

(2023) 06 CAL CK 0014
In the Calcutta High Court
Case No : FMA No. 3357 Of 2015

Santosh Saha And Another

APPELLANT

Vs

Managing Director, Calcutta State Transport Corporation

RESPONDENT

Date of Decision : 13-06-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 140(3), 163A, 163A(1), 163A(2), 166

Citation : (2023) 06 CAL CK 0014

Hon'ble Judges : Bivas Pattanayak, J

Bench : Single Bench

Advocate : Jayanta Kr. Mandal, Sanjay Paul, Jaita Ghosh

Final Decision : Disposed Of

Judgement

Bivas Pattanayak, J

1. This appeal is preferred against the judgment and award dated 31st March, 2015 passed by learned Judge, Motor Accident Claims Tribunal, 1st Court, Balurghat in M.A.C. Case No. 153 of 2008 granting compensation of Rs.15,000/- in favour of the claimant no.2 together with interest under Section 163A of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 29th December, 2007, at about 10:00 hours, while the victim aged about 8 years, a student, was going to her uncle's house on foot keeping left side of the road on "kuccha" portion, at that time the offending vehicle bearing registration no.WB-04B/7879 (bus) which was coming from Balurghat side towards Malda side in a rash and negligent manner dashed the victim, as a result of which, she fell down on the road and was run over. The minor victim died on the spot. The claimants being the parents of the victim filed the application for compensation of Rs.1,60,000/-under Section 163A of the Motor Vehicles Act.

3. The claimants, in order to establish their case, examined two witnesses and produced documents which have been marked as Exhibit 1 to 5 respectively.

4. The respondent did not adduce any evidence.

5. Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.15,000/- in favour of the claimant no.2 together with interest under Section 163A of the Motor Vehicles Act.

6. Being aggrieved by and dissatisfied with the impugned judgment and award, the claimants have preferred the present appeal.

7. Mr. Jayanta Kr. Mandal, learned advocate for the appellants-claimants, at the very outset, submitted that while dealing with an application under Section 163A of the Motor Vehicles Act, the requirement of proof of negligence and consideration thereof is unwarranted. Further in such application, it is also not open for the insurer to raise any defence of negligence on the part of the victim. However, the learned Tribunal failed to adhere to the aforesaid provisions and requirement of law and proceeded to decide the aspect of negligence in an application under Section 163A of the Act. To buttress his contention, he relied on the decision of the Hon'ble Supreme Court passed in United India Insurance Co. Ltd. versus Sunil Kumar and Another reported in 2018 (1) T.A.C. 3 (S.C.).

Furthermore, it is submitted on behalf of the appellants-claimants that the notional income of Rs.30,000/- per annum should be taken into account in case of minor-victim. In support of his contention, he relied on the following decisions of the Hon'ble Supreme Court:

i. Kishan Gopal and another versus Lala and others reported in AIR 2013 SC (Civil) 2465

ii. Kurvan Ansari alias Kurvan Ali & Anr. versus Shyam Kishore Murmu & Anr. reported in 2021 Supp. SAR (Civ) 776

iii. Meena Devi versus Nunu Chand Mahto @ Nemchand Mahto & Ors. reported in 2022 SAR (Civ) 1057

He further submitted that the Hon'ble Supreme Court in its decision passed in Sarla Verma (Smt) and Others versus Delhi Transport Corporation and Another reported in 2009 (6) SCC 121 taking into account the quantum of compensation prepared a table indicating the multiplier actually used in Second Schedule to the Motor Vehicles Act and as per the said table, in case of a victim of road accident who is aged below 15 years, the multiplier would be 20. Such proposition has also been adopted by this Hon'ble Court in the following reports:

i. United India Insurance Co. Ltd. versus Shri Buro Mahara and Others reported in 2015 (2) T.A.C. 753 (Cal.)

ii. Sabina Yeasmin & Anr. versus The Branch Manager, New India Assurance Co. Ltd. & Anr. reported in (2016) 2 WBLR (Cal) 71

iii. National Insurance Company Ltd. versus Jayanti Barik and Another reported in

2019 (1) T.A.C. 201 (Cal.)

