

Oriental Insurance Co. Ltd. Vs Anita Devi and Others

Court: Delhi High Court

Date of Decision: May 10, 2011

Acts Referred: Motor Vehicles (Amendment) Act, 1994 " Section 163A, 54
Motor Vehicles Act, 1988 " Section 140, 140(3)(5), 163, 163A, 163A(1)(2)

Citation: (2012) ACJ 1223 : (2011) 5 AD 138

Hon'ble Judges: Reva Khetrpal, J

Bench: Single Bench

Advocate: L.K. Tyagi, for the Appellant; Sushil Kumar, for Respondent Nos. 1 to 5 and Anshoo Kumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Reva Khetrpal, J.

This appeal preferred by M/s. Oriental Insurance Co. Ltd. seeks to assail the judgment and award dated 13.01.2010

on the short ground that the amount of compensation allowed by the Claims Tribunal on account of the death of Shri Mohan Mishra (hereinafter

referred to as "the deceased") was not in accordance with Section 163-A read with the Second Schedule of the Motor Vehicles Act and the

structured formula delineated therein.

2. With the consent of the parties, the appeal is taken up for final hearing at this stage.

3. Although initially the Respondents No. 1 to 5 had filed a claim petition u/s 166 read with Section 140 of the Motor Vehicles Act, 1988,

subsequently the petition was converted into one u/s 163-A of the Motor Vehicles Act, 1988 with the permission of the Claims Tribunal.

4. The Claims Tribunal after holding that the factum of death of the deceased stood established and also the involvement of truck No. DL-1LB-

1726 and thus the ingredients required for a claim u/s 163-A of the Act stood fulfilled, proceeded to quantify the compensation due and payable to

the Respondents No. 1 to 5/claimants. For the aforesaid purpose, the Claims Tribunal held that recourse to the minimum wages for unskilled

workers was required in view of the fact that there was no documentary evidence on record for establishing the income of the deceased who was

stated to be Kachori vendor earning a sum of Rs. 3,300/- per month. Since the minimum wage rate for an unskilled worker on the date of the

accident, that is, 24.05.2005, was in the sum of Rs. 3,165/- per month, the Claims Tribunal assessed the aforesaid sum to be the income of the

deceased. Thereafter, applying the principles laid down by the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport

Corporation and Another, , it held that the monthly income of the deceased would have increased by 50% by the end of his working career, that

is, by Rs. 1,582.50, and thus his average monthly income would have totaled a sum of Rs. 4,747.50. Deducting 1/4th there from for the personal

expenses of the deceased in view of the fact that the deceased had five dependents, the Claims Tribunal assessed the remaining amount of Rs. 3,

560.62 to be the loss of dependency of the claimants per month, that is, Rs. 42,727.44 per annum. The aforesaid multiplicand was multiplied by

16 and the total loss of dependency was assessed to be in the sum of Rs. 6,83,639.04, that is, Rs. 42,727.44 x 16. In addition, the claimants were

held entitled to a sum of Rs. 10,000/- under the head of loss of estate, Rs. 10,000/-towards funeral expenses, Rs. 10,000/- towards loss of

consortium and Rs. 1,00,000/- for loss of love and affection of the deceased. In all, Rs. 7,64,000/- (i.e. Rs. 813639.04 - 50,000/- interim award)

with interest at the rate of 7.5% per annum from the date of the petition till the date of deposit of the award amount.

5. Aggrieved by the aforesaid findings of the Tribunal, the Appellant has preferred the present appeal in which the only ground sought to be urged

by Mr. L.K. Tyagi, the learned Counsel for the Appellant was that the findings of the Claims Tribunal, having been rendered in a petition u/s 163-

A of the Act, the Claims Tribunal was required to adhere to the structured formula laid down in the said Section read with the Second Schedule to

the Act. In this context, Mr. Tyagi made a three-fold submissions before this Court as follows:

(i) The Claims Tribunal could not have taken into consideration the future prospects of the deceased to the extent of 50% by relying upon the

judgment of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

(ii) The Claims Tribunal could not have deducted only 1/4th of the earnings of the deceased towards the personal expenses of the deceased when

the Second Schedule to the Motor Vehicles Act required a 1/3rd deduction to be made on this count.

(iii) The Claims Tribunal erred in awarding a sum of Rs. 1 lakh under the head of loss of love and affection and likewise erred in awarding amounts

on the higher side under the heads of loss of consortium, loss of estate and for funeral expenses of the deceased which were not in accordance

with the Second Schedule of the Motor Vehicles Act, 1988.

6. Mr. Sushil Kumar, the learned Counsel for the Respondents No. 1 to 5 sought to support the award by rebutting all the aforesaid contentions of

the learned Counsel for the Appellant. In the alternative, he submitted that the multiplier adopted by the Claims Tribunal was not in accordance

with the Second Schedule which required a multiplier of 17 to be applied to the age group of victims between 31 and 35 years of age. Since the

deceased in the instant case was admittedly 34 years at the time of the accident, the Claims Tribunal should have applied the multiplier of 17

instead of the multiplier of 16 to augment the multiplicand constituting the loss of dependency of the Respondents No. 1 to 5.

