus, in the absence of any evidence, the tribunal has rightly taken the income of the deceased at Rs. 2,592/- per month under the Minimum Wages.

27. Thereafter, the Tribunal took into consideration the future prospects of the deceased and assessed the income as Rs. 3,888/- p.m., keeping in view the principles laid down in Smt. Sarla Dixit and another Vs. Balwant Yadav and others,

28. Now the question arises for consideration is that when the income of the deceased would come over Rs. 40,000/- per annum, can the Tribunal pass award u/s 163-A of the Act or not?

29. As regards grant of compensation in all cases u/s 163-A of the Act, the same is payable as indicated in the Second Schedule of the Act to the legal heirs of the victim or to the victim of the accident itself, as the case may be. The Second Schedule of the Act places restriction at Rs. 40,000/- per annum while no such restriction is there u/s 166 of the Motor Vehicles Act. But restriction of Rs. 40,000/- per annum as indicated in the Second Schedule of the Act cannot also be taken as a cap as the government has failed to revise the structured formula of the Second Schedule of the Act as mentioned by Section 163A(3) of the Act.

30. Section 163A(3) of the Act provides that the Second Schedule of the Act is to be revised from time to time keeping in view the cost of living by an appropriate notification in the official gazette by the Central Government but since the time of its insertion w.e.f. 14.11.1994, no revision has taken place even after lapse of about more than 13 years.

31. Since the criteria of revision is based on the cost of living, therefore, the Tribunal has rightly held;

The deceased was around 38 years old at the time of his death. His income would have been doubled during his life time and would have become Rs. 5,184/- p.m. The average monthly income of the deceased could, thus, be calculated by adding Rs. 5,184/- to Rs. 2,592/- which comes to Rs. 7,776/- and dividing by 2 which comes to Rs. 3,888/- p.m. the deceased spent at least 1/3rd

of the income on his own expenses i.e. about Rs. 1,296/- would have been spent by him over on himself which is liable to be deducted from his monthly income of Rs. 3,888/-. The monthly loss of income to the family could, thus, be calculated as Rs. 2,592/- p.m. or Rs. 31,104/-p.a.

32. Here, the Appellant Counsel has argued on the merits of the case also with regard to the future prospects but, admittedly no permission u/s 170 of the Act was obtained by the Appellant from the Tribunal and as such Appellant is barred from raising plea with regard to quantum and merits of the claim in the present proceedings during the course of appeal.

33. Under these circumstances, the judgments cited by Learned Counsel for the Appellant are not applicable to the facts of the present case.

34. So, in view of the above discussion, I do not find any infirmity or illegality in the impugned judgment passed by the Tribunal. The compensation awarded by the Tribunal is just, fair and equitable.

35. Accordingly, the present appeal filed by the Appellant is hereby dismissed.

36. Trial Court record be sent back.