He further submitted that the claimants being the parents are also entitled to non-pecuniary damages of Rs.75,000/- and in support of his contention, he relied on the decision of the Hon'ble Supreme Court passed in R. K. Malik and Another versus Kiran Pal and Others reported in (2009) 14 SCC 1.

Furthermore, it is submitted that the Hon'ble Supreme Court in several of its decisions bearing in mind the changed economic scenario including the rise in cost of living and rate of inflation directed the Central Government to amend the Second Schedule to the Motor Vehicles Act. Relying on the decision of Hon'ble Supreme Court in Puttamma & Ors. versus K. L. Narayana Reddy & Anr. reported in 2014 SAR (Civil) 276, he submitted that the Second Schedule has become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased in life expectancy. Therefore, the compensation should be assessed, in an application under Section 163A of the Act, keeping in mind the changes in the economic scenario and the cost of living, inflation rate since the enactment of the Second Schedule has been made way back in the year 1994.

He further submitted that there should not be any deduction towards personal and living expenses of the deceased while computing the compensation amount since the victim in the case at hand is a minor and he relied on the decision of Hon'ble Supreme Court in Kurvan Ansari alias Kurvan Ali (supra).

In the light of his aforesaid submissions, he prayed for modification and enhancement of the compensation amount.

8. In reply to the contentions raised on behalf of the appellants-claimants, Mr. Sanjay Paul, learned advocate for the respondent, submitted that in an application under Section 163A of the Motor Vehicles Act, the Second Schedule is to be strictly followed and the determination of the compensation should be on the basis of the structured formula provided in the Second Schedule to the Motor Vehicles Act. Thus, the income of minor victim, the deduction towards personal and living expenses and the multiplier is to be applied following the Second Schedule to the Act. In support of his contention, he relied on the decision of Hon'ble Supreme Court in Deepal Girishbhai Soni and Others versus United India Insurance Co. Ltd., Baroda reported in AIR 2004 SC 2107. He also placed reliance on decision of this Court passed in Smt. Pato Mondal versus The New India Assurance Company Limited & Anr. (F.M.A. No. 1805 of 2006) and other appeals and Sri Shama Prasad Roy @ Nema Roy @ Nema Roy versus National Insurance Company Ltd. & Anr. (F.M.A. No. 407 of 2012).

So far as the claim under non-pecuniary damages is concerned, he submitted that such proposition in R. K. Malik (supra) cannot be relied upon, since the judgment in the case of R. K. Malik (supra) does not consider the prior judgment on a reference by a larger bench in Deepal Girishbhai Soni (supra) and is a departure from the principles of law laid down therein.

9. Having heard the learned advocates for the respective parties, it is found that appellants-claimants have raised the following grounds in the present appeal:

Firstly, whether the aspect of negligence is to be considered in an application under Section 163A of the Act.

Secondly, whether the income of the minor-victim aged about 8 years should be considered at Rs.30,000/- per annum.

Thirdly, whether the multiplier of 20 is to be adopted in case of a minor aged below 15 years.

Fourthly, whether the 1/3rd of the income of the minor should be deducted towards his personal and living expenses.

And lasty, whether the claimants are entitled to non-pecuniary damages.

10. With regard to the first issue, it would be appropriate to reproduce the relevant provisions of Section 163A of the Motor Vehicles Act:

"163A. Special provisions as to payment of compensation on structured formula basis.— (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be 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.

Explanation. — For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1) 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 or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

Upon bare reading of the aforesaid provisions, it manifests that, in a proceeding under Section 163A of the Act, 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 or vehicles concerned or of any other person. However, it is found from the impugned judgment that the learned Tribunal has framed issue that whether the victim died in the motor accident due to rash and negligent act of the driver of the offending vehicle and has also proceeded to decide such issue holding the negligence of the driver. The finding of the learned Tribunal with

regard to the aspect of negligence of the driver is not in consonance with the provisions envisaged under Section 163A of the Act and therefore, such finding of the learned Tribunal with regard negligence of the driver in the accident in a proceeding under Section 163A of the Act is liable to be set aside. I find substance in the submission of Mr. Mandal, learned advocate for the appellants-claimants, in this regard relying on Sunil Kumar (supra). However, the involvement of offending vehicle is not in dispute.

