
(2011) 04 AHC CK 0289

In the Allahabad High Court

Case No : First Appeal From Order No. 1308 of 2009

The National Insurance Co. Ltd. Lko.

APPELLANT

Vs

Smt. Manju Devi and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 140, 163A, 163B, 165

Citation : (2011) 6 ADJ 555

Hon'ble Judges : Sudhir Agarwal, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—Present appeal u/s 173 of the Motor Vehicles Act, 1988 has been preferred against the impugned award dated 4.8.2009, passed by the Motor Accident Claims Tribunal/Addl. District Judge, Court No. 4, Lakhimpur Kheri in Motor Accident Claims Petition No. 44 of 2008.

2. Controversy, in brief, relates to an accident occurred on 26.1.2008. The deceased Rajesh Kumar was driving his Marshal Geep No. U.P. 32 Z/8334 on the way from Lucknow to Lakhimpur Kheri. At about 7.00p.m., when the vehicle arrived near Sitapur towards Lakhimpur, on account of failure of steering of Geep, the vehicle lost its balance and overturned in the pit adjoining the road. Rajesh Kumar was seriously injured and later on, he was admitted to Ayush Nursing Home from where, he was referred to Lucknow. On his way to Lucknow, Rajesh Kumar succumbed to the injuries near Bakshi-Ka-Talab. After Panchayatnama, he was cremated in his own district Lakhimpur Kheri. The deceased was head of the family leaving behind his widow wife and son. He used to drive the vehicle on monthly salary of Rs. 5000/-and keeping in view the expected age of 70 years, the claim petition was filed for compensation to the extent of Rs. 42,00,000/-.

3. The owner of the vehicle Om Prakash filed his written statement and stated

that the vehicle is registered with R.T.O. Office and insured with National Insurance Company. On the date of accident, the vehicle was insured.

4. On the other hand, the National Insurance Company took a plea that the deceased cannot be driver of the vehicle since the vehicle was owned by his own father Shri Om Prakash. It is further stated that the owner of the vehicle had not informed the Insurance Company with regard to the accident. A plea has also been taken that the deceased was not having the driving licence.

5. On behalf of Shanti Devi, the factum of accident has been proved with assertion that the deceased was driver of the vehicle. It was also stated that a portion of land was given to him by Om Prakash and from the income earned from the vehicle, the deceased used to serve his wife Manju and two sons and resided in Lakhimpur.

6. The tribunal has framed six issues, out of which, issue No. 1 relates to accident, issue No. 2 relates to negligent driving of the vehicle, issue No. 3 is with regard to insurance cover, issue No. 4 relates to driving licence, issue No. 5 relates to entitlement of compensation and issue No. 6 with regard to registration and fitness of the vehicle.

7. Before the tribunal, P. W. 1, wife of the deceased stated that her husband Rajesh Kumar used to serve his family from the earning received by driving the vehicle. She has proved the factum of accident but not an eye-witness. However, P.W. 2 Sanjay Kumar is the eye-witness. He stated that the vehicle after crashing with culvert overturned in a pit. He further stated that the police arrived at the spot since the residence of the Superintendent of Police was situated nearby the scene of occurrence. The tribunal recorded a finding that the accident occurred on 26.1.2008 at about 7.00p.m. at the place in question.

8. The tribunal further recorded a finding that the accident occurred because of failure of steering. The tribunal further observed that the Appellant insurance company has not led any evidence to establish that the accident occurred because of fault of the driver of the vehicle. With regard to insurance cover, the tribunal has also recorded a finding that on the date of occurrence, the vehicle was insured by the Appellant insurance company. The deceased was also having valid driving licence on the date of occurrence. The driving licence was valid from 1.4.2003 to 31.1.2023. The tribunal rejected the plea of the Appellant insurance company that the owner of the Geep himself had given the vehicle to his own son, hence he is not covered by third party insurance and no liability may be fastened on the insurance company to pay compensation. The tribunal has repelled the argument of the insurance company with the finding that once it is proved that the deceased was driving the vehicle and by oral evidence, it has been proved that he was paid monthly salary at the rate of Rs. 5000/-, then in absence of any rebuttal or any evidence in contrary led by the insurance company, the evidence produced by the claimant cannot be disbelieved. However, the tribunal instead of treating the income at the rate of Rs. 5000/-per

month held that in absence of any documentary evidence, the compensation should be assessed on the basis of notional income provided by Second Schedule of the Motor Vehicles Act. The tribunal has applied the multiplier of 12 and after deducting 1/3rd in lieu of personal expenses assessed the annual income to the tune of Rs. 12,000/-. Keeping in view the age of the deceased, the tribunal has applied the multiplier of 17 and granted compensation to the extent of Rs. 2,04,000/-.

