Smt. Brinda Routh and Others Vs United India Insurance Company Ltd.

F.M.A. No. 2482 of 2005

Court: Calcutta High Court

Date of Decision: Dec. 5, 2008

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 27#Motor Vehicles Act, 1988 â€" Section 147, 163A#Workmens Compensation Act, 1923 â€" Section 19, 3, 3(1), 3(5), 4A(3)

Citation: (2010) ACJ 377 : (2009) 2 CALLT 173

Hon'ble Judges: Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Krishanu Banik, for the Appellant; Kamal Krishna Das, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.
This appeal is at the instance of the claimants in a proceeding u/s 163A of the Motor Vehicles Act and is

directed against the award dated 29th June, 2005 passed by the Motor Accident Claims Tribunal, Burdwan, in M.A.C. Case No. 85 of 2004

thereby disposing of the said proceeding by awarding a sum of Rs. 1,60,500/- to the claimants to be paid by the United India Insurance Company

Ltd.

2. Being dissatisfied, the claimants have come up with the present appeal.

3. There is no dispute that the victim was the ""Khalasi"" of an oil- tanker which collided with a lorry resulting in his death. In the claim-application

u/s 163A of the Motor Vehicles Act, the claimants, his heirs and legal representatives, however, made the owner of the oil- tanker and its insurer

as parties to the proceedings without impleading either the owner or the insurer of the lorry as parties. The claimants alleged that the victim used to

earn Rs. 3,000/- a month, as an employee, from the owner of the oil-tanker.

4. The claim-application was contested both by the owner of the oil- tanker and its insurer by filing separate written statement.

5. At the time of hearing, the owner of the oil-tanker as a witness admitted that the victim was his employee who used to get Rs. 3,000/- a month

in lieu of his service.

6. The learned Tribunal below, however, was of the view that it was impossible to believe that a Khalasi could get a sum of Rs. 3,000/- a month as

salary and accordingly, held that he should be treated to be a daily-labour having income of Rs. 60/- a day and on the basis of the assumption that

he could get 25 day"s work in a month, calculated his income to be Rs. 1,500/- a month and by applying the provisions contained in the Second

Schedule of the Motor Vehicles Act with the aid of the multiplier of 13 came to the conclusion that the claimants were entitled to get Rs.

1,60,500/-.

7. Being dissatisfied, the claimants have come up with the present appeal. After hearing Mr. Banik, the learned advocate appearing on behalf of the

appellants and Mr. Das, the learned advocate appearing on behalf of the Insurance Company, we are unable to approve the approach of the

learned Tribunal in the facts of the present case. In the case before us, the claimants have prayed for compensation u/s 163A of the Act against the

employer of the victim by making the insurer of such vehicle as a party. Such employer has admitted in his deposition that the victim was his

employee and used to get Rs. 3,000/- a month. In such circumstances, in the absence of any other evidence to the contrary adduced by the

Insurance Company, there was no just reason for disbelieving the version of the owner of the vehicle itself. It appears that the accident occurred in

the year 2004. As observed by the Supreme Court in the case of Sm. Laxmi Devi Ors. v. Md. Tabbar and Anr. reported in 2008 (2) TAC 394

(SC), now-a-days, even an unskilled labourer earns Rs. 100/- a day and, thus, there was no absurdity in the claim of the heirs of the victim so as

to disbelieve their assertion, when they asserted that their predecessor-in-interest used to earn Rs. 3,000/- a month and the employer has admitted

such fact in his deposition.

8. We, therefore, find that this is a fit case where on the basis of income of Rs. 3,000/- a month and by applying the principles laid down in the

Second Schedule of the Motor Vehicles Act, we should assess the compensation and on that basis, the amount comes to Rs. 3,21,500/-. In our

view, the claimants are also entitled to get interest at the rate of 8 percent per annum from the date of filing of such application till the date the

amount is deposited by the awardees. At this stage, Mr. Das, the learned advocate appearing on behalf of the Insurance Company has taken a

pure question of law regarding the liability of his client, the Insurance Company. According to him, the present application u/s 163A of the Act

having been filed by the heirs of an employee against the employer of the victim, his client, as an insurer of the said vehicle, by virtue of Section 147

of the Act, is liable only to the extent of the liability of the employer as provided in the Workmen''s Compensation Act, 1923 and not beyond that

notwithstanding the fact that the present proceedings have been initiated under the provisions of the Motor Vehicles Act. Mr. Das, therefore,

contends that his client is liable to pay only to the extent which can be assessed if the assessment is made in accordance with the provision of the

Workmen''s Compensation Act, 1923.

