

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Appeal from Order No.279 of 2012

Bharti AXA General Insurance Company

...Appellant

Vs.

Smt. Soma Devi & others

.....Respondents

Mr. Pulak Agarwal, Advocate for the appellant.

Mr. Kurban Ali, Advocate, for respondent nos.1, 2 & 3.

Mr. D.C.S. Rawat, Advocate, for respondent no.4.

Mr. G.S. Negi, Advocate, for respondent no.5.

Hon'ble Sharad Kumar Sharma, J (Oral)

The claim petition being claim petition preferred under section 163A of the Motor Vehicle Act stood instituted before the court of learned Motor Accident Claims Tribunal, Pauri Garhwal, on 06.07.2010, praying for the grant of an appropriate compensation on account of the sad demise of Mr. Rupan S/o Shri Chunni Lal, who is said to have met with an accident on 31.05.2010, at 14:55. It was contended in the claim petition that the deceased at the time of accident was 54 years of age, and at the relevant point of time, he was working as a "Safai Sevak" at Additional Primary Health Centre, Pokhal, District Pauri Garhwal. The claimants have come up with the case that since on the date of the accident, the deceased was having an income of Rs.12,000/- per month. Accordingly, they have prayed for that the compensation may be determined and paid to them to the tune of Rs.23,00,000/-.

2. The claim petition, thus, instituted on 06.07.2010, was opposed by the opposite party nos.1 and 2, therein, i.e. owner of the vehicle and the driver, as well as, the present appellant, who were later on impleaded by an amendment of 13.10.2010, denying the claim as it was raised under section 163A of the Motor Vehicle Act, and with regards to the adequacy of the same, as it was claimed by the claimants in the claim petition, which was registered as MACT No.33 of 2010, "Smt. Soma Devi and others Vs. Harimohan Singh Rawat and others".

3. The appellants, herein, had contested the proceedings by filing a written statement, after they were impleaded as party to the proceedings on 18.02.2011, denying the contention of the claim petition, and particularly, they have taken a specific plea in paragraph 1, that since the claim petition itself has been preferred under section 163A of the Motor Vehicle Act, the parameters prescribed for its determination has had to be confined on the basis of the annual income, which was accrued to the deceased, which will be less than Rs.40,000/- as contemplated under the said provisions. The provisions as contained under section 163A of Motor Vehicle Act, is extracted as under:-

“[163A. 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 of 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.

(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.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule”

4. The respective parties led their evidence, and consequent to it, the learned Motor Accident Claims Tribunal had rendered an award on 02.04.2012, and while determining the quantum of the compensation, because there was no other factual dispute, which was subjected to the challenge before the Motor Accident Claims Tribunal, the learned Motor Accident Claims Tribunal while deciding the issue no.3, had determined the aspect of compensation by treating the income accruing to the deceased on the basis of the income accruing to the deceased as depicted in the claim petition i.e. Rs.12,000/- and

after making the legally admissible deductions as permissible under law to the extent of 1/3rd, the amount of dependency was determined as to be Rs.7,671/- which was held to be payable, based on which, after determining the actual annual dependency as to be Rs.92052/-, the learned Motor Accident Claims Tribunal has applied the multiplier of 11 as per the age of deceased, and had determined the compensation made payable to the tune of Rs.10,32, 572/- and the interest payable on it @ 9%, as it has been observed in the impugned award dated 02.04.2012. Learned counsel for the appellant while putting the challenge to the impugned award had confined his argument while pressing his ground nos.5 and 6 only, which are extracted hereunder:-

“5- उभय पक्ष के अभिवचनों के आधार पर निम्नलिखित वाद बिन्दु सृजित किए गए-

(1) क्या दिनांक 31-5-10 को स्थान प्राथमिक स्वास्थ्य केन्द्र दुगड्डा में जब मृतक रूपन सड़क पार कर रहा था तो वाहन सं० यूके 12ए-3300 के चालक द्वारा वाहन को तेजी व लापरवाही से चलाते हुए मृतक रूपन पर टक्कर मार दी जिसके परिणामस्वरूप उसे गम्भीर चोटें आईं और उसकी मृत्यु हो गयी?

