(2008) 11 DEL CK 0065

In the Delhi High Court

Case No : MAC App. No. 533 of 2008 and CM No. 15069 of 2008

The New India Assurance Co. Ltd. APPELLANT

Vs

Sh. Amru Ram and Others RESPONDENT

Date of Decision : 12-11-2008

Acts Referred:

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

Citation : (2008) 11 DEL CK 0065

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Present appeal u/s 173 of the Motor Vehicles Act, 1988 (for short as ''Act'') has been filed against award dated 19th July, 2008 passed by Ms. Deepa Sharma, Judge, MACT (for short as ''Tribunal''), New Delhi.

2. The facts in brief are that deceased Om Parkash was going to see his truck on 30th August, 1996 at the site and when he reached at ring road No. 8, a vehicle No. DIL 1507 knocked him down. He sustained fatal injuries and expired on 31st August, 1996. It is alleged that the accident has taken place due to rash and negligent driving of the offending vehicle by its driver/respondent No. 6. The offending vehicle is owned by respondent No. 5 and it is insured with appellant.

3. Vide impugned judgment, the Tribunal awarded a sum of Rs. 5 lacs as compensation along with 7.5% interest per annum from the date of filing of the petition till realization.

4. Insurance Company being aggrieved with this award has filed the present appeal.

5. It has been contended by the learned Counsel for the appellant that the Tribunal has proceeded with the wrong assumption that even though respondents

No. 1 to 4 filed their petition u/s 166 of the Act and lead evidence accordingly, but without making any prayer for conversion of their petition u/s 166 of the Act to Section 163A of the Act, the Tribunal passed the award u/s 163A of the Act on its own, while delivering its finding pertaining to rash and negligent driving of the offending vehicle, on the part of respondent No. 6 i.e. driver in the happening of the accident resulting into death of deceased, considering the Act as a socio-beneficiary legislation.

6. It is evident from the record that initially this petition was filed u/s 166 read with Section 140 of the Act but the Tribunal has converted the claim petition into u/s 163A of the Act on its own.

7. Section 163A of the Act reads as under;

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 (8 of 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.

8. In Rukmani Devi v. New India Assurance Co. Ltd. and Anr. III (2008) ACC 68, this Court has observed as under;

The provisions with regard to the no fault liability were inserted having regard to the fact that road accidents in India have reached an alarming proportion and in many of the cases it could be noticed that the victims were being deprived of the compensation amount in the absence of proving rash or negligent driving due to inability in producing any independent witness. To come to the rescue of such victims, earlier Section 140 was brought on the Statute book whereby the provision was made to pay a fixed sum of Rs. 50,000/- (through an amendment by Act 54 of 1994 to substitute the amount of Rs. 25,000/- by Rs. 50,000/-) in respect of the death of any person and a fixed sum of Rs. 25,000/- (through an amendment by Act 54 of 1994 to substitute the amount of Rs. 12,000/- to Rs. 25,000/-) is payable in respect of the permanent disablement of any person on the principle of no fault liability. This right given u/s 140 of the Motor Vehicles Act was in addition to the right to claim compensation in respect of any such death or permanent disablement under any other provisions of Act or of any other law for the time being in force. Section 163-A was introduced in the Act again by way of a social security scheme. It would be evident from the objects and reasons of the Motor Vehicles (Amendment) Act, 1994 that after the enactment of 1988 Act several representations and suggestions were made by the State Governments, transport operators and members of public in relation to certain provisions thereof and after taking note of the said suggestions made by the various Courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a Review Committee. The Review Committee appointed by the Government in its report made the following recommendations:

The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability cases. It also provides for payment of compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31.3.1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as the Insurance Company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different clauses of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels.

The General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for settlement of claims on ``fault liability''` in respect of third party liability under Chapter XI of M.V. Act, 1988. They have suggested that the claimants should first file their Claims with Motor Accident Claims Tribunals and then the insurers may be allowed six months'' time to confirm their prima facie liability subject to the defences available under Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time.

40. The recommendations of the Review Committee and representations from public were placed before the Transport Development Council for seeking their views pursuant whereto several sections were amended. Section 163A was inserted in the Act to provide for payment of compensation in motor accident

cases in accordance with the Second Schedule providing for the structured formula which may be amended by the Central Government from time to time.

9. Section 163B of the Act reads as under;

163B. Option to file claim in certain cases. Where a person is entitled to claim compensation u/s 140 and Section 163A, he shall file the claim under either of the said sections and not under both.

