

(2008) 07 AHC CK 0046
In the Allahabad High Court

The New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Pooja Gupta and Others

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2009) 1 AWC 189

Hon'ble Judges : Shishir Kumar, J; Amitava Lala, J

Bench : Division Bench

Judgement

Amitava Lala, J.—This appeal has been preferred by the appellant-insurance company challenging the judgement and order dated 05th April, 2008 passed by the concerned Motor Accidents Claims Tribunal, Kanpur Nagar.

2. According to the learned Counsel appearing for the appellant-insurance company, number of the vehicle was not taken at the time of filing the first information report in the night at 3.15 A.M. after the accident occurred at about 2.00 A.M. It is a case of hit and run. However, we find that subsequently the vehicle was identified and in the charge-sheet number of the vehicle was given. Five witnesses were examined in the criminal case. The eye witness was examined before the tribunal. Therefore, we do not find any cogent reason to interfere in the appeal on such point particularly when there is no rebuttal on this issue on the part of the insurance company before the tribunal itself.

3. So far as the question of applicability of multiplier is concerned, the only point has been taken that the deceased was about 31 years old and multiplier of 17 has been applied, which should be 13 in view of the recent Supreme Court judgement reported in *The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others*, We find that in such judgement the Supreme Court has not laid down any ratio applicable in rem but replied multiplier of 13 taking advantage of the observation of the Supreme Court in *U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors.* reported in JT 1996 (5) SC 356, whereunder it has been held that the Second Schedule u/s 163-A of the Motor Vehicles Act,

1988 (hereinafter in short called as the "Act") is not invariable ready reckoner but guide due to certain mistakes in the calculations. The Supreme Court also considered the issue on the basis of the hypothesis. Relevant portion is quoted hereunder:

12. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered.

(Emphasis supplied)

It has also been observed that the highest multiplier has to be used for the age group when an ordinary citizen starts independent earning and the lowest would be in respect of the normal retirement age. Therefore, we have to cull out what is the ratio decidendi herein. According to us, hypothesis or implication arising out of a particular case can not form ratio decidendi. The term "judgement" and "decision" are used, rather loosely, to refer to the entire judgement or the final order or the ratio decidendi of a judgement. It is the ratio decidendi of a judgement and not the final order in the judgement, which forms a precedent. A case is only an authority for what it decides and not what logically flows from it. A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention of the Judge, and inferring from it a proposition of law which the Judges have not specifically laid down in the pronouncement.

In *Indian Bank Vs. ABS Marine Products Pvt. Ltd.*, the Supreme Court has held as follows:

One word before parting. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction/order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Court repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The courts should therefore, be careful to ascertain and follow the ratio decidendi, and not the relief given on special facts, exercising power under Article 142. One solution to avoid such a situation is for this Court to clarify that the particular direction or portion of the order is an exercise of power under Article 142. Be that as it may.

4. We are of the view that no uniform rule can be applied in case the application is made u/s 166 of the Act, which requires determination of "just" compensation.

But, by and large, we follow the Second Schedule u/s 163-A of the Act, irrespective of the fact whether the same is guide or ready reckoner because it is part and parcel of the Act of Parliament. Therefore, in all, we can not vary such schedule very often unless and until an exceptional circumstance arises.

5. In this case, we find that both age of the deceased and multiplier were correctly determined by the tribunal. Therefore, in a beneficial piece of legislation, the claimants should not be made to suffer without any exception, otherwise objects and reasons of the Act will be frustrated.

6. Thus, in totality we do not find any reason to interfere with the judgement and order impugned in this appeal. Hence, the appeal is dismissed at the stage of admission, however, without imposing any cost.

7. Incidentally, the appellant-Insurance Company prayed that the statutory deposit of Rs. 25,000/- made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust the same with the amount of compensation to be paid to the claimants, however, such prayer is allowed.