Civil Revision
Present: The Hon'ble Mr. Justice Bhaskar Bhattacharya
And
The Hon'ble Mr. Justice Prasenjit Mandal
F.M.A. No. 647 of 2006
Judgment on: 14th June, 2010.
Sri Haradhan Pal
Versus
The New India Assurance Co. Ltd. & Anr.

POINTS

Motor Accident claim – Motor Accident Claims Tribunal rejected the said application – Claimant having already received a sum of Rs.25,000/- in the earlier proceedings under Section 140 of the Act – Whether it was permissible for a Tribunal dealing with an application under Section 166 of the Act to apply the principle of notional income which has been introduced by the Amending Act of 1994 and is applicable only to the proceedings under Section 163A of the Act – What should be the amount of compensation in such proceedings – Motor Vehicles Act 1988, S 140, 166, & 163A.

FACTS

The claimant in a proceeding under Section 166 of the Motor Vehicles Act and is directed against an award dated 18th July, 2005 passed by the Motor Accident Claims Tribunal and 8th Bench of the City Civil Court at Calcutta, in M.A.C. Case No.388 of 1992, thereby rejecting the said application on the ground that the claimant having already received a sum of Rs.25,000/- in the earlier proceedings under Section 140 of the Act whereas in the proceedings under Section 166 of the Act, the total amount of compensation payable having been assessed at Rs.14,960/-, The Tribunal further added a sum of Rs.2,500/- as funeral expenses. After arriving at such figure, the Tribunal held that since more than that amount had already been paid in the earlier proceedings under Section 140 of the Act, the claimant was not entitled to get any further amount.

Being dissatisfied, the claimant has come up with the present appeal.

HELD

Accident having occurred prior to the coming into operation of the amendment of 1994 introducing the provision of Section 163A of the Act, there was neither any scope of application of the principle of "notional income" of the victim in the facts of the present case nor was there any room for converting the application to one under Section 163A of the Act.

Para 10

In case of a proceeding under Section 166 of the Act against the owner of the involved vehicle, the amount of compensation should be calculated on the basis of actual loss suffered by the claimant and in addition, it should be established from the materials on record that the driver of the vehicle which is owned by the respondent in the proceedings was to some extent responsible for the accident by his acts or omission. Para 13

In a proceeding under Section 166 of the Act, if the partial negligence of the offending vehicle is proved, the Tribunal is required to assess the damages in proportion to the negligence of the offending vehicle found by the Tribunal. In other words, if the offending vehicle is fully responsible for the injury or the death, the full compensation should be paid by the owner of the vehicle or the Insurance Company, if insured, depending upon the terms of the insurance agreement. Similarly, if more than one vehicle are involved, the damages will be divided between the owners or the Insurers of those vehicles in proportion to their respective negligence. If, on the other hand, there is some contributory negligence on the part of the victim, the damages actually suffered by him would be reduced by that percentage of the contributory negligence. Para 14

The human life has a value even if the victim is incapable of earning. Article 21 of the Constitution of India protects the life and the liberty of an impecunious person in the same way as those of a prosperous one.

Para 20

CASES CITED:-

Lata Wadhwa vs. State of Bihar reported in AIR 2001 SC 3218,

For the Appellant: Mr. Krishanu Banik.
For the Insurance Company: Mr. Animesh Das.

Bhaskar Bhattacharya, J.:

THE COURT. 1)This appeal is at the instance of the claimant in a proceeding under Section 166 of the Motor Vehicles Act and is directed against an award dated 18th July, 2005 passed by the Motor Accident Claims Tribunal and 8th Bench of the City Civil Court at Calcutta, in M.A.C. Case No.388 of 1992, thereby rejecting the said application on the ground that the claimant having already received a sum of Rs.25,000/- in the earlier proceedings under Section 140 of the Act whereas in the proceedings under Section 166 of the Act, the total amount of compensation payable having been assessed at Rs.14,960/-, the Insurance Company was under no obligation to pay any further amount.

2)Being dissatisfied, the claimant has come up with the present appeal.

3)There is no dispute as regards the death of the victim in the accident where the offending vehicle was insured by the New India Assurance Company Limited. It appears from record that in a previous proceeding under Section 140 of the Act, a sum of Rs.25,000/- was awarded in favour of the claimant for the death of the victim which occurred on 26th December, 1991 due to the said accident.