10. The embargo u/s 163B of the Act gives an option to file claim petition either u/s 140 or u/s 163A of the Act and not under both the provisions, but no such restriction has been placed under the Act in choosing either of the two remedies i.e. u/s 166 of the Act or u/s 163A of the Act. Section 140 of the Act deals with grant of interim compensation, but Section 163A provides for a situation to grant a pre- determined sum without insisting on a long drawn trial or without proof of negligence in causing the accident. The said Section 163A was a kind of new mechanism evolved by the legislature so as to grant quick and efficacious relief to the victims falling within the specified category, which was not available to the victims u/s 166 of the Act.

11. The object of Section 163A and the Second Schedule of the Act is to avoid long-drawn litigation and to avoid delay in payment of compensation to the victim or his heirs who needs urgent relief, and therefore, the Courts have been permitting the claimants to make application u/s 163A of the Act at any stage of the proceedings, so long as no order is passed on the application u/s 140 of the Act.

12. Further, the object with which Section 163A of the Act has been inserted and the non-obstant clause with which Sub-section (1) of Section 163A of the Act commences clearly indicate that the legislature did not intend to prevent the claimant from getting compensation as per the structured formula merely because in his original claim petition he had prayed for compensation on the basis of ''fault liability'' principle. There is no prohibition in any provision of the Act against the claimant praying for compensation as per the structured formula after his having filed a claim petition u/s 166 of the Act.

13. Remedy for payment of compensation both under Sections 163A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies there under simultaneously. One thus, must opt/ elect to go either for a proceeding u/s 163A or u/s 166 of the Act, but not under both.

14. Taking a purposive interpretation of Section 163A of the Act, the clear intendment of the legislation was to come to the rescue of all those who in the absence of an evidence are not in a position to file a claim petition u/s 166 of the Act where death of the victim or permanent disablement of the victim is required to be proved by establishing the factum of negligence involving the offending vehicle resulting in to causing the accident but u/s 163A, the requirement of

proving the negligence has been dispensed with.

15. In the present case, the claimants have not produced any eye witness to prove the factum of rash and negligent driving on the part of offending vehicle, and have not been able to prove the income of the deceased.

16. The Tribunal while passing the award u/s 163A of the Act held as under;

It is also apparent that it is the duty of the tribunal to keep in mind that petitioners before it are the victims of an act which had happened due to fault of others. Most of the time, they are poor persons. In the present case also the petitioners were the father, mother, widow and son of the deceased who are very poor persons. They are illiterate and are not very well aware of the various provisions of the act. It is also settled provisions of law that filing of a petition under a particular provisions of the Act does not debar the court/tribunal from considering it into another provisions of the Act, keeping in mind the welfare of the petitioner. Since the Act is meant for welfare of the victims of the accident, keeping in view all the facts and circumstances of this case, I consider the present petition u/s . 163A of the MV Act.

17. In Oriental Insurance Co. Vs. Mst. Zarifa and Others, the Jammu and Kashmir High Court has observed as under;

Before concluding, it is also observed that it is a social welfare legislation under which the compensation is provided by way of Award to the people who sustain bodily injuries or get killed in the vehicular accident. These people who sustain injuries or whose kith and kins are killed, are necessarily to be provided such relief in a short span of time and the procedural technicalities cannot be allowed to defeat the just purpose of the Act, under which such compensation is to be paid to such claimants.

18. In the present case, the claimants have alleged that deceased was earning Rs. 7,000/- per month but admittedly they have not been able to prove that income. The Tribunal under these circumstances has taken the income of the deceased to be Rs. 40,000/- per annum for the purpose of determining the loss of dependency. Income of Rs. 40,000/- per annum taken by the Tribunal comes to Rs. 2,500/- per month. Since the deceased was aged about 25 years and had large family to support with, the income of Rs. 2,500/- per month taken by the Tribunal is quite reasonable, since the minimum wages of a skilled worker during the year 1996, was Rs. 2,100/- per month. So, the Tribunal has rightly taken the income of Rs. 40,000/- per annum as per the maximum limits provided under the Second Schedule of the Act.

19. The Tribunal has also rightly applied the multiplier of 18 taking the age of deceased as 25 years, which is as per Second Schedule of the Act.

20. Thus, under these circumstances, there was no bar upon the power of Tribunal for converting the petition and pass the award, u/s 163A of the Act and the Tribunal has rightly decided the petition u/s 163A of the Act.

21. Thus, I do not find any infirmity or illegality with the impugned judgment of the Tribunal and there is no merit in this appeal and the same is, hereby, dismissed.

22. No order as to costs.