

(2006) 11 CAL CK 0017

Calcutta High Court

Case No: F.M.A. No. 77 of 2006

Smt. Fulmani Hemram alias
Hemram and Another

APPELLANT

Vs

The Divisional Manager, New
India Assurance Co. Ltd.

RESPONDENT

Date of Decision: Nov. 3, 2006

Acts Referred:

- Motor Vehicles Act, 1939 - Section 149(2), 163A, 163A(1), 163A(2), 163A(3)

Citation: (2007) ACJ 2521 : (2007) 1 CALLT 648

Hon'ble Judges: Pratap Kumar Ray, J; Arunabha Basu, J

Bench: Division Bench

Advocate: Subir Banerjee, Jayanta Banerjee and Ruxmini Basu Roy, for the Appellant; K.K. Das, for the Respondent

Judgement

Arunabha Basu, J.

Heard the learned Advocates appearing for the parties.

2. The appeal u/s 173 of the M.V. Act is filed assailing the Judgment and order passed by the Motor Accident Claims Tribunal Judge, Uttar Dinajpur in connection with M.A.C. Case No. 206 of 2001 whereby and whereunder the learned Tribunal below decided an application for compensation filed u/s 163A of the M.V. Act, by the legal heirs of the deceased and awarded a sum of Rs. 1,20,000/- as compensation.

3. The short question that is raised in the appeal is that the learned Tribunal below failed to consider the scope of the application filed u/s 163A of the M.V. Act and also failed to consider the monthly income of the deceased as given in evidence and also did not, consider that in a case u/s 163A of the M.V. Act the minimum that is to be considered as monthly income is the notional income in case of non-earning persons. So far as the present case is concerned in the application filed u/s 163A of M.V. Act it has been stated that the deceased was engaged as mason and his

monthly income was Rs. 3,000/- per month. This aspect about the monthly income of the deceased has been supported by the wife of the deceased, who was examined as P.W. 1. During her evidence she has stated that daily income of her deceased husband as mason was Rs. 100/- per day. In this connection, it must be pointed out that her evidence was challenged by way of cross-examination on behalf of the respondent, Insurance Company mainly on the ground that there is no document to show the income of the deceased. But it appears that even though an application u/s 170 of the M.V. Act was filed by the Insurance Company before the learned Tribunal below, the same was directed to be kept with the record and no order was passed either allowing or rejecting the said application. In any case as no order was passed by the learned Tribunal allowing the prayer submitted by the Insurance Company u/s 170 of the M.V. Act permitting the said company to contest the application on all points, the Insurance Company will be competent to challenge the claim petition only with the limited grounds available in terms of Sub-section (2) of Section 149 of the M.V. Act. However, we must point out that when an application u/s 170 of the M.V. Act was filed by the Insurance Company, it was the duty of the learned Tribunal to decide the same on merit and this sort of direction directing the application to be kept with the record is not a proper judicial order passed by the learned Tribunal. It appears that the learned Tribunal while considering the evidence adduced by the claimants also took into consideration the evidence of P.W. 1 about the income of the deceased, but assessed the income of the deceased at Rs. 10,000/- per annum after deducting loss of work and no work etc. There appears to be no foundation in the evidence adduced by the parties to suggest that the deceased was earning only Rs. 10,000/- per annum and, as such, the finding of the learned Tribunal on this ground cannot be said to be legal and must be quashed. It is rightly pointed out by the learned Advocate for the appellants that while deciding an application u/s 163A of the M.V. Act the learned Tribunal failed to consider that income has to be assessed on the basis of Second Schedule and even in case of non-earning persons a notional income has to be fixed at Rs. 15,000/- per annum and any figure less than that amount will be against the language of Schedule 2 to Section 163A of the Act. So far as the present case is concerned it is the categorical evidence of P.W. 1 who is the wife of the deceased that her husband was earning Rs. 100/- per day as he was engaged as a mason. Even assuming for the sake of argument that he may not be engaged some days but that income cannot be to the tune of Rs. 10,000/- per annum as fixed by the learned Tribunal below. It is submitted by the learned Advocate for the appellants that even if the deceased was not engaged on Sundays, then also his monthly income will be Rs. 2,600/-. The income as suggested by the learned Advocate for the appellants is also supported by evidence and the same is required to be accepted. The annual income of the deceased will be Rs. 31,200/-. 1/3rd of the said amount is required to be excluded and, as such, the annual income after deduction will be Rs. 20,800/-. There is no dispute that considering the age of the deceased the learned Tribunal determined and accepted correct multiplier of 18 and, as such, the total amount of

