
(2010) 08 GAU CK 0121
In the Gauhati High Court
Case No : Mac. Appeal No. 23 of 2006

Rupa Das

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 166, 173

Citation : (2010) 6 GLR 636

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : I. Choudhury, for the Appellant; A. Ahmed and D. Saikia, for the Respondent

Judgement

U.B. Saha, J.—The instant appeal is initially filed by the claimant Sri Dasarat Das since deceased, against the Respondents u/s 173 of the Motor Vehicles Act, 1988 ("the Act") challenging the judgment dated 29.6.2005 in MAC Case No. 1388/2003 (904/2003 old) passed by the learned Motor Accident Claims Tribunal, Kamrup, Guwahati wherein the learned tribunal awarded an amount of Rs. 75,000 for the death of the daughter of the Appellant in a motor vehicular accident with a prayer for enhancement of the said amount up to Rs. 1,50,000 applying the multiplier as provided in the 2nd Schedule of the M.V. Act, applicable for non-earning persons, taking note of Section 163A of the M.V. Act.

2. During the pendency of the appeal, the claimant-Appellant died and in his place Smt. Rupa Das, wife of the original claimant, mother of the victim deceased daughter namely, Dipandita Das was substituted as Appellant. Heard Mr. I. Choudhury, learned Counsel for the Appellant as well as Mr. A. Ahmed, learned Counsel for the Respondent Oriental Insurance Co. and Mr. D. Saikia, learned Counsel for the Respondent Nos. 2 and 3, i.e., the owner and driver of the offending vehicle respectively.

3. Facts needed to be discussed for disposal of the instant appeal are as follows:

On 15.5.2001 when the daughter of the Appellant namely, Dipandita Das while coming home from school was knocked down by a speeding Maruti Alto Car as a result of which she sustained injuries and ultimately died. The victim deceased girl was aged about 6/7 years at the relevant time of the accident. According to the Appellant, the incident took place due to the fault of the driver of the Maruti Alto Car bearing registration No. AS-01-K/6579 which was insured with the Respondent No. 1-Oriental Insurance Co. and as such the Appellants are entitled to get compensation in view of the provisions of Section 166 of the M.V. Act as in compliance with the provisions of the said Act an application was made by her deceased husband who was the original claimant in MAC 1388/2003. The Respondent-Opposite parties appeared before the learned Motor Accident Claims Tribunal and contested the case.

4. The learned tribunal while deciding the claim petition framed the following issues:

(i) Whether the accident took place due to rash and negligent driving of the driver of the Vehicle No. AS-01-K/6579 (Alto)?

(ii) Whether the claimant is entitled to get compensation under the Motor Vehicles Act for the death of his minor daughter in the alleged accident?

(iii) Whether the insurance company or owner and driver of the offending vehicle in question are liable to pay compensation?

5. The learned tribunal after discussing the evidence of PW1 Gobin Ch. Bardoloi who was present in the spot at the time of alleged accident and also DW1 the driver of the offending vehicle came to the conclusion that victim deceased Dipandita was hit by the aforesaid offending vehicle No. AS-01-K/6579 and died in this accident.

6. The tribunal has awarded lump sum compensation amounting to Rs. 75,000 on account of the death of deceased in the accident, considering the fact, inter alia, that at the relevant time the deceased daughter of claimant was of about 6/7 years.

7. Being aggrieved by the order of the learned Tribunal, the present Appeal.

8. Mr. I. Choudhury, learned for the Appellant while assailing the impugned judgment argued that the learned tribunal though recorded the finding regarding the involvement of the offending vehicle No. AS-01-K/6579 but he did not consider the provisions of Section 163A for applying the second schedule of the Motor Vehicles Act particularly the multiplier, which is applicable for a non-earning person. He further contended that the learned trial court also failed to consider the future prospect of the victim.

9. Mr. Ahmed, learned Counsel for the Insurance Co. in his usual fairness submits that Section 163A of the M.V. Act has no application in the instant case as the claimant husband of the present Appellant, father of the victim filed the

application u/s 166 of the M.V. Act. He also urges that when an application u/s 166 is filed claiming compensation then the provisions of 163A would not apply as both Sections 140 and 163A are for different purposes. He further urges that unless an application u/s 163A is filed before the court, the claimant is not entitled to get the benefit of the said provision of the Act, wherein it is stated that multiplier specified in the second schedule appended to the Act is applicable, more so the court cannot take in consideration the second schedule for applying the multiplier when an application is filed u/s 166 of the Act.

10. Mr. Choudhury though referred to some decisions of the Apex Court in support of his contention but upon going through the judgments, this Court is of the considered opinion that those cases have no direct bearing with the case in hand. Therefore, it is not necessary to discuss about those cases.

