

(2008) 01 KAR CK 0051
In the Karnataka High Court
Case No : M.F.A. No. 6646 of 2006

North West Karnataka Road Transport Corporation	APPELLANT
Vs	
Dundappa Jyoti Navale, Smt. Seventa Navale, Kumari Archana and Kumari Sarika	RESPONDENT

Date of Decision : 02-01-2008

Acts Referred:

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

Citation : (2009) ACJ 159 : (2008) ILR (Kar) 747 : (2008) 2 KarLJ 746 : (2008) 1 KCCR 295

Hon'ble Judges : Chidananda Ullal, J; A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : L. Govindaraj, for the Appellant; K.M. Nataraj, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is listed today for hearing on admission, after notice to the respondents. Learned Counsel appearing on both the sides submit that the appeal may be taken up for final disposal. With the consent of the learned Counsel, the appeal is heard on merits and for final disposal.

2. Respondents had filed claim petition u/s 163A of the Motor Vehicles Act, 1988 (for short, the Act) claiming compensation from the appellant, on account of the death of one Sri. Rahul Dundappa Navale on 19-5-2005 due to the fatal injuries sustained by him in an accident, caused by the driver of the bus bearing registration No. KA 23/F-836, owned by the appellant. The claim petition was contested by the appellant. After enquiry, the Tribunal has allowed the petition and has passed the award for Rs. 4,12,500/- payable with interest at 6% p.a. from the date of filing of the petition, till realisation. Being aggrieved, the appellant has preferred this appeal.

3. Learned Counsel appearing for the appellant, raised two contentions, namely:

(1) The Tribunal is not justified in adopting the multiplier of "17" to compute the

income of the deceased and to award the compensation under the head loss of dependency".

(2) The Tribunal has erred in deducting only 1/3rd of the amount towards personal expenses of the deceased, as against 50% deduction normally effected, the deceased being a bachelor.

Learned Counsel relied on the decision of this Court rendered in the case of Gulam Khader and Anr. v. United India Insurance Co. Ltd. and Anr. reported in ILR 2000 KAR. 3316.

4. Per contra, learned Counsel for the respondents would generally support the impugned judgment and award and would submit that the same is sustainable in the facts and circumstances of the case.

5. Having heard the learned Counsel appearing on either side, having perused the record of the case and in the light of the contentions advanced by the learned Counsel, the points that arise for our consideration are:

(i) Whether the Tribunal is justified in applying the multiplier of "17" to compute the income of the deceased and to award the compensation under the head "loss of dependency"?

(ii) Whether the Tribunal was justified in deducting only 1/3rd of the income of the deceased, towards his personal expenses

6. Re. Point (i): The claim petition was filed u/s 163A of the Act. The respondents, are the parents and unmarried sisters of the deceased. The post mortem report: at Ex. P.3 shows the age of the deceased as 23 years. In the absence of any other evidence, the Tribunal is justified in accepting the age of the deceased, shown in Ex. P.3. Accident took place on 19-5-2005. Since the accident is after 14-11-1994, the multiplier to be applied for persons in the age group of 23-27 years, is "17", as per Schedule-II of the Act. The Tribunal has not committed any error in applying the multiplier of "17" to compute the income of the deceased and to assess the loss of dependency. Thus, the first contention urged by the learned Counsel for the appellant is devoid of merit.

7. Re. Point (ii): As already noticed, the claim petition was filed u/s 163A of the Act. Section 163A is a special provision for payment of compensation on structured formula basis. The said provision has been considered by the Hon"ble Supreme Court, in the case of, Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, wherein it has been 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 163A 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 therefor. 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 makes 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.

X x x x x ...

44. Section 163A of the Act is interlinked with several sections of Chapters XI and XII thereof Section 140 imposes a liability upon the owner of the vehicle to pay compensation where death or permanent disablement of any person has resulted from accident arising out of the use of a motor vehicle. By reason of the said provision a fixed sum is to be paid.

X x x x x ...

46. Section 163A which has an overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163A contains non-obstinate clause in terms whereof the owner of the motor vehicle or the authorised insurer is 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. Sub-section (2) of Section 163A is in pari materia with Sub-section (3) of Section 140 of the Act.

X x x x x ...

51. The scheme envisaged u/s 163A, 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.

(Underlining is by us for emphasis.)

8. The claimants whose annual income is not more than Rs. 40,000/- can only make the claim u/s 163A of the Act. The claim has to be considered and disposed

off keeping in view the formula provided in the II Schedule of the Act i.e., on structured formula, having regard to the age of the victim and his income. The award made under the said provision shall be full and final settlement of the claim. The note appended to Column 1 which deals with fatal accidents is clear that, from the total amount of compensation, 1/3rd thereof, has to be reduced in consideration of the expenses which the victim would have incurred, towards maintaining himself had he been alive. Thus, the contention put forth by the learned Advocate for the appellant that, 50% of the amount should have been deducted, is untenable and is against the provision made in Schedule II of the Act, which has been made clear from the note appended thereto. The income of the deceased is less than Rs. 40,000/- per annum. The accident has resulted in death. Thus Section 163A of the Act was applicable. Since Section 163A itself provided the manner in which the computation of income has to be made and the percentage of deduction to be effected, it has to be in the way the statute has provided and in no other manner. In this connection it will be useful to refer to the decision of the Hon'ble Supreme Court in the case of Chandra Kishore Jha Vs. Mahavir Prasad and Others, , it has been held as follows:

It is well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.

Section 163A read with Schedule-II of the Act, itself having provided the percentage of deduction to be effected, in our view, the deduction can be in terms thereof only and not otherwise. Thus the submission made by the learned Counsel relying upon the case of Gulam Khader (supra) that, in the case of a bachelor, deduction of 50% should normally be effected, is not tenable, in view of the statutory provision itself providing for one third deduction.

9. Decision in the case of Gulam Khader v. United India Insurance Co. Ltd., supra, relied upon by the learned Counsel for the appellant, is one, which was rendered while considering the claim made u/s 166 of the Act. In the said decision, the cases pertaining to the claims made u/s 163A of the Act did not come up for consideration. This Court in the said decision, did not had the occasion to consider note 1 to Schedule II read with Section 163A of the Act. Hence, the said decision has no application.

10. Both the contentions raised by the learned Counsel for the appellant, for the foregoing discussion and reasons, have to fail. No other ground is urged for consideration by the learned Counsel for the appellant Consequently, the appeal is liable to be dismissed as devoid of merit We order accordingly.

11. Parties to bear their respective costs.