

Raisingh Vs. Anil and anr.

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Court : Madhya Pradesh

Decided On : Aug-06-2007

Reported in : 2009ACJ73

Judge : A.M. Sapre and ;Manjusha P. Namjoshi, JJ.

Appellant : Raisingh

Respondent : Anil and anr.

Disposition : Appeal allowed

Judgement :

A.M. Sapre, J.

1. The decision rendered in this appeal shall also govern disposal of other 2 connected appeals being M.A. Nos. 2066 and 2082 of 2006 because all these 3 appeals arose out of common award passed by Claims Tribunal in relation to one accident.

2. This is an appeal filed by claimant under Section 173 of Motor Vehicles Act (for short called 'the Act') against an award dated 29.4.2006 passed by the Thirteenth Member, M.A.C.T., Indore in Claim Case No. 119 of 2005. By impugned award, the Tribunal has dismissed all the three claim petitions including the one filed by claimant (i.e., appellant herein) under Section 163-A of the Act, claiming

compensation for the injuries sustained by him in accident. So the short question that arises for consideration in these 2 connected appeals is whether Tribunal was justified in dismissing the claim petitions filed by claimant under Section 163-A of the Act and if not then whether the claimants-appellants are entitled to claim compensation for the injuries and death as per provisions of the Motor Vehicles Act?

3. On 15.10.2004, 3 persons namely, one Meharban Singh, Raisingh (appellant of M.A. No. 2065 of 2006) and Sanjay (appellant of M.A. No. 2066 of 2006) were going on scooter bearing No. MP 09-NE 5792 belonging to R-I/NA-1 and insured with R-2/NA-2. Meharban was driving the scooter and other two, i.e., Raisingh and Sanjay were pillion riders. It is at that time, one Eicher truck came with speed and hit the scooter. All the three fell down. Meharban died and other two, i.e., Raisingh and Sanjay suffered injuries. This incident gave rise to filing of 3 claim petitions by three claimants. So far as Raisingh and Sanjay were concerned, they filed their respective claim petitions under Section 163-A of the Act seeking compensation for the injuries sustained in accident whereas the legal representatives of Meharban Singh filed a claim petition under Section 163-A ibid claiming compensation for his death out of which M.A. No. 2082 of 2006 arises. All the three claim petitions were filed against the owner of scooter (NA-I/R-1) and its insurer (NA-2/R-2) on which these 3 were travelling and met with an accident. It was resisted by non-applicants, inter alia, on the ground that firstly, no liability can be fastened on the owner and insurer of the scooter (vehicle) in question because the accident occurred on account of negligence on the part of driver of Eicher truck and hence cause of action to claim compensation arose against the driver, owner and insurer of Eicher truck and not against the owner and insurer of scooter in question. It was also contended that when admittedly, person driving the vehicle scooter, i.e., Meharban Singh had no driving licence and 3 persons were going on scooter, i.e., one driver and 2 as pillion riders, a clear case of breach of policy has occurred and hence no liability can be fastened on the owner and insurer of scooter, i.e., NA-1 and NA-2.

4. By the impugned award the Tribunal dismissed all the three claim petitions. It was held that the driver of scooter, i.e., deceased Meharban had no driving licence

to drive any vehicle (see issue No. 3). It was also held that the driver of Eicher truck was negligent in driving the truck and since there was no negligence on the part of driver of scooter, i.e., Meharban Singh, no liability can be fastened upon the owner of scooter (NA-1) and in consequence on the insurer of scooter, i.e., NA-2/R-2. In other words, the Tribunal was of the view that since the accident occurred due to sole negligence of driver of truck, no liability can be fastened on the insured and insurer of scooter who were impleaded as party non-applicants. It was held that in such case, the claimants should have impleaded driver, insurer and insured of Eicher truck because the accident occurred on account of their negligence and since they were not impleaded in any of the claim case and hence, no award can be passed against the insurer and insured of the scooter. It is against this award, dismissing all the three claim petitions, all the three claimants have filed this appeal.

5. Heard Mr. J. Vaishnav, Advocate for appellant and Mr. Y. Purohit, Advocate for respondent No. 1 and Mr. C.P. Singh, Advocate for respondent No. 2.

