

(2000) 12 RAJ CK 0047

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 664 of 2000

R.S.R.T.C. Barmer

APPELLANT

Vs

Smt. Chandra @ Chandrawati

RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141(3), 163A, 166

Citation : (2002) ACJ 1163 : AIR 2001 Raj 168 : (2001) 2 RLW 1001 : (2001) 2 WLN 51

Hon'ble Judges : N.P. Gupta, J

Bench : Single Bench

Advocate : B.S. Bhati, for the Appellant; H.R. Panwar, for the Respondent

Judgement

Gupta, J.

(1). Heard learned counsel for the parties.

(2). The only point urged by [he [earned counsel for the appellant is that the learned Tribunal was in error in not making deduction to the extent of 1/3 as provided in II Schedule to Motor Vehicles Act, 1988, hereafter to be referred to as "the Act" as the award has been made by the learned Tribunal u/s 163-A of the Act.

(3). The learned counsel for the claimants respondents contended that since the income of the deceased was found to be beyond Rs. 40,000/- and since the award was made u/s 163-A, considering the maximum ceiling of the income as provided in the II Schedule, no deduction was required to be made.

(4). The learned counsel for the claimant respondents then contended that since the income of the deceased was more than Rs. 40,000/-, the claimants were entitle" to be awarded the compensation on the basis of income of the deceased, in proper of the scale as provided in the II Schedule, and since while considering this aspect the learned Tribunal has left it open to the claimants to file a separate claimpetition u/s 166, therefore, whatever deductions are to be made,

or are required to be made, that can be made only while making assessment of compensation in the claim u/s 166, and at this stage the deduction is not required to be made.

(5). I have considered the rival submissions and perused the impugned award. A look at the provisions of Section 163-A would show that in the scheme of things, this provision is an extended version of Section 140 of the Act, inasmuch as u/s 140 only interim award is made on no fault liability basis, while u/s 163-A, compensation is awardable up to limits mentioned in 11 Schedule on no fault liability basis as final awards. By virtue of Section 163-B, the claimant preferred claim u/s 163-A, cannot claim compensation u/s 140, obviously therefore, the right of the claimant to claim compensation u/s 166 cannot be said to be barred.

(6). The basic difference between the claim u/s 163-A and 166 is that if the claimant files a claim u/s 166, he is not entitled to get any compensation until and unless he proves the delinquent vehicle to be guilty of negligence, either whole or in part. As against which in claim u/s 163-A the claimant is not required to even alleged or prove any negligence on the part of the delinquent vehicle. The obvious result of this difference is that, there may be cases and cases where the claimants may either feel or be aware, either that the delinquent vehicle was not at fault or that the claimant would not be able to prove the negligence on the part of the delinquent vehicle, they may choose to lodge a claim u/s 163-A so as to get a specified amount of compensation as a definite relief, as against which if they were to lodge claim u/s 166, they run the risk of refusal of the entire claim in the event of failure to prove negligence.

(7). It is in this view of the matter that when a claim is lodged u/s 163-A, the claimant has not been held entitled by the Legislature to the amount of compensation commensurate with his income, in case the income happens to exceed the maximum limit prescribed in the II Schedule being Rs. 40,000/-. Therefore, if the claim is filed u/s 163-A and the income is found to be beyond Rs. 40,000/-. still the claimants would not be entitled to compensation u/s 163-A beyond what has been specified in the II Schedule in proportion of the scale as provided in the II Schedule. If the claimants want to claim more amount on the basis of the excess income of the victim, then of course they have to go u/s 166, prove negligence of the delinquent vehicle and get award for such amount or such additional, as they may be found entitled to.

(8). A look at the provisions of Section 141(3) would show that in case of claim u/s 140, the amount payable thereunder is the minimum guaranteed amount to which the claimant is entitled in the event of the death or permanent disablement being suffered by the victim, even if in the ultimate trial the claimant is found entitled to any lesser amount and in the event of claimant being found entitled to a larger amount, then the claimant is to be awarded the larger amount. However the amount paid u/s 140 is to be adjusted therein. As against this in the language of Section 163-A or 163-B no such thing has been enacted. With the result that it is a question which does arise that, though even

after filing claim u/s 163-A, filing of claim u/s 166 is not barred, but then if in the subsequently filed claim u/s 166 the claimant is not found entitled to any amount or if he is found entitled to any lesser amount then the one awarded to him u/s 163-A, what is to happen to the claimant? Prima-facie it does not appear that the two types of claim petition can be allowed to co-exist so as to entitle the claimant to first receive the amount u/s 163-A and then to retain it as a minimum guarantee and take a chance of receiving further amount u/s 166. However, this question has not been argued before me in this appeal, I do not propose to here and leave it open to be decided in appropriate case after appropriately hearing to the concerned parties.

(9). Accordingly in my view while dealing with the claim u/s 163-A, the award can be made only for such amount as is payable in accordance with the II Schedule. A look at the II Schedule shows that it gives a structured formula of the amount awardable as compensation in case of death, and according to this Schedule, for the death of the deceased the maximum amount awarded as compensation comes to Rs. 6,40,000/-. The learned Tribunal has thus awarded this amount.

(10). A look at the impugned award shows that the learned Tribunal has expressly declined to make a deduction by 1/3 for the reason that according to the learned Tribunal since the income of the deceased is more than 40,000/- and even after making deduction to the extent of 1/3 in the income of the deceased, also the income exceeds Rs. 40,000, therefore, it would not be proper to reduce the amount. Suffice it to say that the approach and reasons given by the learned Tribunal for declining to reduce the amount cannot be sustained. When the Section read with II Schedule provides a specific structured formula and enacts a specified amount to be payable by way of compensation and also provides that the amount of compensation so arrived at in case of fatal accident claim shall be reduced 1/3, in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive, no discretion remains with the Tribunal to decline to make such deduction.

(11). Accordingly, the appeal is partly allowed, the impugned award is modified in the manner that the amount of compensation for death awarded by the learned Tribunal being Rs. 6, 40,000 is reduced by Rs. 2,13,000, with the result that the figure 6.40,000/- awarded by the learned Tribunal shall stand substituted by the figure 4,26,700. Rest of the award is maintained.

(12). It is further made clear that in the event of claimant filing claim u/s 166, and being able to prove the claim to be result of negligence of the delinquent vehicle, while making assessment of the compensation awardable to the claimants, the learned Tribunal shall take into account the fact of the claimants having been awarded a compensation of Rs. 6,40,000/- for the death and of 1/3 deduction having been made from out of that amount in consideration of expenses which the victim would have incurred towards maintaining himself had he been alive.

(13). The parties are left to bear their own costs of the appeal.