7. In a recent decision of this Court rendered in MAC. APP. No. 190/2011 titled as ""Jagdish and Anr. v. Madhav Raj Mishra and Anr."" decided

on April 19, 2011, this Court had considered the question as to whether in a claim petition instituted u/s 163-A of the Motor Vehicles Act, 1988,

while assessing compensation to a third party involved in a fatal accident, the structured formula referred to in the Second Schedule was required

to be strictly adhered to and had held that the Second Schedule and the structured formula laid down therein was required to be strictly adhered to

while assessing compensation under the aforesaid Section. The relevant portion of the said judgment reads as follows:

7. A glimpse at the legislative history of the law relating to compensation payable to motor accident victims is sufficient to show that the law as

originally enacted required compensation to be paid only on proof that the accident was a result of the rash and negligent driving of a motor vehicle

by the driver concerned. For the first time, Section 140, which was inserted in the statute book on the promulgation of the Motor Vehicles Act,

1988, provided for liability upon the owner of the vehicle to pay compensation on the principle of no fault. A further exception was carved out

when Section 163-A was inserted by Act 54 of 1994, which came into force on 14.11.1994. The said provision clearly had been inserted to

provide for a new pre-determined structured formula for payment of compensation to road accident victims on the basis of age/income of the

deceased or the person suffering disablement. These provisions with regard to no-fault-liability were inserted having regard to the fact that road

accidents in India had increased stupendously and it was found that compensation could not be paid to the victims in many a case where rash and

negligent driving causing death or injury to the innocent victim could not be proved, but as laid down by a three Judge Bench decision of the

Supreme Court in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, the claimants were not enabled thereby to

pursue their remedies both u/s 163-A and Section 166 of the Act and were required to opt/elect to go either for a proceeding u/s 163-A or u/s

166 of the Act. The Supreme Court further observed in the said case that the proceedings u/s 163-A, being a social security provision, providing

for a distinct scheme, only those whose annual income was up to Rs. 40,000/- could take the benefit thereof. All other claims were required to be

determined in terms of Chapter XII of the Act. In paragraphs 39 and 40, the Hon"ble Supreme Court delineated the reasons for the insertion of

Section 163-A in the Act as follows:

39. Section 163-A was introduced in the Act by way of a social security scheme. It is a code by itself. It appears from the Objects and Reasons

of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act several representations and suggestions were made from the

State Governments, transport operators and members of the public in relation to certain provisions thereof. Taking note of the observations made

by the various courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India

appointed a Review Committee. The Review Committee in its report made the following recommendations:

The 1988 Act provides for enhanced compensation for hit-and-run cases as well as for no-fault-liability cases. It also provides for payment of

compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is

found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11,214 claims pending

before the Motor Vehicle Accidents Tribunals, as on 31-3-1990. Proposals have been made from time to time that the finalisation of

compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle-owner as well as the insurance company if a system

of structured compensation can be introduced. Under such a system of structured compensation that is payable for different classes of cases

depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on

account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is

notified in that scheme of structured compensation or of pursuing his claim through the normal channels.

General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for settlement

of claims on ""fault liability"" in respect of third-party liability under Chapter XI of the MV Act, 1988. They have suggested that the claimants should

first file their claims with Motor Accidents Claims Tribunals and then the insurers may be allowed six months? time to confirm their prima facie

liability subject to the defences available under the Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the

claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time.

40. The recommendations of the Review Committee and representations from the public were placed before the Transport Development Council

for seeking their views pursuant whereunto several sections were amended. Section 163-A was inserted in the Act to provide for payment of

compensation in motor accident cases in accordance with the Second Schedule providing for the structured formula which may be amended by the

Central Government from time to time.

8. In paragraphs 42, 46, 47, 48, 49 and 50 of the judgment in Deepal Girishbhai Soni's case (supra), the contours of Section 163-A were further

delineated by the Supreme Court as follows:

42. Section 163-A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs. 40,000/-

having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid

on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefore. An award made

thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule

appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position

furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the

victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in

columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate

compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the

accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

46. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured-formula basis. Sub-

section (1) of Section 163-A contains non obstinate clause in terms whereof the owner of the motor vehicle or the authorised insurer is 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. Sub-section (2) of Section 163-A is in pari materia with Sub-section (3) of

Section 140 of the Act.

47. Section 163-A does not contain any provision identical to Sub-section (5) of Section 140 which is also indicative of the fact that whereas in

terms of the latter, the liability of the owner of the vehicle to give compensation or relief under any other law for the time being in force continues

subject of course to the effect that the amount paid thereunder shall be reduced from the amount of compensation payable under the said section

or Section 163-A.

48. By reason of the Section 163-A, therefore, the compensation is required to be determined on the basis of a structured formula whereas in

terms of Section 140 only a fixed amount is to be given. A provision of law providing for compensation is presumed to be final in nature unless a

contra-indication therefore is found to be in the statute either expressly or by necessary implication. While granting compensation, the Tribunal is

required to adjudicate upon the disputed question as regards age and income of the deceased or the victim, as the case may be. Unlike Section

140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding u/s 163-A of the Act.