6. Placing reliance on the plain wordings of Section 163-A of the Act coupled with the observations of Supreme Court in a case of Oriental Insurance Co. Ltd. v. Meena Variyal : AIR 2007 SC1609 , in para 24 explaining the distinction between Sections 163-A and 166 ibid and further on the ratio of decision of Gujarat High Court in the case of National Insurance Co. Ltd. v. Rukhshanaben Salimbhai Vora , learned Counsel for the appellant contended that the Claims Tribunal should have allowed the claim petitions filed by the claimants under Section 163-A ibid and in consequence should have awarded reasonable compensation to each claimant commensurate with the extent of injuries sustained by each of them and in other case for death, i.e., in the case of Meharban Singh. It was his submission that in a case where 2 vehicles are involved (as in this case) and injury or/and death is found to have been caused to person then the claimants are entitled to file a petition under Section 163-A or 166 against any of the insurer and insured of the vehicles involved in the accident-they being joint tortfeasors to the incident. He urged that in a case where claimant has invoked the provisions of Section 163-A ibid against one tortfeasor, i.e., insurer of one vehicle involved then, the claim petition cannot be dismissed as being not maintainable. He urged that since

claimants are not required to plead or/and prove the negligence of driver of any vehicle involved in the accident and once it is proved that the death/injury as the case may be has occurred due to accident arising out of motor vehicle, then in such an eventuality, the claimant becomes entitled to claim compensation as per structured formula enacted for determination of compensation under Section 163-A *ibid*.

7. In reply, learned Counsel for the company respondent, supported the impugned award by placing reliance on the decisions of Supreme Court rendered in the cases of *Oriental Insurance Co. Ltd. v. Meena Variyal* : AIR 2007 SC1609 and *United India Insurance Co. Ltd. v. Tilak Singh* : AIR 2006 SC1576 .

8. Having heard the learned Counsel for the parties and having perused the record of the case, we are inclined to allow all the 3 appeals in part and while setting aside of the impugned award, allow the claim petitions which are subject-matter of these 3 appeals in part and award reasonable compensation in each claim petition as indicate *infra*.

9. Their Lordships of Supreme Court in the case of *Meena Variyal*, : AIR 2007 SC1609 , had occasion to consider the issue of liability of the insurance company in cases falling under Section 166 of the Act. While elaborately dealing with the issue of liability arising out of claim cases filed under Section 166 *ibid*, their Lordships approved the ratio of Supreme Court rendered in the case of *Minu B, Mehta v. Balkrishna Ramchandra Nayan* 1977 ACJ 118 (SC) and held as under:

(24) We think that the law laid down in *Minu B. Mehta v. Balkrishna Ramchandra Nayan* 1977 ACJ 118 (SC), was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or 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 the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under Sub-section (1) of Section 163-A of the Act, 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 neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

10. Gujarat High Court also had the occasion to consider the issue of liability of insurer and insured of vehicle arising out of cases falling in Section 163-A *ibid* in the case reported in *National Insurance Co. Ltd. v. Rukhshanaben Salimbhai Vora* 2007 ACJ 1235 (Gujarat), it was held that in a case falling under Section 163-A, the question whether pillion rider was gratuitous passenger or a third party is irrelevant and the insurance company is liable to indemnify the insured if it is proved that accident occurred arising out of the use of motor vehicle. This is what was held while distinguishing the ratio of *Tilak Singh's case*, : AIR 2006 SC1576 :

(5) As regards the second contention, we find that the decision in *Tilak Singh's case*, : AIR 2006 SC1576 , was rendered in an application under Section 166 of the Act. In that case, the accident took place on 31.10.1989. The decision of the Apex Court was not rendered in an application under Section 163-A of the Act introduced in the year 1994.

Section 163-A of the Act reads as under:

163-A. 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 or 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.

Explanation.--For the purposes of this sub-section, 'permanent disability' shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(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 neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

The non obstante clause with which Section 163-A(1) begins makes it clear that the liability of the insurance company to satisfy the award is not dependent upon any other provisions of the Act and, therefore, the question whether the passenger on the motor cycle was a gratuitous passenger or whether he can be said to be a third party or not would not be relevant. The contention, therefore, must be rejected.

