

\$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 4th September, 2013*

+ **MAC.APP. 302/2012**

ORIENTAL INSURANCE COMPANY Appellant
Through: Mr. Tarkeshwar Nath and
Mr. Saurabh Kumar Tuteja, Advocates.

Versus

JAGPATI DEVI & ORS. Respondents
Through: Mr. Ayub Khan, Advocate for
Respondent No.1.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

MAC.APP. 302/2012

1. The present appeal is directed against the impugned award dated 07.01.2012, whereby the learned Tribunal has granted compensation by considering the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

2. Learned counsel appearing on behalf of the appellant/Insurance Company has argued that as the respondent No.1/claimant has failed to establish the negligence of the vehicle, therefore, the appellant/Insurance Company is not liable to pay any amount towards compensation.

3. Second ground argued by the learned counsel is that the learned Tribunal has considered the annual income of the deceased as Rs.30,948/- without any documentary proof, therefore, the learned Tribunal has erred in granting compensation which is on very higher side.

4. Admittedly, initially the claimant filed the claim petition under Sections 166 and 140 of the Act, however, thereafter the same was converted under Section 163-A of the Act.

5. It is not in dispute that the driver of the offending vehicle, i.e., respondent No.2 was acquitted in the criminal case for the reason PW1 and PW2 were declared hostile. Though the consideration of evidence in a criminal case and in the claim petition under the Motor Vehicles Act are altogether different. However, if the two witnesses, mentioned above have been declared hostile in criminal case, that does not effect on claim petition if the evidence is otherwise. A witness may resile from his earlier statement due to various reasons, either to help the driver (accused) of the offending vehicle or being win over by the other side. But in the claim petition, before the learned Tribunal, it is proved that the deceased had suffered fatal injuries due to rash and negligent driving of respondent No.2. To prove negligence, the claimant has proved the certified copy of FIR No. 255/01, P.S. Srinivasapuri, Ex.PW1/2; site plan Ex.PW1/3, seizure memo of offending vehicle Ex.PW1/4, mechanical inspection report of the offending vehicle Ex.PW1/7, seizure memo of the RC and Cover Note of the offending vehicle Ex.PW1/8, superdarinama of the offending vehicle Ex.PW1/13, arrest memo of respondent No.2, Shri Jai Raj Ex.PW1/14 and the refusal of respondent No.2 from participating in TIP proceedings Ex.PW1/18.

6. As noted above, claim petition was converted under Section 163-A of the Act and compensation was awarded accordingly, therefore the claimant was not required to prove the negligence before Id. Tribunal as the law laid down by Supreme Court in ***Oriental Insurance Company Ltd. v. Meena Variyal*** (2007)5SCC428, wherein it is held as under:

*“We think that the law laid down in **Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr.**(supra) was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section [163A](#) 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 [163A](#) 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 [163A](#) 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 [163A](#) 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.”*

7. Therefore, even if the driver of the offending vehicle was acquitted of the charges under Sections 279/304A IPC by the Criminal Court, even then the compensation can be granted under Section 163-A of the Act.

8. I do not find any substance in the argument of the learned counsel for the appellant/Insurance Company that the learned Tribunal has failed to consider the dictum of the Criminal Court, wherein it is recorded that the said truck was not involved in the accident in question. This submission of learned counsel cannot be accepted, because there was no complaint or case filed either by the driver or owner of the offending vehicle for implicating them in a false case. Moreover, FIR, Site Plan, Arrest memo of respondent no. 2, superdarinama of offending vehicle, seizure memo of the RC and Cover Note and mechanical inspection report of the offending vehicle have been proved on record, however, the same have not been challenged. Therefore, simply relying upon the witnesses, who have been declared hostile by the Trial Court will be of no avail.

9. As discussed above, the said witnesses turned hostile for one reason or the other. The Id. Criminal Court has not opined on merit that the offending vehicle was not involved in the accident in question. Therefore, on this issue, I do not find any substance in the submission of learned counsel for the appellant/Insurance Company.

10. So far as quantum is concerned, under Section 163-A of the Act, the maximum annual income can be considered upto Rs.40,000/- per annum. Whereas in the present case, the learned Tribunal has considered the annual income of the deceased as Rs.30,948/- (less than Rs.40,000), as claimed by the claimants.

11. In view of the above, learned counsel for the appellant/Insurance Company has failed to point out any discrepancy in the order passed by the

learned Tribunal under Section 163-A of the Act, which is otherwise proper as per the Second Schedule of the Act.

12. Hence, I do not find any merit in the instant appeal. The same is dismissed accordingly with no order as to costs.

13. It is pertinent to mention here that vide order dated 21.03.2012, while granting stay, this Court directed the appellant/Insurance Company to deposit 80% of the awarded amount with up-to-date interest with the Registrar General of this Court.

14. Vide order dated 27.09.2009 the Registrar General of this court was directed to release the 50% of the deposited award amount, i.e., 80% in favour of respondent no. 1 in terms of the order passed by the Claim Tribunal.

15. Therefore, the appellant/Insurance Company is directed to deposit the balance awarded amount, i.e., 20% with up-to-date interest accrued thereon with the Registrar General of this Court within a period of four weeks from today.

16. On deposit, the Registrar General is directed to release the awarded amount in favour of the respondent No.1/claimant in terms of the order dated 07.01.2012 passed by the learned Tribunal.

17. Thereafter, the statutory amount shall be released in favour of the appellant/Insurance Company.

CM No.5195/2012 (for stay)

With the disposal of the appeal itself, the instant application has become *infructuous*. The same is dismissed accordingly.

SURESH KAIT, J.

SEPTEMBER 04, 2013

Sb/jg