

Joy Minocha and Others Vs. Vijay Kumar and Others

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Court : Chhattisgarh

Decided On : Jul-21-2011

Judge : I.M. Quddusi & G. Minhajuddin

Appeal No. : M.A.No.1174 of 2005

Appellant : Joy Minocha and Others

Respondent : Vijay Kumar and Others

Advocate for Def. : Mr. Raj Awasthy

Judgement :

I.M.QUDDUSI, J.

1. This X Addl. Motor Accident Claims Tribunal, Raipur (C.G.) has passed two separate awards on 28-6-2005 in Claim Case Nos.34/2005 and 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 and 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 and 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 thereunder. 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 in the definition of "legal representative" under Section 2(1)(g) of the Arbitration and Conciliation Act, 1996.

6. Hon'ble the Apex Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique, 1989 Supp (2) SCC 275 : (AIR 1989 SC 1589) 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 v. Ramanbhai Prabhatbhai and another* (1987) 3 SCC 234 : (AIR 1987 SC 1690) Hon’ble 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 v. Oriental Insurance Company Ltd. and another* (2007) 10 SCC 643 : (AIR 2007 SC 1474) 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.

Hon’ble Mr. Justice 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 *Manjuri Bera's* (AIR 2007 SC 1474) (Supra) it has been observed that the liability under Section 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 sub-section (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 under Section 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 jointed 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 jointed, 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 under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

Xx xx xx xx

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (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/- under Section 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. Nor order as to costs.

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