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(2012) 01 DEL CK 0017

In the Delhi High Court

Case No : MAC. APP. 304 of 2009 and MAC. APP. 345 of 2009

New India Assurance Co. Ltd. APPELLANT

Vs

Pitamber and Others
 Pitamber and Others Vs Nirdosh Kumar and Another RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Citation : (2013) 1 ILR Delhi 453

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

Bench : Single Bench

Advocate : D.K. Sharma, in MAC. app. 304/2009 and Mr. O.P. Mannie, in MAC. app. 345/2009, for the Appellant; O.P. Mannie, for R-1 to R-7 in MAC. APP. 304/2009 and Mr. D.K. Sharma, for R-3 in MAC. APP. 345/2009, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—These Cross Appeals arise out of a common judgment in Suit No.931/2008 decided by the Motor Accident Claims Tribunal, (the Tribunal) by judgment dated 28.03.2009 whereby a compensation of Rs. 5,33,000/- was awarded in favour of Pitamber & Ors., for the death of Smt. Harpyari, who died in a motor accident on 27.11.2006.

2. MAC APP.304/2009 has been preferred by the New India Assurance Company Limited, which is the contesting Respondent in Cross MAC APP.345/2009. For the sake of convenience, the New India Assurance Company Limited shall be referred to as the Insurer.

3. MAC APP.345/2009 has been preferred by the Appellants Pitamber & Ors. who are the Respondents in MAC APP.304/2009. For the sake of convenience, Pitamber & Ors. shall be referred to as the Claimants.

4. A Claim Petition was preferred u/s 163-A of the Motor Vehicles Act (the Act) for grant of compensation under the structured formula.

5. The deceased''s income was claimed to be Rs. 39,000/- per annum. The Claimants'' grievance is that the deceased''s age was taken as 53 years to select the multiplier ''11'' whereas according to the postmortem report, the age was 40 years. Thus, it is contended that the appropriate multiplier was ''15'' instead of ''11'' as taken by the Tribunal. Thus, the learned counsel for the Claimants argued that the loss of dependency is liable to be enhanced.

6. Per contra, learned counsel for the Insurer submits that the award of compensation on the basis of the age as given in the Ration Card was rightly taken, in preference to the age mentioned in the Postmortem Report as the Ration Card produced by the Claimants was a more authentic document than a Postmortem Report.

7. In MAC APP.304/2009, it is contended on behalf of the Insurer that amount of Rs. 1,00,000/- awarded towards the non pecuniary damages and Rs. 4,000/- awarded towards the funeral expenses was in contravention of the Second Schedule. Once the Claimants have approached the Court for grant of compensation without proving any negligence on the part of the tortfeasor, they were entitled to the compensation as per the structured formula only.

8. I am not inclined to agree with the contention raised on behalf of the Claimants that the age of the deceased as mentioned in the Postmortem Report should have been taken into consideration for selection of the multiplier. The Claimants have not come forward with any explanation as to why the age in the Ration Card was wrongly mentioned. The deceased had six children including four major children and, therefore, it was unbelievable that she would be just 40 years old.

9. In any case, in the absence of any other evidence with regard to proving of age or any explanation for the fact that the age in the Ration Card was wrongly mentioned, the Tribunal rightly took the deceased''s age to be 53 years as mentioned in the Ration Card.

10. MAC APP.345/2009 preferred by the Claimants is devoid of any merit; the same is accordingly dismissed.

11. Pending applications also stand disposed of.

MAC.APP. 304/2009

12. The question whether a compensation in a Petition u/s 163-A of the Motor Vehicles Act (the Act) can be claimed and awarded strictly in accordance with the structured formula given in the Second Schedule has vexed the Courts in the country. The High Courts and the Supreme Court have been requesting the legislature to come out with an amendment to the Second Schedule which was incorporated way back in the year 1994 so that adequate and ''just compensation'' may be awarded to the persons in the lower income bracket.

13. If we go by the structured formula, a person getting the minimum wages of

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an unskilled worker today would not be able to get the compensation u/s 163-A of the Act.

14. Learned counsel for the Claimants relies upon the judgment of this Court in Oriental Insurance Company Limited v. Smt. Pataso & Ors., MAC APP. 962/2005 decided on 01.09.2008, whereby it was held that considering the inflation and depreciation in the value of the rupee, there was no justification to restrict the award of general damages to the Second Schedule u/s 163-A of the Act.

15. In Oriental Insurance Company Limited v. Om Prakash & Ors., 1 (2009) ACC 148, Rs. 50,000/- was awarded as compensation on account of loss of child and pain and suffering, which was beyond the limits prescribed u/s 163-A of the Act.

16. There are later judgments of this Court in Jagdish & Anr. v. Madhav Raj Mishra and Anr. MAC APP. 190/2011 decided on 19.04.2011; and Oriental Insurance Company Limited v. Anita Devi & Ors., 20011 (5) AD (Del) 138, decided on 10.05.2011 which have adopted the line that when the Claimants approach the Court u/s 163-A of the Act, the compensation is to be restricted as per the structured formula.

