

(2008) 11 DEL CK 0184
In the Delhi High Court
Case No : MAC App. No. 488 of 2008

The New India Assurance Co. Ltd.

APPELLANT

Vs

Sakila and Others

RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

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

Citation : (2008) 11 DEL CK 0184

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : D.D. Singh, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—New India Assurance Company has filed this appeal u/s 173 of Motor Vehicles Act, 1988 (for short as "Act") against award dated 8th July, 2008 passed by Ms. Neena Bansal Krishna, Judge MACT (for short as "Tribunal"), Delhi.

2. Brief facts of this case are that on 4th October, 2001, at about 5.15 p.m. deceased (Mohd. Mosim) was going on his cycle and had reached near Sabzi Mandi, Rani Bagh, Delhi, when a truck bearing No. DIG 2790, which was being driven at a high speed and in a rash and negligent manner by respondent No. 10 came from the side of Nilamber Appatments, Sainik Vihar and hit the cycle of the deceased, due to which deceased sustained fatal injuries. The truck is owned by respondent No. 11 and is insured with the appellant.

3. Respondent No. 10/Driver did not appear despite service before the Tribunal and was proceeded exparte on 17th April, 2002.

4. The owner of the offending vehicle also did not appear before the Tribunal despite service and he was also proceeded ex-parte on 23rd October, 2002.

5. The appellant in its written statement took preliminary objections stating that it is not liable to pay compensation if it is found that the driver of the vehicle was

not holding a valid and effective driving licence at the time of the alleged accident or the owner/insurer had violated any terms and conditions of the policy.

6. On merits, the appellant has admitted the factum of insurance.

7. The claimants had originally filed their claim petition u/s 166 and 140 of the Act and an interim award in a sum of Rs. 50,000/- has already been awarded in their favour.

8. At the time of the final arguments, vide order dated 29th November, 2006, passed by the Tribunal, the claimants were allowed to get their petition converted into claim petition u/s 163(A) of the Act.

9. Vide impugned judgment, the Tribunal awarded a compensation of Rs. 4,57,500/- along with interest @ 7.5% p.a. from the date of filing of the petition till the date of payment.

10. Being aggrieved with the impugned judgment passed by the Tribunal, the Insurance Company has filed the present appeal.

11. It has been contended by the learned Counsel for appellant that as per the facts stated in the petition, the income of the deceased was Rs. 4,500/- per month and only those person are entitled to compensation u/s 163A of the Act, whose income is not more than Rs. 40,000/- per annum. Thus, the Tribunal has erred by awarding compensation u/s 163A of the Act, as the income of the deceased as assessed by the Tribunal was more than Rs. 40,000/-per annum.

12. Furthermore, the Tribunal has committed grave error by holding that as the appellant has not challenged the conversion of the petition as such the same could not be reagitated. Since the respondents No. 1 to 9 had already reaped the benefits by getting the interim award passed in their favour u/s 140 of the Act, as such the order of converting the petition into the petition u/s 163A of the Act was bad in eyes of law.

13. Other contention is that there was no eye witness examined by respondents No. 1 to 9 to prove that the accident has taken place due to rash and negligent act of the respondent No. 10 i.e. driver of the offending vehicle. In case of the petition u/s 166 of the Act, the claimants are required to prove the rash and negligent aspect of the offending vehicle by leading cogent evidence. In the present case, no evidence was led by the claimants and thus, the Tribunal has erred in holding that the accident has taken place due to rash and negligent act of the respondent No. 10 in view of the criminal record as placed on record.

14. Learned Counsel for the appellant has relied upon the decision of the Apex Court in Oriental Insurance Co. Ltd. v. Hansarajbhai V. Kodala and Ors. 2001 SCC (Cri) 857 and the decision of this Court in Delhi Transport Corporation and Anr. v. Nirmala and Ors. 1 (2003) ACC 389, in support of its contentions.

15. Respondent No. 1/Sakila, widow of the deceased as PW1 has deposed that the deceased was aged about 35 years old at the time of his death and was

earning Rs. 4,500/- per month.

16. On the other hand, Kamre Alam, son of the deceased as PW2 has deposed that the deceased was earning Rs. 3,000/- per month.

17. However, the claimants have not placed any documentary proof with regard to the income of the deceased.

18. Under Second Schedule of the Act, the upper limit of the income is Rs. 40,000/- per annum.

19. Since no proof with regard to the income of the deceased has been placed on record, the Tribunal thus took the safest course and adopted the minimum wages. The minimum wages has been taken as Rs. 2,600/- per month for unskilled worker relevant at the time of accident and considering the future prospects which are inherent and taking into account the method as laid down in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, the income of the deceased was doubled and average of the same was taken and 1/3rd was deducted and thus monthly income was taken as Rs. 2,600/-. The loss of income to the family of deceased thus comes to Rs. 31,200/-, which in any case, comes within the prescribed limits, as laid down in the Second Schedule of the Act.

20. It is evident from the record that initially this petition was filed u/s 166 read with Section 140 of the Act and thereafter the claimants got converted their petition into u/s 163A of the Act. The claim petition was converted into section 163A of the Act vide order dated 29.11.2006. However, the appellant did not challenge this conversion order and therefore, appellant cannot agitate this point at this stage.

21. As regards to the contention of proving rash and negligent driving, in the present case, since the petition has been decided by the Tribunal u/s 163A of the Act, the claimants need not prove that the death of the deceased was caused due to any wrongful act or neglect or default of the owner of the vehicle or of any other person. The claimants have only to prove that deceased died in the accident on account of involvement of offending truck. Thus, this contention of the appellant is also rejected.

22. For detailed reasons recorded in MAC App. No. 368 of 2005 Uttar Pradesh State Road Transport Corporation v. Gajraj Singh and Ors. decided on 26th August, 2008 and MAC App. No. 439/2008 and CM No. 11233/2008 The New India Assurance Co. Ltd. v. Sh. Mohd. Jabir and Ors. decided on 23rd September, 2008 by this Court, the present appeal is not maintainable and the same is, hereby, dismissed.

23. No order as to costs.