11. Yet we consider it proper to take note of the law laid down by Full Bench decision of our High Court in *Sushila Bhadoriya v. Madhya Pradesh State Road Trans. Corporation* : 2005(1)MPHT486 . It is in this case, their Lordships while examining the scope of Section 166 of the Act and the issue as to whether it is necessary to implead insurer and insured of both vehicles involved in the accident or impleading of one is sufficient ruled that it is not necessary to implead both sets of insurer and insured. It was held that since the position of driver and insurer of both the vehicles is in the capacity of joint tortfeasors and hence impleading one out of 2 is sufficient. In other words, it was held that though claimant may implead both but if he has not so impleaded but impleaded only one out of 2 sets of insurer and insured of the vehicle then the claim petition cannot be dismissed as being not maintainable. It is held maintainable even against one set, i.e., insured and insurer of one vehicle. This is how their Lordships summed up in para 27:

(i) Owner, driver and insurer of one of the vehicles can be sued and it is not necessary to sue owner, driver and insurer of both the vehicles. The claimant may implead the owner, driver and the insurer of both the vehicles or any one of them.

(ii) There cannot be apportionment of the liability of joint tortfeasors. In case both the joint tortfeasors are impleaded as party and if there is sufficient material on the record, then the question of apportionment can be considered by the Claims Tribunal. However, on general principles of law, there is no necessity to apportion the inter se liability of joint tortfeasors.

12. Keeping in view the plain and unambiguous language of Section 163-A of the Act and the ratio of three decisions referred supra, we are of the view that claim petitions filed by the claimants (appellants herein of the three appeals) under Section 163-A *ibid* were maintainable in law and had to be thus entertained for awarding reasonable compensation to the claimants in terms of Schedule appended to the Act for determination of compensation payable under Section 163-A *ibid*. In other words, it was a case where two vehicles were involved, namely, the one on which the two claimants and deceased Meharban Singh were going (scooter) whereas the other one was the unknown Eicher truck which dashed the scooter. In a case of this nature, both the vehicles were in the form of joint tortfeasors and hence one could be impleaded for suing under Section 163-A *ibid*. In this view of the matter, the claim petition filed against the insurer and insured of scooter involved in the accident, i.e., respondents was maintainable.

13. It cannot be disputed that accident has occurred arising out of the use of the vehicle in question, i.e., scooter and hence the requirement of Section 163-A of the Act are satisfied by the claimants. In a claim petition filed under Section 163-A *ibid* it is not necessary to plead and prove the negligence of driver of the vehicle involved. In this view of the matter, whether driver of vehicle in question, i.e., scooter or that of Eicher truck was negligent in driving was entirely insignificant in these proceedings. In other words, it was not required to be gone into. The very fact that the claimants had invoked the beneficial provisions of Section 163-A, which has given overriding effect on all other provisions of the Act, they were entitled to claim the compensation on their proving the requirement of Section 163-A *ibid*. We are, therefore, of the considered opinion that the claim petitions filed under Section 163-A *ibid* out of which these 3 appeals arise were maintainable as against the insurer and insured of scooter in question. We, therefore, reverse the findings of the Claims Tribunal on this issue and answer the same in favour of

claimants.

14. This takes us to the next question regarding quantum of compensation payable in each case.

15. Coming first to the M.A. No. 2065 of 2006, it is filed by Raisingh (claimant) for the injuries sustained by him in the accident.

16. We have gone through the record of Claim Case No. 119 of 2005 out of which M.A. No. 2065 of 2006 arises. It is filed by the claimant Raisingh in support of his claim for compensation for the injuries said to have been suffered by him. Having gone through the evidence adduced in this case, it is, however, noticed that claimant Raisingh has not filed any medical documents in support of his claim to prove the injury, its nature and extent of damage caused to him due to injury. No doctor is examined to prove the injury and its consequent damage and loss caused to him. The only document relied on by the claimant is Exh. P5. It is prescription issued by a doctor of one SAIMS Hospital. It does not mention any kind of injuries as such except causing of simple and superfluous injury to the claimant after the accident.