49. Decisions rendered by this Court are galore where computation as regard the amount of compensation has been related to multiplier method

involving ascertainment of loss of dependency and capitalizing the same by appropriate multiplier. (See G.M., Kerala SRTC v. Susamma Thomas).

The structured formula provided for in the Second Schedule also provides for similar concept as regard determination of the amount of

compensation.

50. Apart from the fact that compensation is to be paid by applying multiplier method under the Second Schedule other relevant factors, namely,

reduction of one-third in consideration of the expenses which the victim would have incurred towards maintaining himself, general damages in case

of death as also in the case of injuries and disabilities as also the disability in non-fatal accidents, a notional income for compensation to those who

had no income prior to accident are provided for, are required to be considered which is also a clear pointer to the fact that thereby Parliament

intended to provide for a final amount of compensation and not an interim one.

9. Referring to the judgment of the Supreme Court in Deepal Girishbhai Soni's case (supra), a learned Single Judge of this Court (Hon'ble Mr.

Justice Pradeep Nandrajog) in the case of United India Insurance Co. Ltd. Vs. Kaushalya Devi and Others, , negated the plea of the

claimants/Respondents that assessment of compensation in excess of the annual income of Rs. 40,000/-, as stipulated in the Second Schedule to

the Motor Vehicles Act, 1988, was permissible where compensation was assessed u/s 163-A of the Motor Vehicles Act, and held that 1/3rd of

the income was liable to be deducted as the personal expenses of the deceased. The following pertinent observations were made in paragraphs 8

and 9 of the said decision:

8. It may be that the M.V. Act 1988 is a beneficial legislation and, thus, deserves liberal construction with a view to implement the legislative intent

but Courts cannot travel beyond the enacted provisions and extend the scope of the statute on the pretext of exceeding the statutory benefits to

those who are not covered thereby or exceeding the limits of compensation.

9. It is thus obvious that the IIInd schedule referred to in Section 163-A of the M.V. Act 1988 provides for a structured formula which has to be

applied while assessing compensation to a third party involved in a fatal accident/injury. A multiplier system is introduced, pursuant whereto and in

furtherance whereof the compensation has to be calculated having regard to the age of the victim or the dependants as also the annual income of

the deceased/injured.

10. In the case of Smt. Sarla Verma (supra), relied upon by the learned Tribunal no doubt, the Hon'ble Supreme Court held that where the

deceased was a bachelor and the claimants were the parents, the deduction followed a different principle and that in regard to bachelors, normally,

50% was deducted as personal and living expenses, because it was assumed that a bachelor would tend to spend more on himself. Even

otherwise, there was also the possibility of his getting married in a short time, in which event the contribution to the parents and siblings was likely

to be cut drastically. Further, subject to the evidence to the contrary, the father was likely to have his own income and brothers and sisters would

not be considered as dependants, because they would either be independent and earning, or married, or be dependant on the father. Thus, it

would be appropriate to deduct 50% towards the personal and living expenses of the bachelor and treat 50% as his contribution to the family.

8. In view of the aforesaid, it must be held that the Claims Tribunal, in the instant case gravely erred in not adhering to the structured formula laid

down in the Second Schedule and in calculating the compensation in the present petition treating it to be a petition u/s 166 of the Act. This being

so, the amount of compensation awardable to the Respondents No. 1 to 5 is required to be re-computed in accordance with the Second

Schedule. The income of the deceased was assessed to be in the sum of Rs. 3,165/- per month in accordance with the minimum wage rate

applicable to an unskilled workman on the date of the accident. Deducting 1/3rd there from, the loss of dependency of the Respondents No. 1 to

5 comes to Rs. 2,110/- per month, that is, Rs. 25,320/- per annum. The age of the deceased at the time of the accident being 34 years, the

appropriate multiplier would be the multiplier of 17. Thus calculated, the total loss of dependency of the Respondents No. 1 to 5 works out to Rs.

4,30,440/-, that is, Rs. 25,320/- x 17. As per the Second Schedule, the non-pecuniary damages awardable to the legal representatives of the

deceased are in the sum of Rs. 2,000/- for funeral expenses, Rs. 5,000/- towards loss of consortium where the beneficiary is the spouse and Rs.

2,500/- towards the loss of estate. Adding the aforesaid general damages, the total amount of compensation payable to the Respondents No. 1 to

5 works out to Rs. 4,39,940/-, which may be rounded off to Rs. 4,40,000/-. The Respondents No. 1 to 5 shall also be entitled to interest at the

rate of 7.5% per annum from the date of the institution of the claim petition, i.e., from 19.01.2006 till the date of realisation.

9. The award stands modified accordingly. In view of the fact that the awarded amount along with the interest thereon till April 09, 2010 is lying

deposited with the UCO Bank, Delhi High Court branch, through nodal officer in the account of the claimants, the claimants shall be at liberty to

withdraw the sum of Rs. 4,40,000/- with interest thereon. The balance amount shall be refunded to the Appellant - Insurance Company.

10. The appeal is allowed to the aforesaid extent and stands disposed of.