(2) क्या उक्त दुर्घटना के समय प्रश्रुत वाहन के समस्त कागजात मय चालक लाइसेंस वैध एवं प्रभावी थे तथा वाहन बीमा पालिसी की शर्तों के अनुरूप संचालित हो रहा था?

(3) क्या याचीगण कोई प्रतिकर पाने के अधिकारी हैं, यदि हां तो कितना व किस पक्ष से?

6- याचीगण की ओर से श्रीमती सोमा देवी याची सं०1 का साक्ष्य शपथ, पत्र गवाह ए०पी०ड०-1 के रूप में दाखिल किया गया तथा शपथ पत्र के साथ वेतन स्लिप 19ख/3 व 19ख/4, परिवार रजिस्टर की नकल 19ख/5, फोटो प्रति मतदाता पहचान पत्र 19ख/6, फोटो प्रति राशन कार्ड 19ख/7, फोटो प्रति पोस्टमार्टम रिपोर्ट 19ख/8 दाखिल किए गए। याचीगण की ओर से ही संजीत का साक्ष्य शपथ पत्र बतौर ए०पी०ड०-2 दाखिल किया गया। सूची सबूत 4ग से याचीगण द्वारा प्रथम सूचना रिपोर्ट, ड्राइविंग लाइसेंस, आर०सी० की फोटो प्रतियां दाखिल की गईं। विपक्षी सं०1 व 2 वाहन स्वामी व चालक द्वारा सूची सबूत 11ग से वाहन का पंजीकरण प्रमाण पत्र, बीमा पालिसी व ड्राइविंग लाइसेंस की फोटो प्रतियां दाखिल की गईं। विपक्षी सं०1 व 2 की ओर से ही सूची सबूत 17ग से वाहन सं० यूके 12ए-3300 के कागजातों का विवरण व ड्राइविंग लाइसेंस का विवरण सम्भागीय परिवहन अधिकारी कार्यालय पौड़ी से लाकर दाखिल किए गए।”

5. In fact, they have contended that once the claim petition itself was preferred by the respondent was under the provisions contained under section 163A, of the Motor Vehicle Act, the parameters of the determination of the quantum of compensation payable on it, on the basis of the annual dependency, and after making 1/3rd deduction, based upon the salary, which was shown to have been

proved to be paid to the deceased, the factors, which were taken into consideration by the learned Motor Accident Claims Tribunal, since would be falling within the ambit of parameters prescribed under section 166 of the Motor Vehicle Act, that was in contravention to the basic spirit and intention of the provisions contained under section 163A of the Motor Vehicle Act, which was the determination of compensation which the claimants/respondents themselves have claimed on the basis of the no fault liability.

6. It has been argued by the learned counsel for the appellant, that in the light of the grounds, as extracted above, the parameters resorted to by the learned Motor Accident Claims Tribunal of determining the annual dependency on the basis of dependency of Rs.7,671/- per month, and its consequential multiplier of 11 as applied, in fact would amount to that the Motor Accident Claims Tribunal, has exceeded its jurisdiction, and has without there being any ground taken by the claimant had treated the claim petition as preferred under section 163A of the Motor Vehicle Act, as to be one of the claim petitions which was treated to be filed under section 166, and had determined the compensation accordingly.

7. According to the facts of the case, it is not in controversy that the accident did chanced on 31.05.2010, and late Mr. Rupan, had met with the sad demise, and the claimants/respondents were dependent upon him, but it is contended that since the claim petition was preferred under section 163A of the Motor Vehicle Act, the Court shouldn't have travelled beyond the claim raised by the claimants by filing an application under section 163A of the Motor Vehicle Act, by alternatively treated it to be as preferred under section 166 of the Motor Vehicle Act, and that too without assigning any reasons while deciding the issue no.3, and determining the compensation on the basis of the annual dependency of the claimants.