11. However, there is no doubt that the Section 163A of the Act is a special provision for payment of compensation on structured formula basis applying the second schedule of the M.V. Act, and benefit of the said section can be available only to a person who applied under that section. At the same time, when there is no specific prohibition for taking note of the said principle of structured formula by a tribunal or a court while deciding an application u/s 166 of the Act, therefore, tribunal or court can take some assistance from the said scheme while passing any award particularly in case of a non-earning person, as in the second schedule for a non-earning person a notional income amounting to Rs. 15,000 per annum is mentioned, for deciding the "just" compensation, in view of the decision in *Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another*, and in *New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others*,

12. In a case where an application is filed u/s 163A of the Act for compensation, the future prospect may not be of much relevance but when an application is filed u/s 166 of the Act, the future prospect would be a relevant factor. In the instant case, admittedly, the application was filed u/s 166 of the Act but the tribunal failed to consider the future prospect. Hence, being an appellate court we have to consider the same.

13. In *Nagappa Vs. Gurudayal Singh and Others*, Apex Court noted that in an appropriate case, wherefrom the evidence brought on record, if the tribunal, court considers that the claimant is entitled to get more compensation than claimed, the tribunal may pass such award. The only embargo is it should be "just" compensation that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence.

14. The tribunal is required to pass an award u/s 166 of the Act which appears to be just and reasonable. As stated earlier, that the second schedule appended to Section 163A of the Act really should not be applicable in a case where application is filed u/s 166 of the Act but the court can take the assistance of the said second schedule for calculating the "just" compensation whether the victim

injured or deceased victim has come within the purview of non-earning person. In second schedule, a notional income has been mentioned as Rs. 15,000 for non-earning member irrespective of age and multiplier of 15 for the victim below 15 years of age. As per the second schedule, the amount of compensation in the present case comes to Rs. 2,25,000.

15. In *Depot Manager, RSRTC, Hindoncity v. Rajaram Sharma and Ors.* 2009 (3) T.A.C. 558 (Raj.) learned Single Judge of the Rajasthan High Court while deciding the appeal against the impugned award passed by the Motor Accident Claims Tribunal wherein the learned tribunal awarded a lump sum amount of Rs. 1,50,000 as compensation in favour of the claimant-Respondents of that case for death of their son Anjal Sharma who died in a motor accident at the age of 4 years 11 months and 6 days which was upheld taking note of the decision of the Apex Court in *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, wherein it has been observed that every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation, which is the pivotal consideration.

16. As Mr. Ahmed, learned Counsel placing reliance on *Reshma Kumari and Others Vs. Madan Mohan and Another*, would urge that in the aforesaid case question arises for consideration is as to whether the multiplier specified in the second schedule should be taken to be a guide for calculation of compensation payable in a case falling u/s 166 of the 1986 Act? He also urges that while answering the aforesaid question the Apex Court also discussed about the distinction between Section 163 and Section 166 of the Act and noted, inter alia, "Parliament in its wisdom thought to provide for a higher amount of compensation in case of permanent total disablement and proportionate amount of compensation in case of permanent partial disablement depending upon the percentage of disability. Thus, prima facie, it appears that the multiplier mentioned in the Second Schedule, although in a given case, may be taken to be a guide but the same is not decisive. To our mind, although a probable amount of compensation as specified in the Second Schedule in the event the age of victim is 17 or 20 years and his annual income is Rs. 40,000, his heirs/legal representatives are to receive a sum of Rs. 7,60,000, however, if an application for grant of compensation is filed in terms of Section 166 of the 1988 Act that much amount may not be paid, although in the former case the amount of compensation is to be determined on the basis of "no liability" and in the latter on "fault liability". In the aforementioned situation the courts, we opine, are required to lay down certain principles. We are not unmindful of the Statement of Objects and Reasons to Act 54 of 1994 for introducing Section 163A so as to provide for a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational. That may be so, but it defies logic as to why in a similar situation, the injured claimant or his heirs/legal representatives, in the case of death, on proof of negligence on the part of the driver of a motor vehicle would get a lesser amount than the one specified in the Second Schedule. The courts, in our opinion, should

also bear that factor in mind. Having regard to divergence of opinion and this aspect of the matter having not been considered in the earlier decisions, particularly in the absence of any clarification from Parliament despite the recommendations made by this Court in *Trilok Chandra*, the issue, in our opinion, shall be decided by a larger Bench. It is directed accordingly. The Registry is directed to place the matter before the hon"ble Chief Justice of India for appropriate orders for constituting a larger Bench" and ultimately considering the divergent opinion of the Apex Court regarding the applicability of newly incorporated Section 163A and Section 166 of the Act.

17. In view of the above position, it would not be proper for this Court to follow the structured formula as prescribed in the Second Schedule of the Act even for calculating the just compensation either for a victim injured or victim deceased in a vehicular accident who is a non-earning member, rather it would be proper to award lump sum amount which would be a "just" compensation.

18. For the foregoing reasons, this Court is of the considered opinion that the impugned judgment wherein the learned tribunal awarded Rs. 75,000 only as amount of compensation is lower in side and not "just" compensation. Therefore, the claimant will be entitled to get compensation of Rs. 1,50,000 including interest @ 9% per annum from the date of filing of the claim petition till realization instead of Rs. 75,000 as awarded by the tribunal, as the same would be just and proper compensation.

19. Accordingly, the order of the tribunal is modified to the extent as indicated above.

20. Copy of this order be given "Dosti" to the counsel for the parties under signature of the court master.

21. Appeal is disposed of accordingly.

There shall be no order as to costs.