
(2014) 08 GAU CK 0047
In the Gauhati High Court
Case No : MAC No. 7(K) of 2011

National Insurance Company Ltd.

APPELLANT

Vs

Lakshmi Thapa and Others

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163-A, 166, 173, 95(1)(b)(i)

Citation : (2015) 2 ACC 91 : (2016) ACJ 111 : (2014) 5 GLT 691

Hon'ble Judges : M.R. Pathak, J

Bench : Single Bench

Advocate : Imti Imsong, Repenthung and Anungla Jamir, Advocates for the Appellant; T.B. Jamir, Sungtila, Tiakumla, Kivi, Suyie, Vika, Asen, T. Nisa and P. Phosekho, Advocates for the Respondent

Judgement

M.R. Pathak, J.—The appellant, the National Insurance Company Limited, represented by its Branch Manager, Dimapur Branch, Nagaland has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (MV Act, in short) against the Judgment & Award dated 25.05.2011 passed by the learned Member, Motor Accident Claims Tribunal, (MACT, in short) Dimapur in M.A.C. Case No. 83 of 2008 allowing the claim petition of the claimants/respondent Nos. 1 to 4 herein, awarding Rs. 5,53,500/- as total compensation, directing the appellant Insurance Company to deposit the said awarded amount by cheque within 30 days from the date of passing the said judgment & award, in default further directed the said appellant Insurance Company to pay interest @ 9 % per annum on the said awarded amount of Rs. 5,53,500/- from the date of filing of the claim application by the claimant/respondents No. 1 to 4 before the Tribunal i.e. from 24.04.2008 till such payment is made. The brief facts of the case is that the respondent No. 5 is the owner of a Tata Indica Vehicle bearing Registration No. AS-01-AE-3777 insured with the appellant insurance company. On 29.11.2007 at about 04:00 P.M., she sent her authorized & engaged driver; one Bal Bahadur Thapa with her said Tata Indica vehicle to the local market at Diphu for purchasing household items and during such circumstances, some unidentified

miscreants took away her said Tata Indica vehicle with her said authorized driver. The respondent No. 5, the insured owner of the vehicle duly informed the said incident to the police concerned as well as appellant insurance company. Later, her said driver was killed in the process and the unidentified miscreants committed theft of her said Tata Indica vehicle, which is yet to be recovered and police subsequently recovered the body of her said driver at Dhing of Nagaon District, Assam.

2. The respondent No. 1, wife of the deceased driver on her behalf, on behalf of the respondent No. 2, Master Raju Thapa, being the legal representative of their minor son and on behalf of the respondent Nos. 3 & 4, namely, Mrs. Renu Thapa & Mr. Ram Bahadur Thapa, the parents of the said deceased driver respectively filed a claim petition under Section 163-A of the MV Act being the M.A.C. Case No. 83/2008 before the Member, MACT, Dimapur, Nagaland claiming compensation for the death caused to the deceased driver Bal Bahadur Thapa in an accident arising out of the use of the said Tata Indica motor vehicle bearing Registration No. AS-01 -AE-3777. In support of her claim the respondent No. 1 along with the said claim petition submitted the police report, post mortem report of the deceased driver, copy of the FIR etc. The respondent No. 5, insured owner of the said Tata Indica vehicle in her statement before the Member, MACT, Dimapur stated that on the date of the incident i.e. on 29.11.2007 her said vehicle was insured with the appellant National Insurance Company Limited and her said vehicle had all the requisite documents. She also stated that on the said date her said vehicle was driven by her paid, authorized & engaged driver Bal Bahadur Thapa, i.e. the deceased driver, who was in possession of valid & effective driving license.

