

**(2006) 08 CAL CK 0002****Calcutta High Court****Case No:** F.M.A. No. 1704 of 2000

Nirodini Roy

APPELLANT

Vs

N.I.A. Co. Ltd.

RESPONDENT

**Date of Decision:** Aug. 24, 2006**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 149(2), 163A, 170

**Citation:** (2007) 4 CHN 672**Hon'ble Judges:** Pratap Kumar Ray, J; Arunabha Basu, J**Bench:** Division Bench**Advocate:** Supriyo Chatterjee and Sanat Kr. Dutta, for the Appellant; Parimal Kr. Pahari and Sima Sengupta, for the Respondent**Final Decision:** Allowed**Judgement**

1. Heard the learned Advocates appearing for the parties.
2. Assailing the judgment and order passed by the Motor Accident Claims Tribunal, 2nd Court, Jalpaiguri in connection with M.A.C. Case No. 408 of 1996 the appeal is filed. The learned Tribunal vide judgment and order dated 24.3.1998 allowed the application filed by the appellants claiming compensation in terms of provision u/s 163A of the Motor Vehicles Act, 1988 and allowed a sum of Rs. 1,80,000/- payable by both the Insurance Companies jointly in favour of the appellants. The application u/s 163A of the said Act was instituted consequent to the death of the husband of the appellant who according to the recital in the application met with death while he was travelling by maxi taxi bearing No. WB-71/6265 which was proceeding from Dhupguri to Huslurdanga More. The said vehicle met with an accident after it collided with another vehicle bearing No. WGT-2200 which was coming from the opposite direction. A short question that arises in this appeal as argued by the learned Advocate for the appellants is that the learned Tribunal while awarding compensation in terms of structured formula as provided u/s 163A of the Motor

Vehicles Act read with Second Schedule failed to arrive at a correct finding so far as the age of the deceased iris-a-vis income of the deceased is concerned. While discussing the issue Nos. 5 and 6, the learned Tribunal below arrived at a finding that the age of the deceased as per the voter's identity card was 39 years as on 1.1.1995 and as the accident took place on 6.9.1996, the deceased was aged 40 plus and, as such, applying multiplier 15 as the appropriate multiplier to determine the compensation.

3. In this regard, the learned Advocate for the appellants submits that the age of the deceased as per post-mortem report is 30 years and that should have been taken into consideration by the learned Tribunal. In this connection, it is evident from the recital of the claim petition that the age of the deceased was recorded as 38 years in the application. The argument advanced by the learned Advocate for the appellants to accept the age as recorded in the post-mortem report cannot be accepted in view of the fact that the age as recorded in the voter's identity card which was produced by the claimants during the proceeding before the learned Tribunal below in support of the age of the deceased is prepared in exercise of specific provision as provided under the Representation of the People Act and rules framed thereunder. Moreover, the age and other particulars as recorded in the voter's identity card is recorded by the authority in terms of the provision as prescribed in the rules and, as such, it has more evidentiary value than the age which is recorded in the post-mortem report. The age as recorded in the post-mortem report is accepted only when there is no other evidence, but when in this case the age as reflected in the voter's identity card was placed before the Tribunal by the appellants for necessary consideration and when the Tribunal relied the age of the deceased as recorded in the voter's identity card, no illegality can be said to have been committed by the Tribunal while deciding the age of the deceased. As such, the findings as to age of the deceased being 40 plus as arrived at by the Tribunal cannot be disturbed.

4. Coming to the income of the deceased it appears that the learned Tribunal below after considering the evidence of witnesses including the widow and also the certificate issued by Panchayat Pradhan disbelieved the monthly income of the deceased to be Ks. 3,500/- per month and decided that the deceased was earning Rs. 1,500/- per month. We are unable to accept the reason advanced by the learned Tribunal below in deciding the income of the deceased because we do not find any suggestion given to any of the witnesses including the widow that the deceased was earning Rs. 1,500/- per month and, as such, the finding arrived at by the learned Tribunal about the income of the deceased to be that of Rs. 1,500/- per month must be held to be without any basis and cannot be accepted. As per recital in the application, the monthly income of the deceased was Rs. 3,000/-. The widow of the deceased was examined as P.W.I. She has also stated that her husband was dealing with a business of paddy, jute, etc. and he was earning Rs. 3,000/- to 3,500/- per month. The engagement of the deceased as a businessman is also supported by

other witnesses and the evidence of the widow as well the other witnesses insofar as the profession of the deceased is concerned withstood the brunt of cross-examination. In this connection, there is no record before us to show that the Insurance Company obtained leave in terms of provision u/s 170 of the Motor Vehicles Act and if no such leave was obtained, it is not clear to us as to how the learned Tribunal permitted elaborate cross-examination of the witnesses by the Insurance Company which is beyond the scope of limited defence available to the Insurance Company in terms of Sub-section (2) to Section 149 of the Motor Vehicles Act.

