

Smt. Joy Minocha and Others Vs Vijay Kumar and Others

Court: Chhattisgarh High Court

Date of Decision: July 21, 2011

Acts Referred: Arbitration and Conciliation Act, 1996 â€” Section 2(1)

Civil Procedure Code, 1908 (CPC) â€” Section 2(11)

Motor Vehicles Act, 1939 â€” Section 110

Motor Vehicles Act, 1988 â€” Section 140, 140(2), 158(6), 165(1), 166

Citation: (2012) ACJ 915 : AIR 2011 Chh 166 : (2011) 4 MPJR 133

Hon'ble Judges: I.M. Quddusi, J; Gulam Minhajuddin, J

Bench: Full Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

I.M. Quddusi, J.

The X Addl. Motor Accident Claims Tribunal, Raipur (C. G.) has passed two separate awards on 28-6-2005 in Claim

Case Nos. 34/2005 & 35/2005 respectively whereby the claim petitions of the appellants have been dismissed, against which the instant appeals

have been filed. M. A. No. 1174/2005 relates to Claim Case No. 34/2004 and M. A. No. 1175/2005 relates to Claim Case No. 35/2005. Since

both these appeals arise out the same accident met with Tata Sumo bearing Regn. No. M. P. 23-LA/1827, they are being disposed of by this

common order.

2. Brief facts of the case, in a nutshell, are that appellant No. 1 Smt. Joy Minocha was daughter of deceased persons Naresh Arora and Smt-

Bharti Arora, Appellants No. 2 & 3 are minor children of appellant No. 1. On 6-4-2001 the deceased persons along with others had gone to

Bastar by Tata Sumo bearing Regn. No. M. P. 23-L.A/1827. On 7-4-2011 when they were coming back to Raipur, the said vehicle which was

being driven by respondent No. 1 Vijay Kumar Yadav in a rash and negligent manner struck against a stationary Truck which was standing on the

left side of the road, as a result of which, Naresh Arora and Bharti Arora both died.

3. Appellant No. 1 along with her minor children being legal heirs had filed two separate claim petitions u/Ss. 140 & 166 of the Motor Vehicles

Act, 1988 (for short "the Act") for the award of compensations due to death of her father and mother respectively. The claim petitions have been

dismissed by the Claims Tribunal on the ground that the Appellant No. 1 was married daughter of the deceased persons, therefore, the claimants

are not entitled to receive any compensation due to death of mother and father of Appellant No. 1.

4. In view of the above, the only question before us is whether any compensation is payable where the claim is filed by legal representatives of the

deceased who were not dependent on them?

5. The expression "'Legal Representative'" has not been defined in the Motor Vehicles Act or the Rules made there under. It has been defined in

sub-section (11) of Section 2 of the Code of Civil Procedure, 1908 which reads as under:

Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the

estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the

party so suing or sued;

Almost in similar terms is the definition of "'legal representative'" u/s 2(1)(g) of the Arbitration and Conciliation Act, 1996.

6. Hon"ble the Apex Court in Custodian of Branches of Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, observed

that the definition contained in section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it

stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the

deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession

of the estate of the deceased. All such persons would be covered by the expression "'legal representative'". Earlier in Gujarat State Road Transport

Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, Hon"ble the Apex Court also observed that "'a legal representative is one

who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

7. In the above background, Hon"ble the Apex Court in Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, held (Per

Hon"ble Dr. Arijit Pasayat, writing for the Bench) that where a legal representative who is not dependent files an application for compensation, the

quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or

she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the

Act.

S. H. Kapadia, concurring with the opinion of Dr. Arijit Pasayat has laid down that that ""No fault liability envisaged in Section 140 of the said Act,

is distinguishable from the rule of ""Strict Liability"". In the former, the compensation amount is fixed. It is Rs. 50,000/- in cases of death (Section

140(2)). It is a statutory. It is an amount which can be deducted from the final amount awarded by the Tribunal. Since, the amount is a fixed

amount/crystallized amount, the same has to be considered as part of the estate of the deceased. In that case, the deceased was an earning

member. The statutory compensation could constitute part of his estate. His legal representative, namely his daughter has inherited his estate. She

was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under ""No fault Liability"" in terms of Section 140

of the said Act. That section is a Code by itself within the Motor Vehicles Act, 1988"".

8. In Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, it has been observed that the liability u/s 140 of the Act does not

cease because there is absence of dependency. The right to file claim application has to be considered in the background of right to entitlement. In

this context, we are required to look into the provisions of Section 140 which reads as under:

140. Liability to pay compensation in certain cases on the principle of no fault -- (1) Where death or permanent disablement of any person has

resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the

owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the

provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty

thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a

fixed sum of twenty five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent

disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or

vehicles concerned or of any other person.

(4) A claim for compensation under subsection (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect

of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or

permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is

liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under

this section or u/s 163-A.

9. Section 166 of the Motor Vehicles Act corresponds to Section 110 of the Motor Vehicles Act, 1939 (old Act). It provides that an application

for compensation may be made by all or any of the legal representatives of the deceased in case where death has resulted from the accident.

Section 166 is relevant here and quoted below :

166"" ""Application for compensation :-- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of

Section 165 may be made--

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be.

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be

made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be

impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the claims Tribunal having jurisdiction over the

area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business

or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect

immediately before the signature of the applicant.

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(4) The Claims Tribunal shall treat any report of accidents forwarded to it under subsection (6) of Section 158 as an application for compensation

under this Act,.

10. In view of what has been discussed above, we hold that though there is no loss of dependency, yet the claimants being legal representatives are

entitled to inherit the estate of the deceased persons, therefore, in the facts and circumstances of the present cases, the appellants are entitled to

receive compensation under no fault liability in terms of Section 140(2) of the Act. Hence the claim petitions were maintainable as filed by the legal

representatives of the deceased.

11. Since at the time of passing of the interim award u/S. 140, the Tribunal has already directed vide order dated 12-3-2003 to both the Insurance

Companies and owners to pay Rs. 25000/- each and the claimants have already received the amount of compensation of Rs. 50,000/- in both the

claim cases. Therefore, it shall for all purposes, the award of Rs. 50,000/- u/s 140 is to be borne by both the Insurance Companies equally.

Earlier, in M. A. (C). No. 1192/2005, the amount has been enhanced, liability fastened on New India Assurance Company exonerating the

National Insurance Company. The amount has already been paid. Therefore, the same need not be refunded.

12. At this stage, Mr. Raj Awasthy, learned counsel for respondent No. 6/ National Insurance Company Ltd., submits that for payment of

compensation, it was not the liability of his Insurance Company. But no appeal has been filed by the National Insurance Company. We are

deciding these appeals filed by the claimants and therefore no order can be passed on the objection raised by the counsel for respondent No. 6.

13. In the result, the appeals are allowed to the above extent. The impugned awards dated 28-6-2005 are set aside. No order as to costs.