compensation will be Rs. 3,74,400/-. The learned Tribunal also failed to award general damage in terms of Clause (3) to Second Schedule and only awarded a sum of Rs. 2,000/- which being against the specific provision of statute is required to be set aside. In addition to the amount as already stated above, the claimants will be entitled to the amount of Rs. 9,500/- being the amount of funeral expenses, loss of consortium and loss of estate. Out of the said amount under the heading "general damage" Rs. 5000/- will be exclusively paid to the spouse of the deceased and the remaining amount of Rs. 4,500/- shall be equally shared between the claimants along with the principal amount of compensation as mentioned above. It is submitted by the learned Advocate for the respondent, Insurance Company that in the evidence given by the wife of the deceased as well as in the application filed before the learned Tribunal below the claimants prayed that sum of Rs. 3,00,000/- as compensation along with the interest. In this connection, it may be pointed out that while deciding an application for compensation under Motor Vehicles Act, the Court or Tribunal is required to award just compensation in terms of provision of Section 168 of the M.V. Act. Strict rules or pleadings are not applicable while deciding an application for compensation and if it is found that amount of just compensation in the given circumstances of the particular case will be more than the amount claimed, then nothing prevents the Court or Tribunal to award the same. It is only in extreme case Court may require or direct appropriate application to be filed praying for enhancement of compensation. The matter came up for consideration before the Supreme Court in Nagappa v. Gurudayal Singh and Ors. reported in (2003) 1 (SC) 774. The Supreme Court held under the M.V. Act that there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. So far as the present case is concerned the evidence that is forthcoming is sufficient to decide that the income of the deceased was Rs. 2,600/-. As the application is filed u/s 163A of the M.V. Act, the Court is required to decide the compensation following the structured formula. The amount as highlighted above is arrived after following the structured formula taking into account the age and income of the deceased and such amount arrived is the amount of just compensation, there appears to be no necessity for filing amendment petition praying for enhancement of compensation. The learned Tribunal below has also failed to award interest in terms of Section 170 of the M.V. Act and only awarded interest of 6% per annum under default clause. We are unable to accept the finding of the learned Tribunal in this regard as because the compensation payable under the provision of M.V. Act is the outcome of benevolent legislation to compensate the legal heirs of the deceased and it has come out from the evidence of the wife of the deceased that her husband is the only bread earner of the family. This being so, the interest is required to be awarded from the date of filing the application that is on and from 23.11.2001 till the amount is paid by the Insurance Company. We make it clear that amount already deposited by the Insurance Company to satisfy the award is required to be adjusted with the amount of compensation now awarded by us and the principal amount of compensation along with the interest is to be calculated. The total amount of

compensation along with the interest as decided by us shall be from the date of filing the application on and from the date the amount of Rs. 1,22,000/- was paid by the Insurance Company. The principal amount will be reduced to that extent and the interest will be calculated on the reduced amount. The respondent, Insurance Company shall deposit the amount after calculating the interest within four weeks from this date.

4. Before parting with the discussion it is evident that the claimants are the widow and the minor daughter of the deceased and they also belonged to Scheduled Tribes Community and in order to protect their financial interest it is directed that the entire amount payable in favour of the minor shall be caused to be deposited by the learned Tribunal in a scheme either in ,a Nationalised Bank or in Post office at a place near to the place of residence of the claimants or convenient to them. The learned Tribunal below is directed to cause the deposit and only permit interest accrued from the said deposit to be released in favour of the mother of the minor. The claimants shall be handed over copy of the deposit and the specific time direction about his maturity which shall mature on the date minor attains majority and the amount deposited in favour of the minor shall be released in her favour on attaining majority.