9. While assailing the award in question, Mr. U.P.S. Kushwaha, learned Counsel for the Appellant raised two-fold argument. Firstly, the claim petition was filed u/s 163-A of the Motor Vehicles Act (hereafter referred to as Act), hence no compensation can be awarded u/s 166 of the Act and secondly, the deceased being driver of the vehicle and accident being occurred because of his fault, the insurance company cannot be held responsible. He relied upon the cases reported in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda,

10. On the other hand, the learned Counsel appearing on behalf of the claimant Respondent defended the impugned award and submitted that the claim petition has been decided by the tribunal in pursuance to power conferred by Section 166 read with Section 168 of the Act. At no stage, the tribunal has tried or treated the claim petition u/s 163-A of the Act. Merely because on one or two places, Section 163-A has been mentioned will not make out a case to record a finding that the claim petition was filed u/s 163-A and the tribunal has acted thereon. It is further submitted that the accident occurred because of failure of axle and the deceased cannot be held responsible. The burden was on the insurance company to establish that the accident occurred on account of fault of the driver. The Insurance company has not discharged its obligation, hence the finding recorded by the tribunal cannot be faulted. The learned Counsel for the claimant Respondent has relied upon the cases reported in [2001(19)LCD 335] Smt. Manjula Devi, Master Ankur minor through Smt. Manjula Devi (Natural Guardian as real Mother) and Smt. Kamla Devi Vs. Commercial Motors, Chhedi Lal Tripathi and National Insurance Co. Ltd., Smt. Manjula Devi, Master Ankur minor through Smt. Manjula Devi (Natural Guardian as real Mother) and Smt. Kamla Devi Vs. Commercial Motors, Chhedi Lal Tripathi and National Insurance Co. Ltd., [2004(22)LCD 688 Smt. Qamrun Nisan and Ors. v. Vijai Maurya and Ors. 2004 (22) LCD 688, 2010 (4)ALJ 1 U.P. State Road Transport Corporation, Through Chairman and Anr. v. Vidya Devi and Ors. 2010 (4) ALJ 1 2004) ALJ 5 Bhagwat Prasad Shukla v. State of U.P. and Ors. 2010 (4) ALJ 52010 (3)ALJ 532 United India Insurance Company Limited v. Smt. Anne Swaroop and Ors. 2010 (3)ALJ 532 , 2010(3) ALJ 390 Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, 2010 (3) ALJ 390 Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another,

11. Coming to first submission of the Appellant's counsel with regard to

maintainability of the claim petition. A perusal of the original petition, moved before the tribunal as well as the impugned award indicates that it was filed u/s 166 of the Act. The tribunal has considered the claim petition u/s 166 of the Act and delivered the award. Merely because Section 163-A has been mentioned in a cursory manner and that too which was not taken note by the tribunal shall not render the award illegal or without jurisdiction. The case of Deepal Girishbhai Soni (supra) relates to a situation where a claim petition was filed u/s 163-A of the Act and compensation was awarded by applying the multiplier provided by Second Schedule. Another petition was filed u/s 166 of the Act. The compensation awarded u/s 163-A of the Act was treated as interim relief which was impugned before the High Court, then came before Hon''ble Supreme Court. An argument was advanced by the claimant that the legislation deserves liberal construction and the payment of just compensation in terms of Section 166 of the Act cannot be taken away only because an interim award has been made in terms of Section 163-A of the Act. Hon''ble Supreme Court held that the power conferred to tribunal under Sections 140, 163-A and 166 read with Section 168 of the Act deals with different situation. Option is open to the claimant u/s 167 of the Act to choose a forum. In case, a compensation is awarded u/s 163-A of the Act as a measure of speedy and effective remedy, then at later stage, it is not open to invoke the jurisdiction conferred by Section 166 of the Act. A claimant does not have right to pursue their claim petition u/s 163-A and 166 of the Act simultaneously. For convenience, relevant portion from the judgment in Deepal Girishbhai Soni (supra) is reproduced as under:

51. The scheme envisaged u/s 163A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000/-or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society.

52. It may be true that Section 163B provides for an option to a claimant to either go for a claim u/s 140 or Section 163A of the Act, as the case may be, but the same was inserted "ex-abundanti cautela" so as to remove any misconception in the mind of the parties to the lis having regard to the fact that both relate to the claim on the basis of non-fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims either u/s 163A or Section 166 does not arise. If the submission of the learned Counsel is accepted the same would lead to an incongruity.