9. Mr. Banik, the learned advocate appearing on behalf of the claimants, however, opposed the aforesaid contention of Mr. Das and contended

that in the case before us it was the duty of the insurer to produce the insurance certificate itself to show that the insurer did not accept extra-

premium for meeting the liability of the insured beyond the statutory liability and in the absence of such evidence, we should draw adverse

presumption against the Insurance Company and direct the payment of the entire amount in terms of Section 163A of the Act. In the case before

us, a xerox copy of the first page of the insurance policy was produced by the claimants themselves and the Insurance Company did not dispute

such document; however, the entire agreement was not placed before the Tribunal at the instance of the claimants. The Insurance Company, in this

appeal, came up with an application under Order XLI Rule 27 of the CPC for accepting the original insurance as additional evidence. We allowed

such application and found from the said policy that no additional amount was taken by the Insurance Company to cover the liability of the insured

beyond the statutory limit.

10. We, thus, find that in the facts of the present case, although, the claimants are entitled to get Rs. 3,21,500/- along with interest at the rate of 8

percent per annum from the date of filing of the application till the actual deposit, we should direct the Insurance Company only to pay the amount

which would be payable by applying provisions of the Workmen''s Compensation Act. On the basis of the income of the victim, if we apply the

provisions contained in the Workmen''s Compensation Act, the amount comes to Rs. 2,54,500/- with interest at the rate of 12 percent per annum

from the date of one month after the accident till actual payment and the liability of the Insurance Company would be limited to that amount. (See:

Ved Prakash Garg Vs. Premi Devi and others, At this stage, Mr. Das, appearing on behalf of the Insurance Company by relying upon the decision

of a bench of two judges of the Supreme Court in the case of National Insurance Company Ltd. v. Mubasir Ahmed and Anr. reported in 2007(2)

T.A.C. 3 (S.C.), strenuously contended before us that under the provision of the Workmen''s Compensation Act, the interest at the rate of 12

percent per annum should be payable not from the expiry of one month from the date of accident but from the expiry of one month from the date

of adjudication of the claim as provided in Section 4-A(3) of the said Act. We are, however, unable to accept the decision relied upon by Mr. Das

as a precedent on the question of the starting point of the liability to pay interest in terms of the said provision in view of the decision of the bench

consisting of four judges of the Supreme Court in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, where the said bench in

paragraphs 6 and 7 of the judgement held as follows:

6. It has next been argued that the Commissioner committed a serious error of law in imposing a penalty on the appellant u/s 4-A(3) of the Act as

the compensation had not fallen due until it was "settled" by the Commissioner u/s 19 by his impugned order dated May 6, 1969. There is

however no force in this argument.

7. Section 3 of the Act deals with the employer"s liability for compensation. Sub-section (1) of that section provides that the employer shall be

liable to pay compensation if ""personal injury is caused to a workman by accident arising out of and in the course of his employment."" It was not

the case of the employer that the right to compensation was taken away under Sub-section (5) of Section 3 because of the institution at a suit in a

civil Court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the

compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course

of the employment. It is therefore futile to contend that the compensation did not fall due until after the commissioner"s order dated May 6, 1969

u/s 19. What the Section provides is that if any question arises any proceeding under the Act as to the liability of any person to pay compensation

or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to

justify the argument that the employer"s liability to pay compensation u/s 3, in respect of the injury, was suspended until after the settlement

contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the

appellant, and there is no justification for the argument to the contrary.

11. The two-Judges-Bench in the case of Mubasir Ahmed and Anr. (supra,) relied upon by Mr. Das, it appears, did not take note of the earlier

decision of the four-Judges-Bench in the case of Pratap Narain Singh Deo (supra), taking a contrary view on the question of commencement of the

liability of the employer. We, therefore, find that in this case, although the claimants are entitled to get Rs. 3,21,500/- with interest at the rate of 8

percent per annum from the date of filing the application till the actual payment in terms of the provision contained in Section 163A of the Motor

Vehicles Act, 1988, the Insurance Company will be liable to pay Rs. 2,54,160/- with interest at the rate of 12 percent per annum from the expiry

of one month from the date of the accident till actual payment and the excess amount should be paid by the owner of the vehicle himself. We, thus,

set aside the award impugned and enhance the same to Rs. 3,21,500/- with interest at the rate of 8 percent per annum out of which Rs. 2,54,160/-

with interest at the rate of 12 percent per annum from the period of one month after the date of accident till actual payment should be paid by the

Insurance Company and the balance will be paid by the owner of the vehicle.

12. The appeal is, thus, allowed to the extent indicated above. In the facts and circumstances, there will be, however, no order as to costs.

Bhaskar Bhattacharya, J.

13. I agree.