4)Subsequently, the claimant came up with his application under Section 166 of the Act claiming compensation of Rs.70,000/- on the allegation that the victim aged 40 years used to earn Rs.240/- a month.

5)The learned Tribunal below from the materials on record concluded that due to negligence on the part of the driver of the offending vehicle the accident occurred. However, the learned Tribunal below for the purpose of assessing the compensation decided to apply the multiplier of 13 as the victim was aged 40 years and on the basis of income of Rs.240/- a month, arrived at the figure of Rs.14,960/-. The Tribunal further added a sum of Rs.2,500/- as funeral expenses. After arriving at such figure, the Tribunal held that since more than that amount had already been paid in the earlier

proceedings under Section 140 of the Act, the claimant was not entitled to get any further amount.

6)Being dissatisfied, the claimant has come up with the present appeal.

7)Mr. Banik, the learned advocate appearing on behalf of the appellant, strenuously contended before us that even though his client pleaded in the application under Section 166 of the Act that the victim used to earn Rs.240/- a month in the year 1991, the Tribunal below having disposed of the proceeding in the year 2005, should have applied the principle of notional income as provided in Second Schedule of the Motor Vehicles Act which has been incorporated in the Act by way of Amendment Act of 1994. According to Mr. Banik, the value of a human life cannot, at any rate, be less than Rs.70.000/-. Mr. Banik, therefore, prayed for enhancement on the amount on the basis of notional income and by application of multiplier of 15 to the facts of the present case.

8)Mr. Das, the learned advocate appearing on behalf of the Insurance Company, has, however, opposed the aforesaid submission of Mr. Banik and has contended that the claimant having pleaded that the income of the victim was Rs.240/- a month, there was no scope of application of "notional income" introduced by way of amendment of the Act in the year 1994 as the accident occurred prior to that date. Mr. Das, therefore, prays for dismissal of the appeal.

9)Therefore, the first question that falls for determination in this appeal is whether in the facts of the present case it was permissible for a Tribunal dealing with an application under Section 166 of the Act to apply the principle of notional income which has been introduced by the Amending Act of 1994 and is applicable only to the proceedings under Section 163A of the Act.

10)After hearing the learned counsel for the parties and after going through the materials on record, we are convinced that the accident having occurred prior to the coming into operation of the amendment of 1994 introducing the provision of Section 163A of the Act, there was neither any scope of application of the principle of "notional income" of the victim in the facts of the present case nor was there any room for converting the application to one under Section 163A of the Act.

11)Therefore, we are to proceed on the basis of the law as it stood on the date of accident, *viz.* 26th December, 1991.

12)According to the provision of Motor Vehicles Act as it stood on that day, in terms of Section 140 of the Act even without proving any fault whatsoever of the driver of the involved vehicle, a claimant was entitled to get a compensation to the tune of Rs.25,000/- irrespective of the income of the deceased. Therefore, the intention of the legislature, at that point of time, was that whatever may be the income of the victim, and even if the victim had no income, a minimum amount of Rs.25,000/- should be payable as compensation for the death of the victim notwithstanding the fact that the claimant was unable to prove negligence on the part of the driver of the vehicle which caused the death.

13)In case of a proceeding under Section 166 of the Act against the owner of the involved vehicle, the amount of compensation should be calculated on the basis of actual loss suffered by the claimant and in addition, it should be established from the materials on record that the driver of the vehicle which is owned by the respondent in the proceedings was to some extent responsible for the accident by his acts or omission.

14)In a proceeding under Section 166 of the Act, if the partial negligence of the offending vehicle is proved, the Tribunal is required to assess the damages in proportion to the negligence of the offending vehicle found by the Tribunal. In other words, if the offending vehicle is fully responsible for the injury or the death, the full compensation should be paid by the owner of the vehicle or the Insurance Company, if insured, depending upon the terms of the insurance agreement. Similarly, if more than one vehicle are involved, the damages will be divided between the owners or the Insurers of those vehicles in proportion to their respective negligence. If, on the other hand, there is some contributory negligence on the part of the victim, the damages actually suffered by him would be reduced by that percentage of the contributory negligence.

15)In this case, it has been found by the Tribunal that the driver of the offending vehicle was solely responsible for the accident and thus, whatever will be assessed, the insurer of the vehicle should pay compensation for the death, the vehicle having been proved to be insured and the victim being a third party.

16)Therefore, the next question is what should be the amount of compensation in such proceedings.