17. We are, therefore, of the view that the claimant has not been able to prove the causing of injury to him, its extent, damage resulted and any kind of disability whether permanent or partial and hence he is only entitled to claim reasonable compensation towards pain and suffering and small expenses incurred for attending the injuries in hospital. We, therefore, allow the appeal in part and award a sum of Rs. 15,000 to claimant Raisingh by modifying the impugned award in claimant's favour to the extent indicated in this para.

18. In other words, the claimant is held entitled for a total sum of Rs. 15,000 by way of compensation for the injury sustained by Raisingh.

19. The compensation awarded to the claimant is just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases. Indeed in such cases, no fixed and any static formula is provided for determining the compensation and the

same is required to be determined on the basis of evidence adduced and the relevant factors mentioned supra. It is on this basis, the courts have to work out award of reasonable compensation.

20. Learned Counsel for the appellant cited some authorities for claiming enhancement. We have gone through these authorities. In our opinion and as observed supra, every case depends upon facts of each case and one can rely upon the cases for awarding compensation.

21. In this view of the matter, the appeal succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The enhanced sum will carry interest at the rate of 6 per cent per annum from the date of application till realisation. All other findings are upheld being not under challenge to the extent necessary.

22. This now takes us to another appeal being M.A. No. 2066 of 2006 filed by Sanjay. This is also an injury case. Having gone through the evidence adduced by this claimant, i.e., Sanjay, we find that his case is identical to that of Raisingh, i.e., claimant of M.A. No. 2065 of 2006. In other words, there is absolutely no distinction between the case of Raisingh and Sanjay. In this view of the matter, this appeal is also allowed in part. We, thus, award a sum of Rs. 15,000 to the claimant Sanjay as Sanjay did not appear to have suffered any injuries like Raisingh.

23. In other words, the claimant is held entitled for a total sum of Rs. 15,000 by way of compensation for the injury sustained by Sanjay.

24. The compensation awarded to the claimants is just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases. Indeed in such cases, no fixed and any static formula is provided for determining the compensation and the same is required to be determined on the basis of evidence adduced and the relevant factors mentioned supra. It is on this basis, the courts have to work out the award of reasonable compensation.

25. In this view of the matter, the appeal succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The enhanced sum will carry interest at the rate of 6 per cent per annum from the date of application till realisation. All other findings are upheld being not under challenge.

26. This takes us to third appeal being Misc. Appeal No. 2082 of 2006. It is filed by the legal representatives of Meharban Singh who was driving the scooter and died. The deceased was aged 30 years at the time of accident. He was a labourer. According to the claimants, he was earning Rs. 3,000 per month, i.e., Rs. 36,000 yearly.

27. We have gone through the evidence adduced by claimants, i.e., legal representatives of the deceased, we find that except the oral version of widow (claimant No. 1) that her husband was earning Rs. 3,000 per month from labour, there is no evidence adduced by the claimant. We, therefore, do not consider it safe to accept the oral testimony of claimant on this issue in totality. In our view, we hold that the deceased's yearly income was Rs. 24,000. Deducting 1/3rd, we get a sum of Rs. 16,000. Applying the multiplier of 17, we get an amount of Rs. $16,000 \times 17 = \text{Rs. } 2,72,000$. We then award a sum of Rs. 28,000 for other statutory heads so as to make a total amount of Rs. 3,00,000 as compensation payable to claimants.

In other words, the claimants are held entitled for a total sum of Rs. 3,00,000 by way of compensation for the death of Meharban Singh.

28. The compensation awarded to the claimants is just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases. Indeed in such cases, no fixed and any static formula is provided for determining the compensation and the same is required to be determined on the basis of evidence adduced and the relevant factors mentioned supra. It is on this basis, the courts have to work out award of reasonable compensation.

29. Learned counsel for the appellant cited some authorities for claiming enhancement. We have gone through these authorities. In our opinion and as

observed supra, every case depends upon facts of each case and one can rely upon the cases for awarding compensation.

30. In this view of the matter, the appeal succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The enhanced sum will carry interest at the rate of 6 per cent per annum from the date of application till realisation. All other findings are upheld being not under challenge.

No costs.

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