
(2011) 07 KL CK 0116
In the High Court Of Kerala
Case No : MACA No. 1763 of 2009

United India Insurance Co. Ltd.

APPELLANT

Vs

Madhavan M., Myladimmal House and Others

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2011) 8 RCR(Civil) 1452

Hon'ble Judges : R. Basant, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : P.V. Jyothi Prasad, for the Appellant; Saju S.A, for the Respondent

Final Decision : Dismissed

Judgement

Basant, J.—This appeal comes up for admission now. The respondents/claimants are served. The insurer is the appellant. Compensation is claimed by the claimants for the loss suffered by them on account of the death of their son, a young person, aged about 14 years. Father and mother of the deceased are the claimants. The claim was initially staked u/s 166 of the Motor Vehicles Act. The deceased was a passenger in a taxi jeep. The appellant is the insurer in respect of that vehicle. The claim was staked against the driver, owner and insurer of the vehicle in which the deceased was travelling as also the driver and owner of another vehicle which was also involved in the accident.

2. As stated earlier, the claim was initially lodged u/s 166 of the Motor Vehicles Act. In the course of the proceedings - evidently after realising that the other vehicle involved in the accident was not covered by a valid policy of insurance, the claimants prayed that driver and owner of the other vehicle may be deleted from the party array. They were accordingly deleted. A request was made that the claim may be reckoned as one u/s 163 A of the Motor Vehicles Act. That request was allowed by the Tribunal and the claim was considered as one u/s 163 A of the Motor Vehicles Act. The Tribunal came to the conclusion that the claimants are entitled to an amount of Rs.2,29,500/- as per the details shown

below:

i)

Compensation for fatal accident (under entry 1 of second schedule)

(15,000 X 15)

Rs.2,25,000.00

ii)

Funeral expenses

Rs. 2,000.00

iii)

Loss of estate

Rs. 2,500.00

iv)

Total :

Rs.2,29,500.00

3. The insurer challenges the award. It is first of all contended that alteration of a claim from Section 166 of the Motor Vehicles Act to Section 163 A of the Motor Vehicles Act and the deletion of the driver and owner of the other vehicle from the party array was ill conceived. The claimants cannot be assumed to have such a discretion to delete the owner and driver of the other vehicle from the array of parties. Merely because the other vehicle had not been insured, the appellant herein should not have been mulcted with the entire liability u/s 163 A of the Motor Vehicles Act, it is urged.

4. The right of the claimant to request that his claim lodged initially u/s 166 of the Motor Vehicles Act may be converted and treated as one u/s 163 A of the Motor Vehicles Act cannot possibly be doubted. If there be any doubt on that aspect, the last trace of such doubt must be held to have been set at rest by the recent decision of the Supreme Court in *Oriental Insurance Co. Ltd. v. Dhanbai Kanji Gadhvi* (SC) (2011 (1) KLT 617 (SC)). That decision is authority for the proposition that until an award is passed either u/s 166 or u/s 163 A of the Motor Vehicles Act, the claimant has the right to request that his claim may be considered under either of the two Sections. That decision refers to the earlier decision in *Deepal Girishbhai Soni v. United India Insurance Company Ltd.* (2004 (2) KLT 395 SC). It is clarified that *Deepal Girishbhai Soni* does not fetter the option of the claimant who chooses to press the claim either u/s 166 or u/s 163 A of the Motor Vehicles Act if the claim under the other section has not been decided and ordered earlier.

5. Therefore it is crystal clear that the exercise of option by the claimants to reckon their claim as one u/s 163A of the Motor Vehicles Act is absolutely justified. That conversion of the claim cannot possibly be faulted.