17)The appellant has claimed a sum of Rs.70,000/- as compensation for the death of his mother who according to him used to earn a sum of Rs.240/- a month in the year 1991. With effect from November 14, 1994, the law relating to compensation for death arising out of accident involving motor vehicles in public place has undergone a change of considerable dimension by introduction of Section 163A of the Act. According to such provision, in case of a death of a person having yearly income of less than Rs.40,000/-, the claimants, without proving negligence of the driver of the vehicle, can claim compensation in accordance with the Second Schedule of the Act and even if the victim had no income, the compensation should be assessed by treating his income to be Rs.15,000/- per annum. The amount of compensation under Section 140 of the Act has also been increased from Rs.25,000/- to Rs.50,000/-. The net result of these amendments is that in case of death after November 14, 1994 the legislature thought that even without proving negligence of the driver of the vehicle concerned, in case of death of any person, whatever be his income, Rs.50,000/- should be the minimum amount of compensation and if the victim is a member of below Rs.40,000/- annual income group, his income should be treated as Rs.15,000/- per annum for the application of Second Schedule even if he had actually no income or income below Rs.15,000/- per annum.

18)In the case before us, the death had taken place in the year 1991 and therefore, the amended provision will not be applicable. We are, however,required to decide what should be the just amount of compensation for the death of a person aged 40 years, when she had no negligence in the accident but the entire negligence was of the driver of the offending vehicle and such victim was a member of below Rs.40,000/- per annum income group.

19)In this case, the victim had a meagre income of Rs.240/- a month and her son claimed a moderate amount of Rs.70,000/- as compensation for the death when negligence of the driver had been established.

20)There is no dispute that the amount should be assessed based on the principles of tort. Although the income of the victim is a factor in assessing them compensation, the law relating to assessment of damages arising out of tort is not that for the tortious act of a person leading to death of a victim

who had no income, no compensation should be payable. If that was the law, a doctor by causing death of an infant or an helpless poor person having no income, for the gross negligent act on his part, could avoid payment of compensation on the ground that the heirs of the victim suffered no pecuniary loss. Similarly, the owner or the insurer of a vehicle, also on that ground, could avoid payment of compensation for the negligent driving resulting in the death of a beggar or a person having no income. The human life has a value even if the victim is incapable of earning. Article 21 of the Constitution of India protects the life and the liberty of an impecunious person in the same way as those of a prosperous one.

21)In our opinion, even in the year 1991, the value of life of an active lady aged 40 years having child cannot be said to be less than Rs.70,000/- notwithstanding the fact that she was actually earning only a sum of Rs.240/- a month. Apart from the said earning, she had a contribution towards her family and that amount should not be lost sight of.

22)As held by the Apex Court in the case of Lata Wadhwa vs. State of Bihar reported in AIR 2001 SC 3218, while dealing with a case of compensation for the death due to fire which broke out in the year 1989 due to the negligence of the organizer of a function, taking into consideration, the multifarious servicesrendered by the housewives between the age group of 34 – 59 for managing the entire family, the same, even on a modest estimation, should be valued at Rs.3,000/- a month and Rs.36,000/- per annum.

23)On that basis if we propose to assess the compensation, the amount would be much higher. However, the claimant having restricted his claim to Rs.70,000/-, we are of the opinion that the said amount cannot be said to be unreasonable one and there is no just reason for refusing the said amount. The value of the deprivation of the love, affection and company of a mother to a young man who has just attained majority cannot at any rate be less than Rs.70,000/- even in the year 1991. On her death, the claimant has lost his only near and the dear one.

24)We, therefore, hold that the learned Tribunal below erred in law in rejecting the application under Section 166 of the Act notwithstanding its finding of negligence of the driver of the vehicle on the ground that the appellant obtained more than the actual amount of loss suffered by him in the earlier proceedings under Section 140 of the Act.

25)We, consequently, set aside the order impugned by allowing the application under Section 166 of the Act and awarding Rs.70,000/- out of which a sum of Rs. 25,000/- had already been paid in the proceedings under Section 140 of the Act. The Insurance Company is consequently directed to pay the balance amount of Rs. 45,000/- with interest at the rate of 12% per annum from the date of filing the application until December 31, 1999 and thereafter at the rate of 8% per annum from January, 2000 until actual deposit of the amount before the Tribunal. The amount should be paid within a month from today.

26)In the facts and circumstances, there will be, however, no order as to costs.

(Bhaskar Bhattacharya, J.)
I agree.
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(Prasenjit Mandal, J.)