

(2008) 09 DEL CK 0205

In the Delhi High Court

Case No : M.A.C. App. No. 441 of 2008 and C.M. No. 11237 of 2008 & MAC App. No. 441 of 2008 and CM No. 11237 of 2008

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Om Prakash, Smt. Murti, Sukhbir Singh and Paramjeet Singh

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 163A(3), 163B, 166

Citation : (2008) 09 DEL CK 0205

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : R.B. Shami, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The appellant/Insurance Company has filed present appeal u/s 173 of the Motor Vehicles Act, 1988 (for short as "Act") against the award dated 3rd May, 2008 passed by Ms. Deepa Sharma, MACT (for short as "Tribunal"), New Delhi.

2. Brief facts of this case are that on 28th October, 2003, respondent No. 1 was coming on his scooter No. DL-4-SC-1977 along with his brother Phol Singh and his daughter Riya, aged 31/2 years, who was standing on scooter in front of respondent No. 1. While coming from Janak Puri and going towards Sangam Vihar via alof palame Marg at about 8.15 a.m., when they reached Sector 3, Masjid, R.K. Puram Red Light, respondent No. 3/Sukhbir Singh came driving taxi No. DL-IT-3078 in a rash and negligent manner and at a high speed, and overtook the scooter and suddenly applied brakes. Due to sudden application of brakes by respondent No. 3, the scooter of respondent No. 1 got hit at the back of the taxi and as a result thereof, his daughter sustained injuries as the handle of the scooter struck in her chest. She was taken to the Hospital South Point, GK-II, Masjid Moth. After giving first aid, she was referred to Govt. hospital and was brought to Safdarjung hospital where she was declared brought dead. The

accident has taken place due to rash and negligent driving on the part of respondent No. 3.

3. The offending vehicle was owned by respondent No. 4/Paramjeet Singh and it is insured with appellant/Insurance Company.

4. Vide impugned award, the Tribunal granted compensation of h 2,75,000/- to respondents No. 1 and 2, who are the claimants.

5. Respondents owner/driver filed joint written statement before the Tribunal stating that respondent No. 3/driver of taxi was having a valid driving licence at the relevant date and time. It is not disputed that respondent No. 4 was the owner of offending taxi. The factum of accident has been admitted. However, it is stated that the taxi was going ahead and respondent No. 1 has failed to maintain the minimum distance from the taxi. The taxi never overtook the scooter and while the taxi had halted, respondent No. 1 could not apply brakes of his scooter and thus he could not control the scooter, which hit the back of the taxi and consequently, there was impact on the chest of little girl and thus accident occurred due to negligence on the part of respondent No. 1.

6. Appellant/Insurance Company has admitted the factum of accident. However, it is stated that the driver of the taxi was not having any valid and effective driving licence for particular category of the vehicle which he was found to be driving at the time of alleged accident, therefore, the appellant is not liable at all on account of breach of terms and conditions of the Insurance policy.

7. It has been contended by the learned Counsel for the appellant that the present claim petition has been filed u/s 163A of the Act and the Tribunal could not have passed award for more amount than the amount fixed as per Second Schedule of the Act. The Tribunal, wrongly relied upon the decisions of Apex Court and High Courts and passed order u/s 166 of the Act in the claim petition filed u/s 163A of the Act.

8. The tribunal has also failed to appreciate that the amount of compensation arrived at as per Second Schedule u/s 163A of the Act, has to be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining herself had she been alive.

9. Further, the Tribunal has failed to appreciate that while passing award u/s 163A read with Second Schedule of the Act, there is no provision for awarding Rs. 50,000/- on account of loss of child and pain & sufferings to the parents/claimants.

10. Learned Counsel for the appellant has also relied upon the decisions of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, , Oriental Insurance Co. Ltd. Vs. Rajwati Devi and Others, and The New India Assurance Company Vs. Shanker Lal and Others, in support of its contentions.

11. Before delving on the contentions raised by the learned Counsel for the

appellant, it would be appropriate to reproduce the relevant provisions of the Act so as to properly appreciate the controversy involved in the present appeal.

12. 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.

13. 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.

14. The contention of the learned Counsel for the appellant that the Tribunal should have awarded the compensation as laid down in the Second Schedule of the Act, appears to be attractive but at the same time does not appear to be justified.

15. Section 163A(3) of the Act provides that the Second Schedule of the Act is to be revised from time to time keeping in view the cost of living by an appropriate notification in the official gazette by the Central Government but since the time of its insertion w.e.f. 14.11.1994, no revision has taken place even after lapse of about more than 13 years.

16. In *Oriental Insurance Co. Ltd. v. Rajwati Devi and Ors.* (supra), as cited by the counsel for the appellant, this Court has held that the tribunal after treating a claim application as u/s 163A of the Act has to determine compensation strictly in accordance with Second Schedule of the Act. This Court further observed that;

Second Schedule was amended to the Motor Vehicles Act in the year 1994. Unfortunately, government has not exercised its power provided under Clause (3). Thus, Second Schedule remains unamended since the date of its inception till today.

I note that from year 1994 today, inflation has gone up by 4 per cent to 6 per cent each year. Keeping in view inflation and the rise in cost of living and the fact that the government has not amended the Second Schedule, I think it appropriate to give benefit of 25 per cent increase in the income even as per the Second schedule.

17 To the similar effect, the Apex Court in *Oriental Insurance Co. Ltd. v. Meena Variyal and Ors.* (supra), as cited by the counsel for the appellant, has held that the victim of an accident or his dependants have an option either to proceed u/s 166 of the Act or u/s 163A of the Act. Once they approach the Tribunal u/s 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed u/s 163A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

18. However, as per Section 168 of the Act, it has to be borne in mind by the Tribunal that "just compensation" has to be made in the facts and circumstances of each case.

19. In this regard, the Apex Court also observed in *The Divisional Controller, KSRTC v. Mahadeva Shetty and Anr.* JT 2003 (6) SC 519, as under;

It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be "just". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages

cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so, it cannot be just. (See Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another,

20. Thus, in view of the discussion, the Tribunal has rightly awarded the compensation on account of loss of dependency as per Second Schedule of the Act.

21. As regards the contention of awarding compensation on account of loss of child and pain & sufferings, in Shyam Narayan Vs. Kitty Tours Travels and Others, , this Court awarded compensation of Rs. 50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda.

22. In this regard, the Apex Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , has laid down the broad principles as under;

Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

23. However, no amount of compensation can compensate the loss of a life or can bring back happiness in the lives of the dependant family members. In the present case, the deceased was a child of 3 1/2 years and the parents had undergone lot of pain and sufferings on account of their loss of child.

24. Thus, in view of the facts of the case, a sum of Rs. 50,000/- on account of

pain and sufferings as awarded by the Tribunal to the claimants is just, fair and equitable.

25. In view of the above discussion, I do not find any infirmity or illegality in the impugned judgment passed by the Tribunal.

26. Accordingly, the present appeal filed by the appellant is, hereby, dismissed.

27. Trial Court record be sent back.