8. Under the Motor Vehicle Act, the provisions under section 163A of the Motor Vehicle Act, was inserted by the Act No.54

of 1994, with effect from 14.11.1994, as per the provisions contained under section 163A of the Motor Vehicle Act, it provided the payment for a claim raised, therein, of compensation would be on the basis of structured formulae basis, and therein it has been provided that in these eventualities the compensation couldn't have been determined beyond Rs.40,000/- as provided and intended by section 163A to be read with 2nd Schedule of the Motor Vehicle Act. The provisions contained under section 163A of the Motor Vehicle Act, at the relevant point of time when the accident chanced in i.e. 2010, was in vogue, and as such, when the claimants themselves have preferred the claim under section 163A of the Motor Vehicle Act, they had raised a claim for the payment of the compensation on the basis of the structural formulae, and thus, the compensation couldn't have been paid under the guiding factors of section 166 of the Motor Vehicle Act.

9. The provisions contained under section 163A of the Motor Vehicle Act, was subsequently omitted by the Motor Vehicle (Amendment) Act of 2019, being Act No.32 of 2019, brought into effect with effect from 09.08.2019. The subsequent deletion of section 163A of the Motor Vehicle Act, will have no bearing as far as the present controversy is concerned in the context of the grounds taken by the appellant while putting a challenge to the impugned award in question.

10. On the contrary, the learned counsel for the respondent/claimant had submitted that the appellate court while exercising its powers under section 173 of the Motor Vehicle Act, since being a proceeding in continuation to the claim raised before the learned Motor Accident Claims Tribunal, it has all powers vested with it to determine as to what would be the just and appropriate compensation payable to the claimants, and for that purpose, learned counsel for the respondent has placed the reliance in paragraph 76 of the judgment rendered by the Division Bench of the High Court of Kerala in the matters of "Aswathy and another Vs. Jose K. J and another". Paragraph no.76, is being extracted hereunder:-

“76. As already noticed hereinbefore, the law laid down by the Division Bench in Mithun Subramanian (*supra*) is that, while adjudicating 'just compensation' the Claims Tribunal or the High Court has got unfettered powers to go into the claims in detail and grant compensation in excess of what is actually claimed, if in the opinion of the Claims Tribunal or the High Court the 'just compensation' to which the claimant deserves is more than the amount actually claimed. After referring to the law laid down in Rajesh [(2013) 9 SCC 54] and Binu Chacko [2006 (2) KLT 172] and laying down the law as above, the Division Bench posed the following questions; (1) How a claimant who was granted compensation in excess of his claim maintain an appeal seeking enhancement of compensation without showing that by the award of the Claims Tribunal he had suffered a legal grievance or that he was deprived of or refused something to which he is legally entitled to?; and (2) How a claimant who is a grantee of compensation in excess of his claim, could be considered as a 'person aggrieved', entitled to prefer an appeal in terms of [Section 173](#) of the Act, when as per the award of the Claims Tribunal MACA No. 480 of 2012, etc. nothing was deprived of or refused to him to which he was legally entitled to? In that context, the Division Bench observed that, merely because a claimant had actually made an own assessment of compensation to which he is entitled, and then, limited the claim below such assessed amount, it cannot be a reason for such a claimant to canvass the position that denial of the compensation assessed by him, as can be seen from the claim petition or his hindsight that he is entitled to more than the amount claimed, should confer him an indefeasible right to prefer an appeal, even if he is not otherwise aggrieved by the award in question. In terms of sub-rule (1) of Rule 397 of the Kerala Motor Vehicles Rules, 1989 ad valorem fee was paid by the appellants only for the amount to which the claim is limited. The Division Bench observed that in the eye of law that amount alone can be taken as the amount claimed and the aforesaid question has to be decided based on the amount thus claimed as compensation. In such circumstances, the claimants cannot be permitted to fall back on their own original assessment, ignoring the fact that the claim was then limited below that amount and court fee was paid only for the amount actually claimed while considering the aforesaid question. In MACA No. 480 of 2012, etc. the light of the provisions under Rule 397 of the Kerala Motor Vehicles Rules and the decisions in Raman Nair [2005 (3) KLT SN 83] and Suma [2011 (4) KLT 109] the claimants cannot put forth a contention that they refrained themselves from making a claim in tune with their own assessment solely because they got no means to pay the ad valorem fee. In view of all the aforesaid circumstances and provisions the aforesaid question can be considered only with reference to the amount actually claimed to which court fee was paid and also by taking into account the amount awarded. At paragraphs 14 and 15 of the decision, the Division Bench scanned the contentions raised by the appellants-claimants in both the appeals and found no reason whatsoever to

