

(2008) 08 DEL CK 0093

In the Delhi High Court

Case No : MAC App. No. 368 of 2005

Uttar Pradesh State Road Transport Corporation (U.P.S.R.T.C) APPELLANT
Vs

Gajraj Singh, Smt. Munni Devi and Sh. Vijender Kumar RESPONDENT
through Depot Manager, U.P. Roadways

Date of Decision : 26-08-2008

Acts Referred:

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

Citation : (2008) 08 DEL CK 0093

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Rakesh Sachdeva, for the Appellant; Sanjay Mishra, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The appellant who is the owner of offending bus has filed the present appeal against impugned order dated 31st January, 2005 passed by Ms. Bimla Kumari, Judge, MACT, Delhi vide which she awarded compensation to the tune of Rs. 3,40,500/- in favour of respondent No. 2 Smt. Munni Devi, mother of the deceased.

2. Brief facts of this case are that on 17th March, 2003, deceased was returning to his home on his bicycle. At about 11.45 A.M., when he reached near Indrapuri Police Chowki, Sahibabad, a bus UP bearing No. UP-14B-4854 came from opposite side and firstly, it hit a scooter No. DL-75-T-5969 and then rammed into the bicycle of deceased. As a result of the impact, the deceased fell down on the road and received grievous injuries and was removed to GTB Hospital where doctor declared him brought dead. It has been alleged that this accident was caused due to rash and negligent driving of the offending bus by respondent No. 3, Vijender Kumar.

3. The appellant as well as driver of the bus filed their joint written statements

before the Tribunal alleging that the F.I.R. lodged against bus driver is false and fabricated and there was no fault of the bus driver in the alleged accident. However, it was admitted that the respondent No. 3, the driver on the given date and time was driving the bus and the speed of the bus was hardly 20 km per hour. All of a sudden, deceased while driving his bicycle in a rash and negligent manner came from opposite side and struck against a scooter and then he came in the channel of the Bus and sustained injuries. The accident occurred due to negligence of the deceased and it is a case of contributory negligence.

4. It has been contended by learned Counsel for the appellant that the Tribunal wrongly concluded that the accident had taken place due to the fault of the bus driver. It was the deceased who had hit the scooter in the first instance and thereafter came into the channel of the bus and, thus, was guilty of contributory negligence.

5. The other contention made by the learned Counsel for the appellant is that the Tribunal has erred in taking the annual income as Rs. 36,000/- after having itself observed that the minimum wages rates applicable to Delhi in the year 1993 was Rs. 2783.90.p.m. In fact, notional income of Rs. 15,000/- per annum as per Second Schedule of the Motor Vehicles Act, 1988 (for short as "Act") should have been considered for calculating the income of the deceased.

6. Another contention made by learned Counsel for the appellant is that the Tribunal has wrongly applied multiplier of 15 whereas, the claimants would have been dependant on deceased for not more than a further period of five years considering the fact that deceased would have been married and had started living separately in another five years.

7. Lastly, it is contended that the father of deceased has himself deposed that his another son is labourer and earning Rs. 3,000/- per month and he himself is earning Rs. 3,000/- per month and, thus, the claimants were not dependant on the deceased.

8. On the other hand, it has been argued by learned Counsel for respondents 1 & 2 that the petition filed earlier u/s 166 read with Section 140 of the Act was converted into u/s 163A of the Act and this question of negligence is not to be gone into and the compensation and the multiplier has been given as per the Second Schedule of the Act which is on the lower side.

9. It is evident from the record that initially this petition was filed u/s 166 read with Section 140 of the Act and thereafter the claimants got converted their petition into u/s 163A of the Act.

10. 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.

11. 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 where to 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. In the present case, since the petition has been decided by the Tribunal u/s 163A of the Act, the claimants need not prove that the death of the deceased was caused due to any wrongful act or neglect or default of the owner of the vehicle or of any other person. The claimants have only to prove that their son died in the alleged accident on account of involvement of offending bus.

19. To prove the involvement of the offending vehicle, the claimant No. 1 has examined himself as PW-1 and Sh. Ramdhan Singh as PW-3 who has placed on record the postmortem Ex.PW3/1 of the deceased. The postmortem report of the deceased shows that body of the deceased was sent for postmortem with alleged history of road traffic accident. The cause of the death as mentioned in the postmortem report is shock due to anti-mortem injury to head resulting craniocerebral damage produced by blunt force impact. From the copy of charge sheet Ex.PW1/1 the involvement of the offending bus in the alleged accident is

proved. The charge sheet has been submitted against Respondent No. 3. From the testimony of PW-1 coupled with the postmortem report and copy of charge sheet, the involvement of the offending bus in the alleged accident is proved. Thus, the contention of the appellant regarding negligence is rejected.

20. The next question which arises for consideration is as to what multiplier should be adopted to calculate the compensation?