6. The next question is whether in a claim u/s 163A of the Motor Vehicles Act, the driver, owner and insurer (if any) of the other vehicle involved in the accident are necessary parties and whether the non impleadment of such driver, owner and insurer would adversely affect the claim u/s 163A against the owner and insurer of the vehicle involved. There is nothing in Section 163A to show that when two vehicles are involved, the claim must be staked against the owner and insurer of both vehicles. As in the case of Section 140, we must hold that option is of the claimants to claim against the owner/insurer of either or both the vehicles. A claim u/s 163A can lie only against the owner of the vehicle and the authorised insurer. It cannot lie against a driver (unless he is the owner also). The language of Section 163 A makes the position crystal clear. In this case evidently realising the difficulty of recovering the amount from the owner of the other vehicle, which was not insured, the claimants have chosen to stake their claim only against the owner and the insurer of the vehicle in which the deceased was travelling. That option of the claimants is not in any way fettered or restricted by the language of Section 163 A. We therefore feel it absolutely safe to conclude that in a claim u/s 163 A, option is on the claimants, where plurality of vehicles are involved in the accident, to stake the claim against either or both the owners/insurers of the vehicles involved. In that view of the matter, the claim in this case against the owner and insurer of the vehicle, in which the deceased was travelling without arraying the owner and insurer of the other vehicle involved in such accident, is perfectly justified and cannot be faulted. The challenge on that aspect is also found to be without any merit.

7. The learned counsel for the appellant then raises an incidental challenge against the quantum of compensation awarded. The deceased was a person, aged below 15 years. The second schedule has clauses (ie. clauses 1 to 6). Claim for compensation in respect of death of persons must be considered as per clause 1 dealing with compensation payable for third party in a fatal accident case. Under clause 1 of second schedule, a ready reckoner Chart/Table is given (hereinafter referred to as the Table/Chart). The table/chart has horizontal entries and vertical columns. Horizontal entries (entries 1-12) relate to the age groups. The chart/table has vertical columns. There are columns 1 to 13 which show the income of the deceased. The task to ascertain compensation is simple. Identify the horizontal entry appropriate to the deceased. Then identify the vertical entry appropriate to the earnings of the deceased. Then ascertain the figure relevant to the horizontal entry against the relevant column. The relevant entry gives the amount in thousands. That is the compensation amount. Reduce that by 1/3rd as insisted by the Note under the Chart/Table. That is the amount of compensation payable. Horizontal entry 1 of the table/chart relates to compensation payable in respect of the deceased persons who are aged up to 15 years. Such persons may either be earning persons or non earning persons.

Columns 1 to 13 of the table/chart under entry 1 of Schedule 2 deal with persons having different amounts of annual income. Even in respect of a non earning person as per clause 6 of second schedule, Rs.15,000/- can be assumed to be the annual income. The deceased in this case was an unemployed boy below the age of 15 years. The Tribunal rightly pressed into service the presumption of prudence available under clause 6 of Schedule 2 and reckoned the annual income to be Rs.15,000/-.

8. The Tribunal thereupon appears to have felt that the multiplier has got to be chosen. This error, we find, is committed by many Tribunals. We also take note of the observation of the apex court in paragraph 8 of *National Insurance Co. v. Gurumallamma* ((2009) ACJ 2660 : 2009 (9) SCALE 764) that the multiplier specified in the Second Schedule may not be decisive for calculating compensation in cases of death and that the word multiplier has been used only for the purpose of calculating damages in the case of permanent disability and not in the case of death as would appear from clauses 5 and 6 appended to the Second Schedule. We extract para.8 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. Thus even if the application of multiplier is ignored in the present case and the income of the deceased is taken to be Rs.3,300/- per month, the amount of compensation payable would be somewhat between 6,84,000/- to Rs.7,60,000/-. 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.

Therefore, in respect of the compensation payable for fatal accidents, multiplier shown against each entry of the table/chart is, we must hold, irrelevant. That multiplier has no role to play in the ascertainment of compensation for fatal accidents. For fatal accidents, the amount payable as compensation will have to be ascertained by ascertaining the relevant horizontal entry and the relevant column in the table/chart. For persons up to the age of 15 years, the different entries in the 13 columns prescribe the compensation payable subject of course to the rider in the note that 1/3 of the amount has to be deducted towards personal expenses.