arrive at a conclusion that they suffered a legal grievance as nothing to which they are legally entitled to, in the circumstances, was deprived of or refused to them. In the above circumstances, the Division Bench concluded that, legally the appellants-claimants could not have any grievance on that issue. For the aforesaid reasons, the Division Bench dismissed the appeals as the appellants cannot be said to be aggrieved persons legally entitled to seek enhancement of compensation. Therefore, the law laid down by the Division MACA No. 480 of 2012, etc. Bench in Mithun Subramanian (supra) is that, a claimant who was granted compensation in excess of his claim by the Claims Tribunal cannot maintain an appeal under [Section 173](#) of the Motor Vehicles Act seeking enhancement of compensation without showing that by the award of the Claims Tribunal he had suffered a legal grievance or that he was deprived of or refused something to which he is legally entitled to. When as per the award of the Claims Tribunal nothing was deprived of or refused to the claimant to which he was legally entitled to, a claimant who is a grantee of compensation in excess of his claim, could be considered as a 'person aggrieved', entitled to prefer an appeal in terms of [Section 173](#) of the Act.”

11. The Division Bench of the Kerala High Court in its judgment as rendered on 22.03.2022, the excerpts of which as determined in paragraph 76, which has been extracted above, where the ambit of exercise of the powers passed by the appellate court has been one of the aspect determined by the Kerala High Court, that the appellate Court could have determined as to what would be the appropriate and just compensation, which would be payable because it has been observed that the appellate Court had an unfettered powers to go into the claim and the details for the grant of the appropriate compensation in excess to the actual amount claimed.

12. There cannot be any doubt with regards to the preposition laid down by the Kerala High Court, in paragraph 76 of the said judgment, but then we should bear in mind that the Division Bench of the Kerala High Court, was ceased with the proceedings where the claim was raised under section 166 of the Motor Vehicle Act. The appropriate and just determination of the compensation by the appellate court while holding it that it has got an unfettered power didn't contained any directions as such that the Court exercising the appellate power under section 173 of the Motor Vehicle Act, can alter

by its own wisdom and dictum to treat the claim petition preferred under section 163A of the Motor Vehicle Act, as to be the one under section 166 of the Motor Vehicle Act, and accordingly determine the just compensation.

13. Hence, the principles laid down, therein, has to be borne in mind that the Division Bench of the Kerala High Court, was there dealing with a determination of just compensation in relation to the claim which was raised under section 166 of the Motor Vehicle Act, but it was not dealing with the comparative analysis of the implications of the compensation claimed under section 166 to be read with section 163A of the Motor Vehicle Act. Thus, the philosophy determination of the just compensation as argued by the learned counsel for the respondent was in the light of the paragraph 76 of the said judgment of the Kerala High Court, as extracted above, will have to be read only in the context of claim application which has been preferred, under section 166 of the Motor Vehicle Act, as it involves consideration, therein, a different parameters, unlike the claim application filed under section 163A of the Motor Vehicle Act.