The same proposition of law has been reiterated by Hon''ble Supreme Court in the case of Dr. T.V. Jose(supra), relied upon by the Appellant's counsel with

further finding that the words, "any person" given in Section 166 of the Act would include an occupant who is gratuitously travelling in the car in the event of comprehensive policy.

12. In the present case, neither any compensation has been awarded nor the claimant had pressed their claim u/s 163-A of the Act. The claim petition was tried u/s 166 as is evident from the award. The compensation was awarded in pursuance to power conferred u/s 166 read with Section 168 of the Act. Since the tribunal has not exercised its jurisdiction in pursuance to Section 163-A of the Act, hence merely referring of the section along with Section 166 shall not render the award illegal or without jurisdiction.

13. The second limb of argument is with regard to the submission that the deceased was driving the vehicle and because of his fault, the accident occurred, hence the dependents shall not be entitled for payment of compensation.

14. Power to award compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 is moved before the tribunal u/s 166 of the Act. The entire trial held u/s 166 of the Act culminated into the impugned award. The provisions contained in Section 165 of the Act is subject to Section 167. Where a claim is tried u/s 166, any person may move application who has sustained injury or by the owner of the property or where death has resulted from accident. For convenience, Sub-section (1) of Section 166 is reproduced as under:

166. Application for compensation.-(1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made -

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as Respondents to the application.

A combined reading of Section 166 indicates that the Legislature to their wisdom has not differentiated between the driver of the vehicle or owner of the vehicle. Any person who has suffered injury in the accident covered by Section 165 of the Act may move application u/s 166 and just compensation may be awarded u/s 168 of the Act. Applying the multiplier under Schedule II does not necessarily

mean that the application should be treated u/s 163-A of the Act. Multiplier is used as a measure of uniformity and guideline to award compensation u/s 166 read with Section 168 of the Act as settled by catena of judgments of this Court and Hon"ble Supreme Court.

15. In the case of Smt. Kaushnuma Begum and others(supra), Hon"ble Supreme Court ruled that a compensation may be awarded by the tribunal constituted u/s 165 of the Act. In Smt. Qamrun Nisan(supra), a Division Bench of this Court, of which one of us (Hon"ble Devi Prasad Singh, J) was a member, after considering the dictionary meaning of accident and other statutory provisions held that it will be obligatory on the part of owner of the motor vehicle to maintain the vehicle up to mark keeping in view the standard provided by the Motor Vehicles Act and the Rules framed thereunder. Every incident or accident should be considered under the facts and circumstances of each case. Applying the principle of "Res ipsa Loquitur", the court observed as under:

31. The Constitution assigned duties to constitutional functionaries to serve nation whether it is Judge or Members of Judiciary or the Members of Executive or Legislative wing. No one can escape from his responsibility to discharge his duty by saying that a particular incident is an act of God and nothing can be done. Similarly whether it is owner of a vehicle or driver or any person or authority or citizen in general cannot shirk from his or her responsibility by saying that a particular incident is an act of God, hence he fail to discharge his duties. Since ages human race is struggling to combat the natural calamities by scientific inventions and to help peoples in the event of sufferings occurs due to natural calamities.

We can consider this aspect of the matter by considering a common incidents used to happen resulting in gross destruction in our country. Suppose on account heavy rain or cyclone, a dam or bridge or tower suffers from destruction, then whether such incident may be ignored by saying that it was an act of God. The defence will not be available in case the destruction or breakage of dam, bridge, tower etc. is because of manufacturing defect, III maintenance or otherwise on account of negligent of duty by the authorities concern. Persons responsible shall be liable for prosecution or punishment in accordance to law.

32. An incident should be interpreted and considered under the facts and circumstances of the each case. In the present case it is to be seen that whether the motor vehicle owner has discharged his duties to keep the bus in proper condition including the axle since there is nothing on record hence the breakage of axle can be safely termed as an accident under the principle of "Res ipsa Loquitur". The burden was on the Respondents to prove that the axle was in proper condition. Since they have not done hence the breakage of axle cannot be ignored as an individual incident but it is coupled with the jumping out of the bus by Shri Khursheed Ahmad Khan and under combined consideration of both the incident, it can be said that there was an accident attracting for payment of compensation under the Motor Vehicle Act. It cannot be ignored as an act of

"God".