5. Be that as it may, we find that the income of the deceased being that of Rs. 3,000/- per month as stated by the widow stood unshaken during the cross-examination and that income is required to be accepted. In this connection we find support from the decision of the Supreme Court in the case Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, wherein the Supreme Court considered the evidence of widow as the income of her deceased husband and accepted the same mainly on the ground that there is no contrary evidence to challenge the evidence of widow so far as this case is concerned, no contrary evidence is forthcoming before this Court and the learned Tribunal below appears to have completely ignored the evidence of P.W. 1 who is the widow of the deceased and only discussed the evidence of Panchayat Pradhan who issued the certificate about the monthly income of the deceased. Even assuming for the sake of argument that the learned Tribunal below did not rely upon the evidence of P.W. 3 that is Panchayat Pradhan and also did not rely upon the documents produced by him in support of the income of the deceased, but the learned Tribunal below committed serious illegality in not even discussing the evidence of the widow, who stated the income of the deceased to be that of Rs. 3,000/- per month. As there is no contrary evidence and as the learned Tribunal below completely failed to arrive at a correct finding about the income of the deceased, we accept the monthly income of the deceased was Rs. 3,000/- per month which is the income stated in the application claiming compensation.

6. The finding of the learned Tribunal below about the income of the deceased is set aside and quashed.

7. The annual income of the deceased will be Rs. 36,000/- and the same is determined by us as we have accepted the age of the deceased to be that of 40 plus, the correct multiplier will be 15 as applied by the Tribunal. After 1/3rd statutory deduction from the total income of the deceased. The total amount of compensation following the structured formula will be Rs. 3,60,000/-. A further sum of Rs. 9,500/- is required to be added under general damages of which Rs. 5,000/- shall be exclusively payable to the widow for loss of consortium and the remaining amount of Rs. 2,000/- and Rs. 2,500/- shall come under the heading funeral expenses and loss of estate. The total amount of compensation will be Rs. 3,60,000/-

+ Rs. 9,500/- = Rs. 3,69,500/-. The said compensation amount as determined by us will be divided in equal share between the four claimants. But the widow of the deceased will receive an additional sum of Rs. 5,000/-.

8. Coming to the question of interest we find that the learned Tribunal did not award any interest but directed interest to be payable only on failure to pay the amount, the award shall carry an interest of 12% per annum. The learned Tribunal did not record any reason as to why no interest was awarded from the date of filing of the application. The accident took place on 6.9.1996 and at that time 12% bank interest was available and we propose to award 12% interest to the claimants from the date of filing of the application. It is needless to add that the amount already deposited by the Insurance Companies to satisfy the award shall be adjusted.

9. In view of the discussions as recorded above, we modify the award passed by the learned Tribunal below in the following manner:

The appellants will get compensation of Rs. 3, 69,500/- u/s 163A of the Motor Vehicles Act. The said amount will be equally shared by all the appellants save and except that an amount of Rs. 5,000/- will be paid solely to the widow of the deceased. The award shall carry an interest @ 12% per annum from the date of filing of the application. The entire enhanced compensation along with the interest shall be equally borne by the respective respondents, Insurance Companies in equal share. The interest as awarded by us shall be payable from the date of filing of the application. But the payment of interest shall be adjusted along with the total amount and the amount already paid by the Insurance Companies. The total amount of calculation of the interest will be suitably adjusted. In other words, the interest of 12% shall be payable from the total amount of Rs. 3,69,500/- from the date of filing of the application. But the principal amount shall be reduced on and from the date when the Insurance Companies paid the amount and as such, the principle amount will be suitably reduced for the purpose of calculation of the interest.

10. The amount shall be deposited by both the Insurance Companies in equal share within three weeks from date before the learned Tribunal. As no definite proof as to age of the minors, the Tribunal is directed to ascertain the age of the minors and if they are still minors, then the Tribunal shall pass necessary order as to term deposit in respect of the shares payable in favour of the minors. The learned Tribunal is also given liberty to ascertain the amount payable after calculating the interest and if there is any shortfall in the deposit, the learned Tribunal is given liberty to direct the payment of additional amount, if any. Such determination by the learned Tribunal shall be completed within a week from date.

11. With this modification, the appeal is allowed to that extent.

12. Registry is directed to send the Lower Court records along with the copy of the order by special messenger at the cost of the Insurance Companies and such cost

be deposited within a week from date.

13. Let xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.