
(2006) 09 MP CK 0042
In the Madhya Pradesh High Court

Sapna and Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2008) ACJ 490

Hon'ble Judges : S.K. Kulshrestha, J;N.K. Mody, J

Bench : Division Bench

Judgement

N.K. Mody, J.—Being aggrieved by the award dated 25.15.2004 passed by Fourteenth M.A.C.T., Indore in Claim Case No. 37 of 2004 whereby the claim petition filed by the appellants has been dismissed, the present appeal is filed.

2. Short facts of the case are that a claim petition was filed by the present appellants on 11.3.2001 in which it was alleged that Sujanmal Jain was the father of appellants and was a practising lawyer. It was alleged that on 12.11.1994 at about 4.30 p.m. the deceased Sujanmal Jain was coming from Mhow to Indore on a scooter which was owned by respondent No. 2 bearing registration No. MP 09-1209. It was alleged that all of a sudden the offending scooter fell down in a ditch opposite to Utsav Hotel resulting which deceased Sujanmal Jain sustained grievous injuries and was admitted to Choithram Hospital. Since he had sustained head injury, therefore, he was operated but because of grievous injuries, he passed away on 20.11.1994. In claim application which was filed u/s 163A of Motor Vehicles Act, 1988 (which shall be referred hereinafter as "the Act"), appellants claimed a sum of Rs. 30,00,000.

3. The claim petition was contested by the respondent No. 1 on various grounds alleging that appellants are not entitled for any amount of compensation u/s 163A of the Act. It was also alleged that because of negligent driving on the part of deceased the accident occurred, therefore, no amount of compensation can be claimed. It was also alleged that accident took place on 12.11.1994 while Section 163A was inserted in the Act on 14.11.1994, therefore, appellants are not

entitled to claim any amount of compensation. On the basis of the pleadings of the parties, learned Tribunal framed the issues, recorded the evidence and dismissed the claim petition by the impugned award. However, the learned Tribunal found that the cause of death of Sujanmal Jain was because of accident. It was also found that at the time of death the age of deceased was 53 years and his monthly income was approximately Rs. 15,000.

4. Learned Counsel for the appellants submit that the learned Tribunal committed error in dismissing the claim petition. It is submitted that the accident took place on 12.11.1994 and Section 163A of the Act was amended (sic incorporated) on 14.11.1994 but the death had occurred on 20.11.1994, i.e., after the enforcement of Section 163A of the Act. It is submitted that appellants are the legal representatives of the deceased Sujanmal Jain and prior to 20.11.1994 they were having no cause of action. It is submitted that in view of this, learned Tribunal committed error in dismissing the claim petition on the ground that because of the fact that no retrospective effect can be given to Section 163A of the Act, therefore, appellants are not entitled for any amount of compensation.

5. Catena of authorities has been submitted by counsel for the respondent No. 1 for the contention that the provisions of Section 163A is not having retrospective effect. It is also submitted that for the purpose of claim petition, cause of action accrues on the date when the accident took place. It is submitted that since the accident has taken place on 12.11.1994 and Section 163A of the Act has been inserted in the Act w.e.f. 14.11.1994, therefore, no advantage can be given to the appellants of the provisions. It is also submitted that u/s 163A of the Act, no compensation can be awarded to the appellants for rash and negligent driving of deceased himself. Learned Counsel further submits that even if it is found that the appellants are entitled to the compensation, then too the petition deserves to be dismissed as the income of the deceased was proved Rs. 15,000 per month while this section is available for the persons; of the category where income is as per Second Schedule to the Act.

6. Learned Counsel for the appellants submit that Second Schedule as per structured formula in Section 163A of the Act is not exhaustive, but it is only a guideline to fix just and reasonable compensation. Hence, the provision is applicable even if the amount of income of the victim is above Rs. 40,000. Learned Counsel for the appellants submit that the relevant date for determination of compensation is the date of determination by Tribunal and not the date of accident. It is also submitted that claim petition u/s 163A of the Act is maintainable even when the victim himself was driving the vehicle or he was negligent. Undisputedly, the accident took place on 12.11.1994 and death occurred on 20.11.1994 while the Act came into force on 14.11.1994. Therefore, the cause of action accrued to the appellants only on 20.11.1994 when the victim died. Prior to 20.11.1994, appellants were not having any cause of action because of the fact that injured was alive. Since on 20.11.1994, Section 163A of the Act was in force as the Act was amended w.e.f. 14.11.1994, therefore,

petition filed by the appellants was maintainable and could not have been dismissed on the ground that no retrospective effect can be given to the provisions to Section 163A of the Act.

7. So far as the contention that appellants are not entitled to claim any amount for the negligent driving of the deceased himself is concerned, the provision of Sub-section (2) of Section 163A of the Act makes it clear that the appellants are not required to plead or establish that death or permanent disablement in respect of which the claim has been made was due to any wrongful act or negligence or default of the owner of the vehicle or vehicles concerned, or of any other persons. In the matter of K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn., , the Hon''ble Apex Court while dealing with the provisions of Section 92A of the Motor Vehicles Act, 1939, has observed that an injured-claimant who was solely responsible for the accident cannot be denied compensation on no fault liability basis.

8. Here also since the fault has not to be pleaded or proved, therefore, the benefit u/s 163A of the Act which is beneficiary legislation cannot be denied to the appellants on that account.

In view of this, the appeal stands allowed. The findings of learned Tribunal so far as it relates to maintainability of the claim petition is concerned and also regarding the income of the deceased are set aside. Respondent No. I is directed to pay a sum of Rs. 50,000 to the appellants for no fault liability. The case is remanded to the learned Tribunal for computation of the amount of compensation on the basis of evidence on record. Learned Tribunal shall also examine the impact of Section 163A of the Act, where the income of the victim is found more than mentioned in the Schedule. The parties are directed to remain present before the learned Tribunal on 30.10.2006. The learned Tribunal shall pass the order within a period of three months.

9. With the aforesaid observations, petition stands disposed of with no order as to costs.