
(2009) 11 CHH CK 0025
In the Chhattisgarh High Court
Case No : M.A. (C) No. 175 of 2008

Smt. Durga Bai @ Rupwati Chouhan	APPELLANT
Vs	
Santosh Kumar Soni and Others	RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

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

Citation : (2009) 4 CGLJ 236

Hon'ble Judges : Satish K. Agnihotri, J; Nawal Kishore Agarwal, J

Bench : Full Bench

Advocate : Amit Sharina, for the Appellant; Dashrath Lal, for Respondent No. 1, Raj Awasthy and Manoj Jaiswal, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.

Heard.

1. This appeal arises from the award dated 31.10.2007, passed by the Fourth Additional Motor Accident Claims Tribunal (F.T.C.), Raigarh in Claim Case No. 41/2006 (Durga Bai v. Santosh Kumar Soni and Ors.). The Tribunal had passed this common award dated 31.10.2007, disposing of the Claim Case No. 40/2006 (Ravishankar v. Santosh Kumar soni and Anr.) also.

2. The claim of the Appellant/claimant (Smt. Durga Bai @ Rupwati Chouhan) before the Tribunal was that she is real sister of deceased Basanta Chouhan, who died on account of the alleged accident, which had taken place on 20.4.2006 at about 9.45 p.m. at Rambhantha, Sanjay Maidan, Raigarh due to rash and negligent driving of the driver (Respondent No. 1) of the vehicle Tata Sposio, bearing registration No. C.G. 11-B/6867. The Appellant/claimant was livinig with the deceased as she was a widow and she had no issue. The Appellant/ claimant was having pain in her backbone, therefore, the deceased was taking care of the Appellant/claimant. Thus, she was dependent on the deceased Basanta Chouhan.

3. The Respondent No. 3 (Rukmani Bai) in her counter claim had stated that she is also real sister of the deceased Basanta Bai (Basanta Chouhan). The deceased had been giving some portion of her income to the Respondent No. 3 in order to help her. Thus, the claim of the Respondent No. 3 is that she was also a dependent of the deceased and she is also entitled for compensation in accordance with law.

4. The claim of the Appellant as well as the Respondent No. 3 was rejected on the ground that they have failed to establish that they were dependents of the deceased.

5. Learned Counsel appearing for Appellant submits that the claim of the Appellant has been rejected by the Tribunal on the ground that she is a married sister of the deceased. Learned Counsel, relying on a decision of Hon''ble Supreme Court in Smt. Manjuri Bera v. Oriental Insurance Co. Ltd. and Anr. 2007 STPL (LE)38180 SC submits that at least, the Appellant is entitled to compensation under the provisions of Section 140 of the Motor Vehicles Act, 1988 (for short "the Act, 1988").

6. Hon'' ble Supreme Court in Smt. Manjuri Bera 2007 STPL (LE)38180 SC (supra) held as under:

14. There are several factors which have to be noted. The liability u/s 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

7. Section 140, Chapter X of the Act, 1988 provides for Liability without fault in certain cases, which reads as under:

140. Liability to pay compensation in certain cases on the principle of no fault.-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of (fifty thousand rupees) and the amount of compensation payable under that Sub-section in respect of the permanent disablement of any person shall be a fixed sum of (twenty-five thousand rupees).

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

{(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force;

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163A}

8. Learned Counsel appearing for the Respondent No. 2/Insurance Company, per contra, supports the award.

9. Having heard learned Counsel appearing for the parties and having perused the pleadings and documents appended thereto, it is evident that in respect of the answer to the issue No. 1, the tribunal has held that the deceased Basanta Bai died as a result of the accident caused by the driver of the vehicle, bearing registration No. C.G. 11-B/6867, while driving the vehicle in a rash and negligent manner.

10. In view of the above, we are of the opinion that it would be just and proper to remand the case to the Tribunal for consideration on the point of grant of compensation under the provisions of Section 140 of the Act towards no fault liability. The Tribunal may also consider and decide the entitlement of the Appellant as well as the Respondent No. 3, in accordance with law.

11. In view of the foregoing, the impugned award dated 31.10.2007 is set-aside. The matter is remanded back to the Tribunal for a fresh consideration and determination of the compensation u/s 140 of the Act, 1988, in accordance with law, on its own merits. The Tribunal may consider other evidence also, if adduced by the parties.

12. The parties are permitted to adduce additional evidences, if so advised.

13. The observations, if any, made hereinabove, shall not be construed as our opinion on merit.

14. The appeal is allowed to the above extent. No order asto costs.

15. The Registry is directed to send back the papers, requisitioned from the Tribunal, forthwith.