16. There appears to be no doubt from the evidence on record that the incident occurred because of failure of axle. Accident is an unplanned event frequently resulting broadly injury, property, damage or both. In law, it is a casualty or unforeseen event usually capitalised by suddenness or external force or violence.

In the case of another Division Bench of this Court, of which one of us (Hon^{ble} Devi Prasad Singh, J) was a member, after considering the definition of the word, "accident" held that the use of motor vehicle means the accident occurred by use of motor vehicle. The court further held that where a person died while travelling in a vehicle because of accident or some unforeseen event, then he or she shall be entitled for compensation under the Act.

17. In Rajpal Singh Vs. The Union of India and Others, Rajpal Singh Vs. The Union of India and Others, a Full Bench of the Punjab and Haryana High Court by majority expressed its opinion as under:

6. Section 110 of the Act and the crucial words quoted above were also the subject of consideration by a Full Bench of the Punjab and Haryana High Court in the case of The majority opinion was delivered by S.P. Goyal, J. Speaking for the majority S.P. Goyal, J. Speaking for the majority S.P. Goyal, J observed thus in paragraph 31 of the judgment:

The answer to the problem, therefore, entirely depends on the interpretation of Section 110 under which the Claims Tribunals are set up and conferred with the jurisdiction to deal with the claims for compensation. According to this provision, the Claims Tribunal is set up to adjudicate upon claim for compensation in respect of the accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. So, the Tribunal has not been conferred with the jurisdiction to deal with the claims of compensation in respect of all kinds of accidents. Instead, its jurisdiction is confined to claims of compensation in respect of those accidents which arise out of the use of motor vehicles. In other words, the use of motor vehicle must be the cause of the accident howsoever slight it may be and unless the accident is the effect caused by the use of the motor vehicle it would not be possible to say that it has arisen out of the use of motor vehicle. The interpretation of similar words came up for consideration before a Five Judges Bench of the High Court of Australia in Government Insurance Office of New South Wales v. R.J. Green and Loyd Pty. Ltd. The words used in the insurance policy were "injury caused by or arising out of the use of the vehicle". Windeyer, J. while agreeing with the judgment written by Barwick. C.J. observed:

The words, "injury caused by or arising out of the use of the vehicle" postulate a casual relationship between the use of the vehicle and the injury" caused by connotes a "direct" or "proximate" relationship of cause and effect. Arising out of extends this to a result that is less immediate; but it still carries a sense of consequence. It excludes cases of bodily injury in which the use of the vehicle is

a merely casual concomitant not considered to be, in a relevant casual sense, a contributing facts.

(emphasis added)

The aforesaid proposition of law has been affirmed by the Division Bench in the case of Manjula Devi Mishra (supra). In the case of Manjula Devi Mishra (supra), the Division Bench further ruled that a claim petition may be entertained for compensation in respect of accident involving the death of, or bodily injuries to persons where the accident is caused by the use of the motor vehicle or the use of the motor vehicle contributes, whether by itself or along with some other joint tort-feasors, to the accident.

18. In the present case, the accident was not caused by some outside agency. It was exclusively caused by failure of axle and overturning of vehicle in the roadside pit. Hence, the tribunal seems to have rightly exercised jurisdiction while awarding the compensation.

19. The aforesaid proposition of law has been reiterated by other judgments in the case of Smt. Anne Swaroop, Ashok Kumar, Rita Devi(supra).

20. In the case of Rita Devi, Hon"ble supreme Court while distinguishing the murder in an accident held that if the dominant intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor but in case murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder and the claimant shall be entitled for compensation. Keeping in view the broader principle of law, the claimant seems to be entitled for compensation.

21. The tribunal has assessed the notional income of the deceased instead of relying upon the pleading with regard to earning of Rs. 5000/-. Grant of compensation on the basis of notional income reveals that the tribunal was conscious with the surrounding facts and circumstances while awarding compensation. Merely because the deceased was the son of the owner shall not make out a case for denial of compensation. Sections 165, 166 and 168 of the Act do not contain any rider with regard to payment of compensation on the basis of relationship, caste, creed or religion. The legal heir and successor or dependents of the occupant of the vehicle dying in accident shall be entitled for payment of compensation subject to insurance cover and fulfilment of necessary conditions.

22. In view of above, the impugned award does not seem to suffer from any impropriety or illegality. The appeal, being devoid of merit, is dismissed. Let the entire amount be deposited before the tribunal along with interest within two months, in case already not deposited and the tribunal shall release the compensation immediately thereafter within a month in terms of the award to the claimants.

Subject to above, the appeal is dismissed.