3. The learned Member, MACT, Dimapur framed following seven issues towards adjudication of the said claim which are as follows:-

- (1) Whether the claim is maintainable in the present form?
- (2) Whether the vehicle bearing Registration No. AS-01-AE-3777 (Indica Car) was plying in contrary to the terms and conditions of the insurance policy and is the insured liable for breach of contract and the insurer to be exonerated from liability?
- (3) Whether the deceased namely, Bal Bahadur Thapa died while discharging his duty as paid driver in an accident arising out of the use of motor vehicle?
- (4) Whether the deceased was 22 years of age and was a driver by profession and earning Rs. 4,000/- per month as salary?
- (5) Whether the vehicle was possessing all valid and effective documents as required by the Motor Vehicle Act and was the driver having valid and effective driving license at the material time of accident?
- (6) Whether the tribunal have jurisdiction to adjudicate the claim?

(7) Whether the claimant is entitled to any compensation? If, so what amount and payable by whom?

4. The tribunal after deciding all the aforesaid issues held that the deceased was the employee of the insured i.e. the respondent No. 5 and was the authorized driver of her Tata Indica vehicle bearing Registration No. AS-01-AE-3777 being duly insured at the relevant time with the appellant Insurance Company who is statutorily liable to pay the compensation under the provision of 163-A of the MV Act and the claimants, the respondent Nos. 1 to 4 herein are entitled to compensation payable by the appellant Insurance Company. The tribunal while determining the award amount of Rs. 5,53,500/- under Section 163-A of the MV Act in its impugned judgment & award dated 25.05.2011, used the multiplier 17 considering the age of the deceased driver as 22 years, as reflected in his Driving License and his monthly income @ Rs. 4000/- per month as stated by the respondent No. 5, owner of the vehicle who engaged and paid the said deceased driver.

5. The appellant insurance company filed mis appeal amongst others on the following counts:-

(i) That the tribunal passed the impugned judgment apparently on humanitarian consideration swayed by sympathy as the death of the deceased driver was not resulted out of the use of the motor vehicle but purely a murder simpliciter.

(ii) Maintainability of the claim petition under Section 163-A of the MV Act preferred by the respondents/claimants as the alleged annual income of the deceased had exceeded the amount indicated in the 2nd Schedule of the MV Act.

6. Heard Mr. Imti Imsong, learned counsel appearing for the appellant Insurance Company and Ms. Sungtila, learned counsel appearing for the respondents claimants No. 1 to 4. Though notice was served upon the respondent No. 5, she did not appear in the case.

7. Section 163-A of the Motor Vehicle Act, a new provision in the Motor Vehicles Act 1988 inserted by Act 54 of 1994 with effect from 14.11.1994, provides for payment of compensation for the death or injury suffered in a motor vehicle accident on a structured formula basis and reads as follows-

163-A. 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 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.

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.

8. From Sub-Section (1) of the said Section 163-A it is seen that 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 and Sub-Section (2) of the said Section provides that in any claim for compensation under that sub-section, 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.

9. From the said two Sub-Sections of Section 163-A it is clear that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle without having to prove wrongful act or neglect or default of anyone. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation.

10. Though in the present case, the appellant Insurance Company stated that the death of the deceased driver Bal Bahadur Thapa had not resulted out of use of the motor vehicle but purely a murder simpliciter and not caused by an accident arising out of the use of motor vehicle; but from the statements of the respondent No. 5, owner of the vehicle, before the tribunal it is seen that on the fateful day of the incident i.e. on 29.11.2007 afternoon her Tata Indica vehicle bearing Registration No. AS-01-AE-3777 along with her engaged driver Bal Bahadur Thapa was taken away by some unidentified miscreants when she sent her said driver with the vehicle to a local market at Diphu for some household shopping. She also stated that on the date of the incident her said vehicle was insured with the appellant National Insurance Company Limited, her authorized driver was killed in the process, said unidentified miscreants committed theft on her said Tata Indica vehicle which has not been recovered and police recovered the dead body of the deceased driver from Dhing, Nagaon, Assam.

