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(2007) 7 AWC 7657

Allahabad High Court

Case No: F.A.F.O. No. 1637 of 2007

National Insurance Co. Ltd.		APPELLANT
	Vs	
Nandesh Tomar and Others		RESPONDENT

Date of Decision: July 16, 2007

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A, 166

Citation: (2007) 7 AWC 7657

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

Bench: Division Bench

Advocate: Shanker Amist, for the Appellant; A.L. Jaiswal, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Amitava Lala, J.
Pursuant to the order dated 3.7.2007, service record of the deceased was produced before the Court from which it appears that the date of birth of the deceased is 12.6.1970. Hence, acceptance of the post mortem report being a scientific record by the Tribunal, appears to be appropriate. Therefore, such dispute cannot be held to be sustainable. Although the case could have completed there but the learned Counsel wanted to extend the scope. So far as the dependency is concerned, we have gone through the judgments of the Supreme Court in The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, and Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, So far as the first judgment is concerned, the claimant was placed in the service of the deceased, therefore, the Court was pleased to reduce the compensation. That was a relevant factor for consideration. So far as the other case is concerned, the case in U. P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. JT 1996 (5) SC 356: 1996 (3)

AWC 1489 (SC), was followed therein. It was held that the schedule under the Act is treated to be guide but not invariable ready reckoner. Therefore it was not followed rigidly. However, in the above cases, the claim petitions were filed u/s 166 of the Motor Vehicles Act, 1988 made for "just" compensation. But the case under consideration herein is u/s 163A of the Act in which the schedule is propounded, therefore, the schedule is part of the enactment. Power u/s 166 is more discretionary than Section 163A of the Act. Hence, even agreeing with the proposition, we cannot ignore the schedule casually to suit the purpose but at an appropriate circumstance which is unavailable herein. Thus, we find that there is no merit in appeal. Hence, the appeal stands dismissed.

2. No order is passed as to costs.

3. Incidentally the Appellant National Insurance Company prayed that the statutory deposit of Rs. 25,000 made before this Court for preferring this appeal shall be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust with the amount of compensation to be paid to the claimant, however, such prayed is allowed.

Shishir Kumar, J.

I agree.