SUPREME COURT OF INDIA

National Insurance Co.Ltd.

Vs.

Gurumallamma

C.A.No……..of 2009

(S.B. Sinha and Cyriac Joseph JJ.)

23.07.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Application of the Second Schedule appended to the Motor Vehicles Act, 1988 (the Act) in the facts and circumstances of this case is involved in this appeal which arises out of a judgment and order dated 19.11.2007 passed by a Division Bench of the High Court of Karnataka at Bangalore in MFA No.6627 of 2007 dismissing the appeal preferred by the appellant insurance company from a judgment and award dated 29.11.2006 passed in MVC No.982 of 2006 by the 16th Additional Judge, MACT, Bangalore, awarding compensation for a sum of Rs.4,78,300/- by way of compensation.

3. Indisputably, one Nagraj, predecessor-in-interest of the respondent, died in an accident which took place on 14.12.2005. The deceased was travelling in an auto rickshaw bearing registration No.KA-05-A/4240. It collided with a car bearing Registration No.KA-02-N/4605.

4. An application under Section 163A of the Act was filed. The deceased, at the time of accident, was aged about 22 years; whereas the age of the claimant was 50 years. The learned Tribunal as also the High Court, in determining the amount of compensation, applied the multiplier of 17.

5. Ms. Meenakshi Midha, learned counsel appearing on behalf of the appellant, would submit that the learned Tribunal as also the High Court committed a serious error in passing the impugned judgment insofar as they failed to take into consideration the fact that keeping in view the age of the claimant, the multiplier of 13 should have been applied. It was furthermore contended that no proof of income of the deceased having been brought on record, the Tribunal as also the High Court committed a serious error in holding that his income was Rs.3,300/- per month.

6. The deceased was a bachelor. He was running a small hotel. Although there is some dispute in regard to the nature of the claim petition, the learned Tribunal as also the High Court having proceeded on the basis that the same was filed in terms of Section 163A of the Act, we see no reason to take a different view.

7. Section 163A was inserted by Act No.54 of 1994 as a special measure to ameliorate the difficulties of the family members of a deceased who died in use of a motor vehicle. It contains a non-obstante clause. It makes the owner of a motor vehicle or the authorized insurer liable to pay in the case of death, the amount of compensation as indicated in the Second Schedule to his legal heirs. The Second Schedule provides for the amount of compensation for third party Fatal Accident/Injury Cases Claims. It provides for the age of the victim and also provides for the multiplier for arriving at the amount of compensation which became payable to the heirs and legal representatives of the deceased depending upon his annual income. The Second Schedule furthermore provides that in a case of fatal accident, the amount of claim shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred upon himself, had he been alive. It provides for the amount of minimum compensation of Rs.50,000/-.

"It furthermore provides for payment of general damages as specified in Note 3 thereof."

8. Multiplier stricto sensu is not applicable in the case of fatal accident. The multiplier would be applicable only in case of disability in non-fatal accidents as would appear from the Note 5 appended to the Second Schedule. Thus, even if the application of multiplier is ignored in the present case and the income of the deceased is taken to be Rs.3,300/- per month, the amount of compensation payable would be somewhat between 6,84,000/- to Rs.7,60,000/-. As the Second Schedule provides for a structured formula, the question of determination of payment of compensation by application of judicial mind which is otherwise necessary for a proceeding arising out of a claim petition filed under Section 166 would not arise. The Tribunals in a proceeding under Section 163A of the Act is required to determine the amount of compensation as specified in the Second Schedule. It is not required to apply the multiplier except in a case of injuries and disabilities.

9. The Parliament in laying down the amount of compensation in the Second Schedule, as indicated hereinbefore, in its wisdom, provided for payment of some amount which should be treated to be the minimum. It took into consideration the fact that a person's potentiality to earn is highest when he is aged between 25 and 30 years and that is why in case of permanent disability multiplier of 18 has been specified. The very fact that even if the deceased had an income of Rs.3,000/- per month, he being aged about 15 years would receive a sum of Rs.60,000/- but if his income was Rs.40,000/- per annum, his legal heirs and representatives would receive a sum of Rs.8,00,000/-. In the case of any non-earning person, the notional income has been fixed at Rs.15,000/- per annum.

10. The deceased was running a hotel. He was, therefore, having some income. No document, however, was produced in support of the statement of the claimant (the mother of the deceased) that his income was 3,300/- per month. On what basis such a claim was made has not been disclosed. No document was produced. The deceased was not an income tax payee. Income of Rs.3,300/- might have been chosen so as not to cross the deadline of income of Rs.40,000/- per annum.

11. Although both the Tribunal as also the High Court has accepted the same, in our opinion, the income of the deceased should be determined at Rs.24,000/- per annum. Applying the said principle, the claimant would have been entitled to a compensation of Rs.4,22,000/-. From that sum, one- third should be deducted.

12. In view of the aforementioned finding, we are of the opinion that it is not necessary for us to take into consideration, the decisions cited at the bar suggesting that in a case of death of an unmarried person and wherein the claimants are the parents of the deceased, the age of the deceased shall be irrelevant factor for applying the multiplier specified in the Second Schedule.

13. To the aforementioned extent, this appeal is allowed. In the facts and circumstances of the case, however, there shall be no order as to costs.