11. With regard to the determination of income of the minor-victim, it has been strenuously argued on behalf of the appellants-claimants relying on Kishan Gopal (supra), Kurvan Ansari alias Kurvan Ali (supra) and Meena Devi (supra) that the notional income of Rs. 30,000/-per annum in case of a minor victim should be taken into account for assessment of compensation bearing in mind the present cost of living. Further placing reliance on Puttamma (supra) he argued that although such income is a deviation from Second Schedule to the Act but it can be accepted since the Second Schedule has become redundant. The Second Schedule to the Act provides for notional income of Rs.15,000/- per annum in case of non-earning person. If income of the minor-victim of Rs.30,000/- per annum, as pressed into service, is accepted, it would no doubt be a deviation from the structured formula provided in the Second Schedule to the Act. At this stage, the question which falls for consideration is whether the Second Schedule to the Act is to be strictly followed or there can be deviation from it. In order to appreciate the aforesaid question, it would be profitable to refer to the observation of three-Judges bench of Hon'ble Supreme Court in Deepal Girishbhai Soni (supra) which is reproduced hereunder:

"46. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A contains non-obstante 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 163-A is in pari materia with sub-section (3) of Section 140 of the Act.

47. xxxxxxxxxxxxxxxxx

48. By reason of the Section 163-A, therefore, the compensation is required to be determined on the basis of a structured formula whereas in terms of Section 140 only a fixed amount is to be given. A provision of law providing for compensation is presumed to be final in nature unless a contra indication therefor is found to be in the statute either expressly or by necessary implication. While granting compensation, the Tribunal is required to adjudicate upon the disputed question as regard age and income of the deceased or the victim, as the case may be. Unlike Section 140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding under Section 163-A of the Act."

The larger bench of the Hon'ble Court in the above decision clearly lays down the proposition that Section 163A of the Act, which has an overriding effect, provides for special provisions as to payment of compensation which is required to be determined on the basis of a structured formula.

Bearing in mind the aforesaid observation of the Hon'ble Court, at the outset, it is found that the report in respect of Kishan Gopal (supra) and Meena Devi (supra) relates to claim petition filed under Section 166 of the Motor Vehicles Act and thus does not apply to the case at hand, since the application in the present case has been filed under Section 163A of the Motor Vehicles Act.

The decision rendered by the Hon'ble supreme Court in Kurvan Ansari alias Kurvan Ali (supra), though passed in respect of application under Section 163A of the Act, yet has not considered the decision of the larger bench of the Hon'ble Supreme Court in Deepal Girishbhai Soni (supra), which clearly holds that the determination of compensation in an application under Section 163A of the Act should be made on the basis of the structured formula of the Second Schedule to the Motor Vehicles Act. I find substance in the submission of Mr. Paul, learned advocate for the respondent, that such findings in Kurvan Ansari alias Kurvan Ali (supra), is a departure from the principles of law laid down by a larger bench in Deepal Girishbhai Soni (supra).

In Puttamma (supra) the Hon'ble Supreme after considering the observation in Deepal Girishbhai Soni (supra) in paragraph no.41, 42, 52, 53, 57 and 72 held that the Second Schedule has become redundant, irrational and unworkable and issued direction upon the Central Government for making proper amendments to the Second Schedule. However, it has not considered the observation of larger bench in Deepal Girishbhai Soni (supra) made in paragraph no. 46 and 48 respectively that Section 163A of the Act, which has an overriding effect, provides for special provisions as to payment of compensation which is required to be determined on the basis of a structured formula.

