
(2008) 07 AHC CK 0004
In the Allahabad High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Sukhbiri Devi and Others

RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2009) 1 AWC 186

Hon'ble Judges : Amitava Lala, J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—Insurance company has preferred this appeal from the judgment and order dated 19.2.2008, passed by the concerned Motor Accident Claims Tribunal, Muzaffarnagar, by saying that there should be deduction of 2/3rd instead of 1/3 of expenses which the victim would have incurred towards maintaining himself had he been alive.

2. It is true to say that the same is depending upon the circumstances of each case and we have already held in an earlier occasion to that extent. The Supreme Court had already said that the Second Schedule u/s 163A is a guide but not a ready reckoner to follow it strictly. However, an exception cannot override the general rule applicable in the cases. More below the Second Schedule u/s 163A clearly speaks that in the case of fatal accident, claims shall be reduced by 1/3 in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. In this case, the claimants were mother; aged about 68 years, father, aged about 70 years ; and brothers between 35 to 40 years or more or less. The claim petition of the father and brothers were rejected since they were earning members. The age of the mother was considered and award was given after giving the deduction of 1/3.

3. So far as consideration of the parental age in case of death of the deceased being underage is concerned, we are of the view that by now we have come

across several decisions of the various High Courts including the Supreme Court and the ratio is that parental age can also be considered in case of death of the deceased as unmarried. Therefore, it cannot be said to be a complete ouster of the age of the deceased. Having so deduction, if any, specially of 2/3rd of the earning appears to be too harsh in nature. If the parental age is considered rigidly then the lower multiplier would be applicable and the amount would be less than the available amount. Therefore, if the deduction is also made particularly being 2/3rd then it will be another deduction on the higher side. If both are added together then a family of the victim will get much lesser amount of compensation. It is to be remembered that predominant part of the law is to give benefit to the family of the deceased or to injured. A beneficial piece of legislation cannot be read with rigidity and ignoring the equity unless, of course, element of fraud or forgery or alike is available in the case before hand. According to us, the above observation requires to be discussed.

4. Particularly in view of the above, we are of the view that the concerned Tribunal has not committed any mistake in passing an order, which should be interfered with by the Court.

5. Hence, the appeal is dismissed the stage of admission, however, without imposing any cost.

6. Incidentally, the appellant-insurance company prayed that the statutory deposit of Rs. 25,000 made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust the same with the amount of compensation to be paid to the claimants, however, such prayer is allowed.

A.P. Sahi, J.

7. I agree