11. In *Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another*, , in a similar circumstances, the Hon"ble Supreme Court of India in paragraphs 10 to 14 and 16 to 18 held as follows:-

10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

11. In *Challis v. London and South Western Railway Company*, (1905) 2 KB 154, the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone willfully dropped on the train by a boy from the bridge, that his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held:

"The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver in other words it arose out of his employment. The argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within me Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the Legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously.

12. In the case of *Nisbet Vs. Rayne and Burn*, (1910) 2 KB 689, where a cashier, while travelling in a railway to a colliery with a large sum of money for the payment of his employers' workmen, was robbed and murdered. The Court of Appeal held:

"That the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of" an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906. In this case the Court followed its earlier judgment in the case of *Challis* (supra). In the case of *Nisbet*, the Court also observed that "it is contended by the employer that this was not an "accident" within the meaning of the Act, because it was an

intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet."

13. The judgment of the Court of Appeal in Nisbet's case (1910 (2) KB 689) was followed by the majority judgment by the House of Lords in the case of Board of Management of Trim Joint District School Vs. Kelly, (1914 AC 667).

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.

16. In the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, this Court while pronouncing on the interpretation of Section 92A of the Motor Vehicles Act, 1939 held as follows (para 12 of AIR):

"Section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose."

17. In that case in regard to the contention of proximity between the accident and the explosion that took place this Court held:

"This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92-A, the casual relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be

connected with the use of me motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Sec. 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment."

18. In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial Court rightly came to the conclusion mat the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

12. Following the aforesaid Judgment of the Hon''ble Apex Court in Rita Devi & Ors. Vs. New India Assurance Company Limited & Anr., in the present case and from the statements of the Respondent No. 5 stated before the Tribunal it is clear that the murder of the deceased driver, Bal Bahadur Thapa is within the word "death due to accident arising out of the motor vehicle" as provided in Section 163-A of the MV Act".

13. The next contention raised by the appellant Insurance Company is that the claim petition under Section 163-A of the MV Act preferred by the claimants respondents No. 1 to 4 herein before the MACT at Dimapur is not maintainable as the said claimants in their claim petition submitted that the deceased driver Bal Bahadur Thapa was employed as a paid driver of the Tata Indica vehicle of the owner the respondent No. 5 and was earning a sum of Rs. 4,000/- per month and that the respondent No. 5 in her statement before the Tribunal also stated that the deceased Bal Bahadur Thapa was the paid driver of her Tata Indica vehicle bearing Registration No. AS-01 -AE-3777 and he was paid a monthly salary of Rs. 4,000/- per month.

14. As per the appellant Insurance Company, accepting Rs. 4,000/- as monthly salary of the deceased driver, his annual income comes to Rs. 48,000/- which is beyond the upper limit of annual income of Rs. 40,000/- as prescribed in the Second Schedule of the MV Act, i.e. the Schedule for compensation for the Third Party Fatal Accidents/Injury Cases Claims applicable for Section 163-A of the Act.

15. The Statement of Objects and Reasons of the Motor Vehicle (Amendment) Act 1994 [Act 54 of 1994] by which Section 163-A was inserted MV Act, 1988 with effect from 14.11.1994 specifies amongst others as follows:

- (i) increase in the amount of compensation of the victims of hit and run cases;
- (ii) removal of time limit for filling of application by road accident victims for compensation;
- (iii) punishment in case of certain offences is made stringent;

(iv) 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.

16. In *Deepal Girishbhan Soni & Ors. Vs. United Insurance Company Limited, Baroda*, three Judges Bench of the Hon'ble Supreme Court reported in *Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda*, has settled the law with regard to Section 163-A of the M.V. Act wherein it held as follows:

42. Chapter XI was, thus, enacted for grant of immediate relief to a section of people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefore. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents make the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in column Nos. 2 to 6 thereof leaves no manner of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

51. The scheme envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000/- or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society.

53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the Court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. (See *Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*, .