The Hon'ble Supreme Court in its decision passed in M/s Trimurthi Fragrances (P) Ltd. Through its Director Shri Pradeep Kumar Agarwal versus Government of N.C.T. of Delhi Through its Principal Secretary (Finance) & Ors reported in 2022 LiveLaw (SC) 778 held as hereunder:

"19..... It is settled that the majority decision of a Bench of larger strength would prevail over the decision of a Bench of lesser strength, irrespective of the number of Judges constituting the majority"

Further Justice Hemant Gupta, J (as His Lordship then was) after agreeing with the majority decision also expressed his opinion and concluded as follows:

"G. The conclusion (1) is that a decision delivered by a Bench of largest strength is binding on any subsequent Bench of lesser or coequal strength. It is the strength of the Bench and not number of Judges who have taken a particular view which is said to be relevant. However, conclusion (2) makes it absolutely

clear that a Bench of lesser quorum cannot disagree or dissent from the view of law taken by a Bench of larger quorum. Quorum means the bench strength which was hearing the matter.

H. Thus, it has been rightly concluded that the numerical strength of the Judges taking a particular view is not relevant, but the Bench strength is determinative of the binding nature of the judgment."

Bearing in mind the aforesaid proposition, the principles laid down in Deepal Girishbhai Soni (supra) by a larger bench of Hon'ble Supreme Court that in an application under 163A of the Act the compensation is required to be determined on the basis of a structured formula as per Second Schedule to the Act still holds the field and needs to be adhered to. The Second Schedule to the Act provides for notional income of Rs.15,000/- per annum in case of non-earning persons. This Hon'ble Court has consistently considered the notional income of Rs. 15,000/- per annum in case of a minor in an application under Section 163A of the Act in Smt. Pato Mondal (supra), Sri Shama Prasad Roy @ Nemai Roy @ Nemay Roi (supra), Sabina Yeasmin (supra) and Jayanti Barik (supra). Therefore, in view of the above discussion the notional income of Rs.15,000/- per annum is to be taken into consideration, in case of a minor-victim, in an application under Section 163A of the Act.

12. With regard to the third issue relating to multiplier, it has been argued vociferously on behalf of the appellants-claimants relying on Shri Buro Mahara (supra), Sabina Yeasmin (supra) and Jayanti Barik (supra), that the multiplier should be 20. Per contra, Mr. Paul, learned advocate for the respondent relying on Smt. Pato Mondal (supra) and Sri Shama Prasad Roy @ Nemai Roy @ Nemay Roi (supra), argued that in case of a minor-victim the multiplier should be 15.

In this regard, reference may be made to the decision of the Hon'ble Supreme Court in case of Reshma Kumari & Ors. versus Madan Mohan & Anr. reported in 2013 ACJ 1253 wherein the Hon'ble Supreme Court held as follows:

"43.2. In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed."

Further in paragraph 40 of the decision of Sarla Verma (Smt) (supra), it is found that a table has been prepared upon noticing several decisions which is reproduced hereunder for convenience:

"40. The multipliers indicated in Susamma Thomas, Trilok Chandra and Charlie (for claims under section 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under section 163-A of MV Act (with appropriate deceleration after 50 years):

Age of the deceased

Multiplier scale as envisaged in Susamma Thomas

Multiplier scale as adopted by Trilok Chandra

Multiplier scale in Trilok Chandra as clarified in Charlie

Multiplier specified in Second Column in the Table in Second Schedule to the MV Act

Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensati

on)

(1)

(2)

(3)

(4)

(5)

(6)

Up to 15

yrs

-

-

-

15

20

15 to 20 yrs

16

18

18

16

19

21 to 25 yrs

15

17

18

17

18

26 to 30 yrs

14

16

17

18

17

31 to 35 yrs

13

15

16

17

16

36 to 40 yrs

12

14

15

16

15

41 to 45 yrs

11

13

14

15

14

46 to 50 yrs

10

12

13

13

12

51 to 55 yrs

9

11

11

11

10

56 to 60 yrs

8

10

09

8

8

61 to 65 yrs

6

08

07

5

6

Above 65 yrs

5

05

05

5

5

The header of column (6) reads as "Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)". The aforesaid proposition has been followed by this Hon'ble Court in Shri Buro Mahara (supra), Sabina Yeasmin (supra) and Jayanti Barik (supra). Thus, bearing in mind the

aforesaid, the multiplier for a victim of road accident who was aged below 15 years would be 20.