14. The logic behind the aforesaid principles as observed by this Court is that the provisions contained under section 166 of the Motor Vehicle Act, was a pre-existing provisions under the Motor Vehicle Act providing for the grant of compensation and that was subsisting without there being any alteration or amendment made on the date when the accident did chanced. But the claimants since have confined their relief under section 163A of the Motor Vehicle Act, which was inserted by an Act Amending of 1994, in fact the two provisions of law though both dealt with the parameters of determination of compensation, but they operated in different fields and based on different aspects. Thus, the parameters of determination of the compensation under section 163A of the Motor Vehicle Act, cannot be misunderstood, to be read as to be a substitutive provisions to the provisions contained under section 166 of the Motor Vehicle Act. Hence, the principles as observed in paragraph 76 of the

judgment of the Kerala High Court will have no bearing as far as the instant case is concerned.

15. Apart from it, the controversy as argued by the learned counsel for the respondents/claimants *qua* the implications of a just determination of compensation has had to be made by the appellate court under section 173 of the Motor Vehicle Act, by treating the claim petition as to be under section 166 of the Motor Vehicle Act, is yet again a would be a principle which cannot be accepted for the reason being that under the Motor Vehicle Act, Chapter 11 deals with the subject of insurance of the motor vehicles as against the 3rd party risk, and it's under the said head and intention of Chapter 11, that section 163A of the Motor Vehicle Act, was made part of Chapter 11, by virtue of an Amendment of 1994, and was deliberately by legislature was not made as part of the provisions contained under Chapter 12, where the powers was vested with the Claim Tribunal to decide the claims independently under section 166 of the Motor Vehicle Act, if agitated before it in the claim petition preferred by the claimant.

16. Since the provisions contained under section 163A of the Motor Vehicle Act, for determination of compensation on the basis of the structural formula for a no fault liability cannot be misconstrued to be read as to be a part of the chapter 12 of the Motor Vehicle Act, in which section 166 of the Act deals with an application for the grant of the compensation based upon the principles as specified under section 165 (1) of the Motor Vehicle Act.

17. In view of the aforesaid, and particularly, when in the impugned award despite of there being a specific ground taken by the appellant, herein, in the written statement, even if the learned Motor Accident Claims Tribunal, was barging over the ground taken by the appellant in the written statement, first of all it ought to have appropriately framed the issue of determination, as to whether at all the Tribunal could have ventured into to determine a claim as to be a claim under section 166 of the Motor Vehicle Act, when it is being admittedly preferred under section 163A of the Motor Vehicle Act,

and that too while quantifying the compensation, while deciding the issue no.3, on the basis of the annual income accruing to the deceased and his dependency to the claimants, after making 1/3 of the deductions, this Court fails to understand as to why the learned Motor Accident Claims Tribunal, has not dealt with the effect of inter play of the provisions contained under section 166 of Chapter 12 and section 163A of Chapter 11 of the Motor Vehicle Act.

18. In view of the fact that there is no finding recorded by the learned Motor Accident Claims Tribunal, with regards to the specific ground taken by the appellant with regards to the impact of section 163A of the Motor Vehicle Act, nor any issues have been framed, it renders the judgment dated 02.04.2012, as to be bad in the eyes of law and in an apparent disregard to the pleadings raised by the appellant in the written statement, as well as, had failed to determine the application for the grant of the compensation in the light of the prospective and the paramaterial limitation imposed by the provisions contained under section 163A of the Motor Vehicle Act, for determining the compensation on the basis of the no fault liability.

19. In view of the above, the impugned judgment dated 02.04.2012, is hereby quashed, and modified to the extent that the learned Motor Accident Claims Tribunal, will re-determined the quantification of the compensation to be made payable to the claimants by treating the claim petition as to be an application preferred under section 163A of the Motor Vehicle Act, and should not misconstrued it to be an application under section 166 of the Motor Vehicle Act and after re-determination of the compensation and its quantification would adjust the amount if any paid in excess to the claimants in accordance with law.

20. Subject to the aforesaid, the appeal from order succeeds and is allowed.

(Sharad Kumar Sharma, J.)

30.11.2023

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