21. The Apex Court in the case of U.P. State Road Transport Corporation Vs. Krishna Bala and Others, has highlighted the manner of fixing the appropriate multiplier and computation of compensation and has observed as under:

6. Certain principles were highlighted by this Court in the case of Municipal Corporation of Delhi Vs. Subhagwanti and Others, in the matter of fixing the appropriate multiplier and computation of compensation. In a fatal accident action, the accepted measure of damages awarded to the dependents is the pecuniary loss suffered by them as a result of the death. "How much has the widow and family lost by the father's death?" The answer to this lies in the oft-quoted passage from the opinion of Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* All ER p.665 A-B, which says:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

7. There were two methods adopted to determine and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in *Davies* case (supra) and the second in *Nance v. British Columbia Electric Railway Co. Ltd.* 1951 (2) All ER 448.

8. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In, ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

Further Court held that;

10. In regard to the choice of the multiplicand the Halsbury's Laws of England in

Vol. 34, Para 98 states the principle thus:

98. Assessment of damages under the Fatal Accidents Act 1976- The courts have evolved a method for calculating the amount of pecuniary benefit that dependants could reasonably expect to have received from the deceased in the future. First the annual value to the dependants of those benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage-earner that figure is arrived at by deducting from the wages the estimated amount of his own personal and living expenses.

The assessment is split into two parts. The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have elapsed between the death and the trial is deducted from a multiplier based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the deceased's working life at the date of death.

11. As to the multiplier, Halsbury states:

However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependants can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the dependants will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies. The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the courts do not encourage such evidence. The calculation depends on selecting an assumed rate of interest. In practice about 4 or 5 per cent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high tax payer. The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure.

22. The deceased was 20 years of age at the time of occurrence of the accident and he was survived by his parents, aged 45 years and 40 years. Thus, the age of deceased parents has to be taken into account in choosing the appropriate multiplier and for this purpose, there could be no better measure than the Second Schedule of the Act.

23. Keeping in view, the age of both parents, the average age comes to 42 years $(45 + 40 / 2)$ and as per the Second Schedule of the Act, the appropriate

multiplier for the age group 40 but not exceeding 45 years is 15. Thus, the Tribunal has rightly applied the multiplier of 15.

24. As regards to the question of compensation, the Tribunal held as under;

So far as the question of quantum of compensation is concerned, the petition has to be decided according to the II schedule as per provision contained in Section 163A of the M.V. Act for which annual income of the deceased at the time of the accident has to be taken into consideration. PW-1 has deposed that deceased Rohtas Singh was earning Rs. 3,000/- per month. He was a daily labourer. In cross-examination PW-1 has deposed that he cannot show any proof that his son was earning Rs. 3,000/- per month. In the claim petition, the income of deceased has been mentioned Rs. 100/- per day. The accident in this case took place on 17.03.2003. the Minimum Wages Rates applicable to Delhi to an unskilled worker in the year 2003 are Rs. 2783.90/-. As Minimum Wages Rates as applicable to an unskilled worker in the year 2003 are almost equal to the income of income. I am taking the annual income of deceased Rohtas Singh Rs. 36,000/- for the purpose of this claim ($3000 \times 12 = 36000$).

25. The accident has taken place on 17.03.03 and at that time, the minimum wages of an unskilled worker was Rs. 2793.90/- p.m. There is not much difference between the income claimed in the claim petition and under the minimum wages. Thus, in the absence of any other proof, the Tribunal has rightly applied the minimum wages of unskilled worker and take the monthly income of the deceased.

26. Therefore, in these circumstances, the Tribunal has rightly awarded the compensation on account of loss of dependency after applying the multiplier of 15.

27. As regards to the contention that the claimants would have been dependant on deceased for not more than a further period of five years considering the fact that deceased would have been married and had started living separately in another five years, in Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others, the deceased was an unmarried person, aged 27 years and was getting Rs. 2,000/- per month. The Tribunal in this case had applied multiplier of 18 and directed deduction to the tune of 50% of income towards personal expenses. The appeal filed against the order of the Tribunal was dismissed by the High Court and thereafter the Apex Court after taking into consideration the facts and circumstances of the case, felt it appropriate to restrict the deduction towards personal expenses only to the extent of 1/3rd monthly income of the deceased. It would be relevant to refer to the following para from the said judgment;

What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would

have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction.

28. Thus, in view of the above decision, this contention of the Appellant is also rejected.

29. The compensation awarded by the Tribunal to the Legal Heir's of the deceased is just, fair and equitable. However, the Tribunal granted the compensation only in favour of Respondent No. 2 i.e. mother of the deceased.

30. The compensation u/s 163A of the Act is awarded to the claimants of the deceased. The view taken by the Tribunal in respect of legal heir is clearly erroneous because, the compensation payable in a claim petition u/s 163A of the Act is to legal heirs. The fact that the claimants are the parents of the deceased is not denied or disputed, so they would be the legal heirs to the estate of the deceased and thus are entitled to get the compensation. However, Respondent No. 1 Gajraj Singh, the father of the deceased has not filed any appeal.

31. So the entire compensation amount as ordered by the Tribunal is payable to the mother of the deceased who is Respondent No. 2 in this case.

32. Thus, I do not find any infirmity or illegality in the impugned judgment of the learned Tribunal and no ground is made out for interference with the award passed in this case. The compensation amount awarded by learned Tribunal is just and fair.

33. The present appeal is thus not maintainable and is dismissed.

34. No order as to costs.

35. Trial court record be sent back.