13. The next issue that has fallen for consideration in the present appeal is whether deduction of 1/3rd of the annual income of a minor should be made towards his personal and living expenses or not. Learned advocate for the appellants-claimants relying on Kurvan Ansari alias Kurvan Ali (supra) have argued that since the victim was a minor and was non-earning, hence there should not be any deduction towards personal and living expenses. Although such argument has been pressed into service on behalf of the claimants yet following the observation of the Hon'ble Supreme Court in Deepal Girishbhai Soni (supra) that the determination of compensation in an application under Section 163A of the Act should be made on the basis of the structured formula of the Second Schedule to the Act, deduction of 1/3rd of the notional income towards personal and living expenses as provided under the Second Schedule is to be taken into account. Though in Kurvan Ansari alias Kurvan Ali (supra), the Hon'ble Supreme Court has not deducted any amount towards personal and living expenses, but the decision of the larger bench passed in Deepal Girishbhai Soni (supra) has not been considered in the said decision. Therefore, following the proposition laid down in Deepal Girishbhai Soni (supra), I do not find any merit in the argument advanced by learned advocate for the appellants-claimants in this regard.

14. The last issue relates to entitlement of non-pecuniary damages. Mr. Mandal, learned advocate for the appellants-claimants, relying on the decision of the Hon'ble Supreme Court in R. K. Malik (supra), has contended that the claimants are entitled to non-pecuniary damages of Rs. 75,000/-. Mr. Paul, learned advocate for the respondent-Insurance Company, in the contrary, has submitted that the decision of the larger bench passed in Deepal Girishbhai Soni (supra) has not been considered in the decision of R. K. Malik (supra) and thus such proposition laid down in R. K. Malik (supra) departs from the proposition of law in Deepal Girishbhai Soni (supra). I find substance in the submission of Mr. Paul, learned advocate for the respondent-Insurance Company. Following the Second Schedule to the Motor Vehicles Act, it goes without saying that the ambit and scope of the Second Schedule does not permit for entitlement of non-pecuniary damages of Rs. 75,000/- as claimed by the learned advocate for the appellants-claimants.

15. In view of the above discussion, the calculation of compensation is made hereunder:

Notional yearly income

Rs. 15,000/-

Less: 1/3rd on account of

personal and living expenses of the victim (Rs.15,000 x 1/3)

Rs. 5,000/-

Rs. 10,000/-

Compensation after multiplier of 20 is applied

Rs. 10,000 x 20 Rs. 2,00,000/-

Loss of estate

Rs. 2,500/-

Funeral expenses

Rs. 2,000/-

Total compensation awardable

Rs. 2,04,500/-

16. Thus the claimants are entitled to compensation comes to Rs.2,04,500/- together with interest @ 6% per annum from the date of filing of the claim application till deposit.

17. It is informed that the appellant no.2-claimant no.2 has already received the amount of compensation of Rs. 15,000/- together with interest in terms of order of the learned Tribunal.

18. Accordingly, the respondent no.1-Insurance Company is directed to deposit the balance amount of Rs. 1,89,500/- together with interest @ 6% per annum from the date of filing of the claim application till deposit, by way of cheque with learned Registrar General, High Court, Calcutta within a period of six weeks from date.

19. Appellants-claimants are directed to deposit ad valorem Court fees on the balance amount of compensation, if not already paid.

20. Upon deposit of the aforesaid amount, learned Registrar General, High Court, Calcutta shall release the said amount in favour of the appellants-claimants in equal proportion upon satisfaction of their identity and payment of ad valorem Court fees on the balance amount of compensation, if not already paid.

21. With the aforesaid observation the appeal stands disposed of. The finding of the learned Tribunal pertaining to the aspect of negligence in respect of issue no.3 is set aside. The impugned judgment and award of the Tribunal stands modified to the aforesaid extent. No order as to cost.

22. All connected applications stand disposed of.

23. Interim order, if any, also stands vacated.

24. Let a copy of this judgment be forwarded to learned tribunal along with the lower court records for information.

25. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.