5. So far as the widow is concerned 80% of the amount shall be deposited in the same manner as directed for the minor. She will be allowed to draw interest from the said amount. Liberty is given to the learned Tribunal to calculate the amount of interest that may be deposited by the Insurance Company and in case of dispute, the same may be settled by the Tribunal after hearing both the parties.

6. The appeal is accordingly allowed.

7. The Judgment and finding passed by the learned Tribunal below is hereby set aside and quashed.

8. The copy of the order along with the lower Court records be returned to the learned Court below by special messenger at the cost of the appellants and such cost shall be deposited within a week from this date.

Pratap Kumar Ray, J.

9. I fully agree with the view expressed by my learned Brother. Since from the impugned Judgment under appeal it appears that the learned Tribunal below failed to notice the statutory implication of Section 163A of the M.V. Act in its true and proper perspective, I like to add something on that issue. Section 163A reads to this effect:

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 of 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.

(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 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.

10. The said special provision was brought in the Statute by Amendment Act of 54 of 1994 effected from 14th November, 1994 and it starts by a non-obstantee clause. Furthermore, under Sub-section (2) of the said section a claimant need not plead or prove the death or permanent disablement of the victim due to wrongful act or neglect or default of owner's of the vehicle or vehicles concerned or of any other persons. It appears from the impugned Judgment under appeal that the learned Tribunal below had framed an issue being issue No. 3 to this effect.

3. Was there any rash and negligence on the part of the driver of the offending vehicle?

11. u/s 163A of the said Act since the claimants need not to prove the rash and negligent driving and also need not to plead it, there is no question of framing such an issue whether the driver of the offending vehicle was rash and negligent in driving the vehicle. Hence, framing of issue, practically was contrary to the statutory provision u/s 163A which ought to have been noticed by the learned Tribunal below. It appears from the impugned Judgment under appeal further that the learned Tribunal below allowed the insurance Company to cross-examine on that point also which is per se contrary to the aforesaid statutory provision.

12. So far as the fixation of the income by random method without any supporting evidence to that effect is also not permissible under the law. Since Section 163A is a special provision with a protective umbrella of "non-obstantee clause", the structured formula as framed and constituted under Second Schedule is required to be followed in a strict manner wherein it appears that the minimum income was directed to be considered as Rs. 15,000/- per annum in case of the non-earning persons who suffered fatal or non-fatal accident. Since the statute has limited the minimum income even to a non-earning person which should be considered in adjudicating the application u/s 163A of the M.V. Act, fixation of the income by the learned Tribunal in respect of the victim who breathed last due to the accident to the extent of Rs. 10,000/- per annum accordingly was contrary to the meaning, object and purpose of the Statute.

13. Another issue is required to be addressed in this case that the structured formula was framed and constituted on the basis of the price index as prevalent in the year 1994 and accordingly by Sub-section (3) of Section 163A of the Act, the Legislatures kept a provision for enhancement of the amount time to time on the basis of price index by notifying the same in the Official Gazette by the Central Government. Unfortunately as yet the Central Government has not considered that provision and such statutory provision practically has been kept in the Statute as a show-piece upon giving a go bye of legitimate claim of the victim of the accidental death. The Supreme Court accordingly was compelled to direct the Central Government to consider the issue in the case [Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda](#), . The relevant provision reads to this effect:

69. Keeping in view the limited questions posed before us, in our opinion, it is not necessary to go into the purported discrepancies existing in the Second Schedule of the Act.

72. Section 163A was introduced in the year 1994. The executive authority of the Central Government has the requisite jurisdiction to amend the Second Schedule from time to time. Having regard to the inflation and fall in the rate of bank interest, it is desirable that the Central Government bestows serious consideration to this aspect of the matter.

14. As nothing has been done, we are of the view that let a copy of this Judgment be referred to the Central Government for taking appropriate steps in terms of the Judgment delivered by the Apex Court and a compliance report to be filed by the Central Government to" the High Court registry within six months from this date.

15. Let a copy of the Judgment be served to the learned Presiding Officer who delivered Judgment under appeal for his taking note of the statutory provision of Section 163A of the said Act in future. Similarly a copy be served to the learned District Judge, Uttar Dinajpur for necessary action in the matter and for issuing instruction to the learned Tribunal, Motor Accident Claim Case to that effect.

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