67. We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annum shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

17. In view of the aforesaid decision of the Hon''ble Apex Court and discussions made here in above, this Court is of the view that the claim petition of the claimants respondents Nos. 1 to 4 under Section 163-A of the MV Act is not tenable in law as the deceased driver Bal Bahadur Thapa's annual income was Rs. 48,000/- (Rs. 4,000/- X 12), which was beyond the upper limit of annual income of Rs. 40,000/- as provided by the Second Schedule of the MV Act and accordingly, the issue of maintainability of the claim petition preferred by the claimants respondents No. 1 to 4 is decided in favour of the appellant Insurance Company.

18. Before patting with this case, the Court observed that sub-Section 3 of Section 163-A of the M.V. Act provides that - 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. In this regard, the Hon''ble Apex Court in the above noted case of Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, observed as follows:

72. Section 163-A was introduced in the year 1994. The executive authority of the Central Government has the requisite jurisdiction to amend the Second Schedule from time to time. Having regard to the inflation and fall in the rate of bank interest; it is desirable that the Central Government bestows serious consideration to this aspect of the matter.

19. As per the statements of object and reason of the Motor Vehicle (Amendment) Act 1994 [Act 54 of 1994] by which Section 163-A of the M.V Act 1980 was incorporated, it has specifically stated that the said pre determined formula for payment of compensation to road accident victims was on the basis of age and income which was more liberal and reasonable and the said amendment was made on 15.11.1994. From the said period to the date of incident involved in this case i.e. on 29.11.2007, the Central Government had already brought in to force two central pay commissions, i.e. the fifth Central Pay Commission (CPC, in short) with effect from 01.01.1996 and the sixth CPC with effect from 01.01.2006 and already constituted the seventh CPC in September 2013. It is to be noted herein that pay scale of Rs. 750- 940 during the fourth CPC, which was in effect from 01.01.1986 to 31.12.1995 was enhanced to Rs. 2,550-3,200 during the fifth CPC that was in effect from 01.01.1996 to 31.12.2005 and the same was further enhanced to Rs. 4,440 -7,440 with the grade pay of Rs. 1,300 with effect from 01.01.2006 during the sixth CPC.

Similarly, a person who's pay scale was Rs. 2,000-2,120 during the fourth CPC got the pay scale Rs. 6,500-6,900 during the fifth CPC and Rs. 9,300-34,800 with grade pay of Rs. 4,000 during the sixth CPC. Similarly, a person who was in the pay scale of Rs. 2,000-3,500 during the fourth CPC, got the pay scale of Rs. 6,500-10,500 during the fifth CPC and now is in the pay scale of Rs. 9,300-34,800 with grade pay of Rs. 4200 during the sixth CPC.

20. Considering Rs. 40,000 as the annual income under Second Schedule of the MV Act as on 15.11.1994 goes to show that the date when Section 163-A was incorporated in the MV Act, 1988 the incumbent's monthly salary/income was of Rs. 3,333/- which was between Rs. 6,500/- to Rs. 10,500/- during the fifth CPC and presently under the sixth CPC it is Rs. 9,300/- to Rs. 34,000/- with-grade pay of Rs. 4,200. MV Act is a beneficial legislation and though Central Government enhanced the pay scale in the fifth and sixth central pay commission, but till date since the incorporation of Section 163-A on 15.11.1994 in the MV Act 1988, it did not consider to amend the Second Schedule of the said 1988 Act till date through specific observation was made by the Hon'ble Apex Court in the aforesaid judgment reported in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, and various other cases. Had the Central Government timely amended the Second Schedule, many victims under the MV Act would have been benefited. Such inaction on the part of the Central Government in spite of the clear observation of the Hon'ble Apex Court is regrettable,

21. In the result appeal succeeds. The judgment & award dated 25.05.2011 passed by the learned Member, Motor Accident Claims Tribunal, Dimapur in M.A.C. Case No. 83/2008 is hereby set aside. However the respondents claimants may approach the Tribunal, if so advised for grant of compensation under the MV Act as there is no time limit for making any claim under the said Act. In view of the above, this appeal stands disposed of. There shall be no order as to cost.