9. We have no hesitation to agree that the Tribunal erred grossly in attempting to ascertain the compensation payable with the help of the multiplier in the table/chart. The multiplier in the chart/table is relevant only when compensation is attempted to be ascertained in respect of non fatal accidents as per clause 5 of the second schedule. Though the multiplier is shown in the table/chart, the multiplier has no relevance in ascertainment of the compensation payable in

respect of fatal accidents. This is the irresistible conclusion that should be drawn from a holistic reading of the second schedule. We are conscious of the fact that there was some confusion earlier in understanding the scheme of the second schedule. But after Gurumallamma (supra), we have no doubt that in accordance with the second schedule, going by the statutory stipulation, the compensation amount for fatal accidents has to be ascertained by searching for the correct figure against the relevant horizontal entry and the vertical column in the table/chart given under clause 1. Multiplier-multiplicand method has no relevance whatsoever when one attempts to ascertain the quantum of compensation payable for fatal accidents u/s 163 A with the help of the second schedule. The Tribunal, we find, erred grossly, in taking 15 as the multiplier and attempting to ascertain the compensation payable by adopting the multiplier-multiplicand method. That is how the Tribunal came to the conclusion that Rs.2,25,000/- is payable as compensation (15,000 X 15) under clause 1. More surprisingly the Tribunal has not followed the mandate of the note in the Table/chart that 1/3 of the amount must be deducted from the compensation ascertained with the help of the table/chart (not by using the multiplier-multiplicand method).

10. Problems do not end there. What is the relevant amount of compensation payable by resort to the table/chart? This has to be ascertained. Annual income with the help of clause 6 of the second schedule, we have already concluded, can be assumed to be Rs.15,000/-. Surprisingly of all the 13 columns available in the table, there is no column referring to that figure of Rs.15,000/-. How then is the relevant figure to be ascertained? Two methods appear to be possible. The first is to reckon the entry under column Rs.3,000/- as the compensation payable in respect of all persons belonging to the income group up to Rs.3,000/-. So reckoned, the entry in 13 columns will have to be read as indicating the range as shown below:

1

2

3

13

Upto Rs.3,000

above Rs.3,000

above Rs.4,200

Above Rs.36,000

upto Rs.4,200/-

upto Rs.40,000/-

11. There is another possible method also for ascertaining the compensation. As the amounts payable for various incomes have been specified in the columns, it

is possible to infer the rationale and then ascertain the compensation payable for a particular income. So reckoned, for a deceased having annual income of Rs.15,000/-, the average of the amounts prescribed under the column for Rs.12,000/- and Rs.18,000/- can be taken. M.A.C.A No.1763 of 2009 12 The average can be ascertained and Rs.3 lakhs can be reckoned as the compensation payable for persons earning the income Rs.15,000/- $(12,000 + 18,000)/2$, ie. $(240000 + 360000)/2 = \text{Rs.}3,00,000/-$, for a person of income Rs.15,000/-.

12. Both methods do not seem to be unjust or unreasonable. But going by the rationale behind prescribing the schedule we feel that the former approach will be more sound and reasonable.

13. For this we have to ascertain the purpose and object of Section 163 A. Section 163 A dispenses with the requirement of proof of negligence. Negligence has no relevance in a claim u/s 163 A of the Motor Vehicles Act. The language of Section 163 A makes it crystal clear that absolute statutory liability is created in favour of the victims of non fatal accident and legal heirs of deceased victims. The owner of the motor vehicle or the authorised insurer of the vehicle is saddled with liability. Section 163 A will come to a grinding halt if there is no valid schedule prescribed under the Act. A perusal of the language of Section 163 A which we extract below will make the position crystal clear.

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.

