(2011) 08 KL CK 0076

In the High Court Of Kerala

Case No : M.A.C.A. No. 1180 of 2011

The Oriental Insurance Company Ltd. APPELLANT

Vs

Mariyakkutty and Others RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(4), 163A, 166

Citation : (2011) 08 KL CK 0076

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : A.R. George, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—The insurance company is the Appellant. The insurance company is aggrieved by the quantum of compensation awarded in a claim u/s 163A of the Motor Vehicles Act. Against a total claim of Rs. 3,58,500/-, the Tribunal awarded an amount of Rs. 2,77,000/- as per the details appearing in para.16 of the award, which we extract below:

i)

Loss of dependency

Rs.2,72,000.00

(16,000 X 17)

ii)

Funeral expenses

Rs. 2,000.00

iii)

Loss of estate

Rs. 2,500.00

iv)

Medical expenses

Rs. 500.00

v)

Total

Rs.2,77,000.00

2. The claimants are the legal heirs of the deceased. The claim was staked u/s 163A of the Motor Vehicles Act. The Tribunal had entered a specific finding that Rs. 2,000/- was the income of the deceased. The Tribunal M.A.C.A No. 1180 of 2011 2 had further entered a specific finding that 27 was the age of the deceased on the date of his death. Bills for Rs. 500/- were produced to prove medical expenses incurred.

3. The learned Counsel for the Appellant/insurance company argues that the quantum of compensation awarded is excessive. Requested to explain the basis of the contention, the learned Counsel for the Appellant submits that the Tribunal, after assuming that Rs. 2,000/- is the monthly income, deducted only 1/3 towards the personal expenses/maintenance of the deceased; reckoned Rs. 16,000/- as the contribution to the dependents and further assumed 17 as the multiplier. Taking cue from Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, one half should have been deducted towards the personal expenses of the deceased, a bachelor. The learned Counsel for the Appellant further shows that the multiplier adopted is that of the deceased and not that of the much older claimants. The mother of the deceased - claimant No. 1, was of the age 63 years. The Tribunal had reckoned the multiplier not based on the age of the claimants.

4. We are of the opinion that there is a lot of confusion continuing to remain in the mind of the polity as well as the legal experts. The Tribunal in this case also entertained confusion in its mind. The Tribunal, unnecessarily according to us, strained to identify a multiplier. In a claim for compensation in the case of death u/s 163A, it is now well settled that the Tribunal does not have to apply its judicial mind to ascertain the quantum of compensation. It does not have to strain to ascertain the extent of dependency. The Tribunal need only look into the table given under Clause 1 of the Second Schedule. The correct X axis (age group of the deceased) and the Y axis (income group of the deceased) will have to be ascertained. At the point where the X and Y axes meet in the table/chart is given the amount of compensation payable "in thousands". That is the amount payable. The Tribunal is not expected to resort to the multiplier-multiplicand method to identify the quantum of compensation payable in the case of death in a claim u/s 163A. If there be any doubt on this aspect, that has been finally laid

to rest by the decision in National Insurance Company v. Gurumallamma 2009 KHC 6154 S.C. in para.8, which we M.A.C.A No. 1180 of 2011 4 extract below:

Multiplier stricto sensu is not applicable in the case of fatal accident. The multiplier would be applicable only in case of disability in non-fatal accidents as would appear from the Note 5 appended to the Second Schedule.... As the Second Schedule provides for a structured formula, the question of determination of payment of compensation by application of judicial mind which is otherwise necessary for a proceeding arising out of a claim petition filed u/s 166 would not arise. The Tribunal in a proceeding u/s 163A of the Act is required to determine the amount of compensation as specified in the Second Schedule. It is not required to apply the multiplier except in a case of injuries and disabilities.

5. According to us, Gurumallamma (supra) has to be followed, and that clearly states that ascertainment of the quantum of compensation payable in the case of death by the application of the multiplier-multiplicand method is unnecessary and irrelevant in a claim u/s 163A. We pointedly requested the counsel to explain to us if there is any larger Bench decision contrary to the proposition enunciated in Gurumallamma earlier or any subsequent decision specifically referring to this principle declared in Gurumallamma. We are informed that there is No. such precedents. Gurumallamma, which is in tune with the Second Schedule and which offers a valid and tenable explanation for the legislature furnishing "rupees in thousands" payable as "compensation in case of death" in the table/chart has to be followed by us, as that gives meaning and content to the Second Schedule. If courts were to ascertain the quantum of compensation payable in case of death by resorting to the multiplier-multiplicand method in a claim u/s 163A, it passes reason, logic and commonsense as to why amount in rupees in thousands has been specified by the legislature under the Second Schedule. We are not embarking on a more detailed discussion as the question is already covered by the decision in the unreported judgment dated 22.07.2011 in M.A.C.A Nos. 223 and 243 of 2007 National Insurance Company Ltd. v. P.C.Chacko.

6. We therefore come to the conclusion that the Tribunal undoubtedly was in error in attempting to ascertain the quantum of compensation payable for loss of dependency by employing the multiplier-multiplicand method. Though the learned Counsel for the Appellant assails the impugned award on other grounds, we are of opinion that the impugned award is bad for the reason that the multiplier-multiplicand method has unnecessarily been imported into a claim u/s 163A. Inasmuch as the question has been considered in detail in the decision in the unreported judgment dated 22.07.2011 in M.A.C.A Nos. 223 and 243 of 2007 (supra), we feel it unnecessary to delve deeper into that question now.

7. What remains to be ascertained is the quantum of compensation that will be payable in accordance with law in a claim u/s 163A. On the age of the deceased and the income of the deceased virtually No. dispute is raised. He belongs to the age group of 25-30 years, that is horizontal entry No. 4 in the table/chart given in Clause 1 of the Second Schedule. He belongs to the income group of persons

earning above Rs. 18,000/- upto Rs. 24,000/-, that is vertical column No. 11. The horizontal and the vertical columns meet and there, the amount of compensation payable in the case of death is given in rupees in thousands. The relevant entry is Rs. 4,08,000/-. From this, applying the Note, 1/3 has to be deducted towards the personal expenses of the deceased. The amount that is payable hence is Rs. 2,72,000/-(4,08,000 X 2/3). Though the Tribunal unnecessarily resorted to the multiplier-multiplicand method, the amount of compensation fixed under loss of dependency is found to be correct on a proper application of the principles in the Second Schedule. In addition to that amount, an amount of Rs. 2,000/- for funeral expenses under Clause 3(1), an amount of Rs. 2,500/- as loss of estate under Clause 3(3) and a further amount of Rs. 500/- being bills produced for medical expenses under Clause 3(4) will have to be awarded. That means that the total amount of Rs. 2,77,000/- awarded by the Tribunal is perfectly justified. By a proper ascertainment of the amount payable under the Second Schedule to the Motor Vehicles Act, the amount awarded is correct. It is true that the Tribunal unnecessarily attempted to ascertain the compensation payable for loss of dependency by resort to the multiplier-multiplicand method. That is impermissible. But notwithstanding that inadequacy/ error, the total amount of Rs. 2,77,000/- awarded by the Tribunal is found to be absolutely correct u/s 163A. The challenge in this appeal at the instance of the Appellant does not deserve to be allowed.

8. In the result:

a) This appeal is dismissed in limine;

b) Needless to say, all other directions including the direction u/s 149(4) issued in favour of the Appellant, will remain undisturbed by this judgment, without any prejudice to the right of the aggrieved to challenge such directions before us.