17. There are judgments of the Supreme Court also which have lamented the inaction on the part of the Central Govt. in not carrying out amendment in the Second Schedule to the Act, but have held that u/s 163-A of the Act, the compensation can be granted only as per the structured formula. The first such judgment is The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., , where it was held that the benefit of filing a petition on no-fault liability can be claimed on the basis of income with a cap of Rs. 40,000/-. It was the highest slab in the Second Schedule. It was observed that others have to approach the Court u/s 166 of the Act. Para 15 of the report is extracted hereunder:-

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

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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 Second 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 Second 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

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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.

18. In Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, ; the observations of the Supreme Court in Para 67 partly appears to be contrary as initially it was stated that we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A of the Act, the annual income of Rs. 40,000/- per annum shall be treated as a cap. The Hon''ble Supreme Court hastens to add that in our opinion, the proceedings u/s 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefits thereof. All other Claimants have to be determined under Chapter XII of the Act.

19. Para 67 in Deepal Girishbhai Soni (supra) is extracted hereunder:-

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 annual shall be treated as a cap. In our opinion, the proceeding u/s 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

20. The observations of the Supreme Court in Para 72 of the report in Deepal Girishbahi Soni (supra) further clarifies the position that the Supreme Court expected the Central Govt. to bestow serious consideration to carry out an amendment in the Second Schedule from time to time to obviate the difficulty faced by the victims belonging to the lower income group.

21. Deepal Girishbahi Soni (supra) was relied in two decisions of this Court in (i) Oriental Insurance Company Limited v. Anita Devi & Ors. (supra) and (ii) Jagdish & Anr. v. Madhav Raj Mishra and Anr. where it was held that:-

...the Claimants approaching the Court u/s 163-A of the Act can be awarded compensation only on the basis of the structured formula given in the Second Schedule.

22. In Anita Devi & Ors. (supra), a compensation of Rs. 10,000/- towards loss of estate, Rs. 10,000/- towards funeral expenses, Rs. 10,000/- towards loss of consortium and Rs. 1,00,000/- towards the loss of love and affection was reduced to Rs. 2,000/- for funeral expenses, Rs. 5,000/- towards loss of consortium (where the beneficiary is the spouse) and Rs. 2,500/- towards the loss of estate only (as per the structured formula). The overall compensation of Rs. 8,13,639/- was reduced to Rs. 4,39,940/- which was in accordance with the Second Schedule.

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23. In the later judgment of the Supreme Court in The Oriental Insurance Company Limited Vs. Meena Variyal and Others, while referring to Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, , it was held that a person can apply to the Tribunal to claim compensation in terms of the Schedule without proving the negligence or default on the part of the driver/owner of the offending vehicle and in other cases, the Claimants had to approach the Court u/s 166 of the Act and were necessarily under obligation to prove the negligence. Para 27 of the report is extracted hereunder:-

27. We think that the law laid down in Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr. (supra) was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a 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 the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under Sub-section (1) of Section 163-A of the Act, 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 concerned. Therefore, the victim of an accident or his dependants have an option either to proceed u/s 166 of the Act or u/s 163-A of the Act. Once they approach the Tribunal u/s 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed u/s 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

24. In view of the judgments of the Supreme Court in Kodala (supra), Deepal Girishbhai Soni and Meena Variyal (supra), the judgments of this Court in Smt. Pataso & Ors. (supra) and Om Prakash & Ors. (supra) cannot be taken as precedent.

25. The judgment of this Court in Anita Devi & Ors.(supra) which is in consonance with the law laid down in Kodala (supra), Deepal Girishbhai Soni (supra) and Meena Variyal (supra) shall be taken as a binding precedent.

26. In view of the above, a compensation of Rs. 5,000/- is granted towards loss of consortium instead of Rs. 50,000/-; Rs. 2,000/- towards funeral expenses instead of Rs. 4,000/- and Rs. 2,500/- towards loss of estate and love and affection instead of Rs. 50,000/-.

27. The overall compensation awarded is re-assessed as under:-

Head of Compensation

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Granted by the Tribunal

Granted by this Court

1.

Loss of Dependency

Rs. 4,29,000/-

Rs. 4,29,000/-

2.

Loss of Consortium

Rs. 50,000/-

Rs. 5,000/-

3.

Funeral Expenses

Rs. 4,000/-

Rs. 2,000/-

4.

Loss of Estate & Love & Affection

Rs. 50,000/-

Rs. 2,500/-

TOTAL

Rs. 5,33,000/-

Rs. 4,38,500/-

28. The compensation of Rs. 5,33,000/- awarded by the Tribunal is reduced to Rs. 4,38,500/-.

29. The excess amount of Rs. 94,500/- along with the interest earned if any, during the pendency of the Appeal shall be refunded by the Claimants to the Insurer within 30 days. The statutory amount of Rs. 25,000/- deposited by the Insurer shall be refunded to it.

30. MAC APP.304/2009 preferred by the insurer is allowed in above terms. No costs.

31. Pending applications also stand disposed of.

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