14. The objects of reasons behind introduction of Section 163 A would reveal that the legislature was anxious to ensure that the amount due under the structured formula in the table/chart is paid to the victims without obliging them to stand in the long queue before the Tribunals. A rough and ready method for ascertainment of just and reasonable compensation was conceived by Section 163 A. The accent of that statutory provision is certainly the yearning to avoid unnecessary litigation. That is why the same compensation is fixed for persons belonging to the various age groups shown in the horizontal entries - up to 15 years, 15 to 25 years, 20-25 years and so on. The precise age becomes irrelevant and the range of age alone becomes relevant. Thereby a lot of unnecessary litigation is avoided as the precise age becomes irrelevant and the relevance is only to ascertain the age group to which a victim belongs. Similarly coming to the question of income also, it would be absolutely reasonable to assume that the legislature in its anxiety to eliminate unnecessary litigation on the precise and specific quantum of annual income wanted to prescribe ranges of

income so that a lot of unnecessary disputes about the precise and actual income can be avoided. That is evidently why the same amount of compensation is prescribed for all persons belonging to the various age groups

15. A criticism is raised that second schedule is riddled with errors and inaccuracies. We may accept that there are inadequacies. But Section 163 A cannot operate without a schedule. The interpreter has to find meaning and reason in the schedule. Without the schedule, Section 163 A cannot operate at all. There is no challenge before us against the constitutional validity of Section 163 A on the ground that it is not fair, reasonable or just. We are not called upon to decide the validity of Section 163A in judicial review. The matter has received the attention of this Court earlier. In *National Insurance Co. Ltd. Vs. Muneer*, another Bench headed by Justice Abdul Gaffoor had considered this criticism/question in detail (judgment rendered by one of us).

16. Similarly coming to the question of income also, it would be absolutely reasonable to assume that the legislature, in its anxiety to eliminate unnecessary and avoidable litigation on the quantum of actual income, wanted to prescribe ranges so that a lot of unnecessary dispute about the precise and actual income can be avoided. That is why the same amount of compensation is prescribed for all persons earning upto an amount of Rs.3,000/-. All those belonging to the range of income upto Rs.3,000/- must get the same amount of compensation. All those belonging to the income above Rs.3,000/- upto Rs.4,200/- shall also get the same compensation. For those having income above Rs.4,200/- upto Rs.5,400/- the same compensation shall be payable. What we are trying to assert is that when the legislature prescribed Rs.3,000/-, Rs.4,200/-, Rs.5,400/-, Rs.6,600/- etc., as the annual income, the legislature was certainly prescribing only the range of income and not the precise income. If such a rigid view were taken, for a person getting Rs.3,001/- as annual income, Sec.163A of the Motor Vehicles Act cannot operate at all as there is no entry relating to his income. That cannot obviously be the intention. When the legislature prescribed amounts under various columns specifying the income, it could only have meant that those getting income upto to the figure specified will all get the same compensation. We do note that the anxiety of the legislature to avoid unnecessary and needless litigation can be clearly deciphered when we reckon the income as ranges of income and not any specified income. So understood, we accept that it will be appropriate to reckon the same compensation to be payable for all belonging to a particular income group.

17. If we accept the above reasoning, those getting income above Rs.12,000/- upto Rs.18,000/- are covered by Column 10 of the table/chart given in Clause-1. For death of a person upto the age of 15 years getting income in the range of "above Rs.12,000/- upto Rs.18,000/-", the claimant/legal heir must therefore get Rs.3,60,000/- as specified in the 10th vertical Column against the first horizontal entry relating to persons upto the age of 15 years. From this 1/3rd of amount has to be deducted. Therefore the compensation payable to the claimant can

only be Rs.3,60,000/- x 2/3 i.e., Rs.2,40,000/-. The amount awarded in this case is only Rs.2,25,000/-. In these circumstances, even though the Tribunal has grossly erred in ascertaining the compensation payable in respect of a fatal accident by resorting to the multiplier-multiplicand method, we note that only an amount of Rs.2,25,000/- -- lesser than the actual amount payable, has been awarded by the Tribunal. There is no appeal or cross-appeal preferred by the claimants. In these circumstances, we are satisfied that the impugned award does not, at any rate, warrant interference at the instance of the appellant/ insurance company. The challenge therefore fails.

18. In the result, this appeal is dismissed.