SUPREME COURT OF INDIA

Eshwarappa @ Maheshwarappa

Vs.

C.S. Gurushanthappa

C.A.No.7049 of 2002

(Aftab Alam and R.M. Lodha JJ.)

18.08.2010

JUDGEMENT

Aftab Alam,J.

1. A certain Basavaraj was the driver of a privately owned car. In the night of October 28, 1992 he took out the car for a joyride and along with five persons, who were his neighbours, proceeded for the nearby Anjaneya temple for offering pooja. On way to the temple the car met with a fatal accident in which Basavaraj and four other occupants of the car died; the fifth passenger sustained injuries but escaped death. One of the persons dying in that motor accident was Nagaraj, whose parents are the appellants before this Court.

2. The heirs and legal representatives of the deceased driver, Basavaraj filed a claim for compensation under the Workmen's Compensation Act, 1923. They got nothing. The Commissioner under the Workmen's Compensation Act found and held that the accident did not take place in course of employment and rejected the claim for compensation.

3. The heirs of the four occupants of the car, dying in the accident (including the present appellants) and the fifth passenger suffering injuries in the accident sought compensation before the Motor Accidents Claims Tribunal. Their claims proved to be equally barren.

4. The appellants took the matter in appeal before the High Court where they were equally unsuccessful. They are now in appeal before this Court by special leave.

5. The counsel appearing on behalf of the appellants raised a very limited issue. He submitted that in any event the appellants were entitled to the `no fault compensation' as provided under section 140 of the Motor Vehicles Act, 1988 but they were denied even that by the Tribunal for reasons that are totally unsustainable in law.

6. We are, therefore, required to see how and why the appellants were denied compensation under section 140 of the Act and how far the denial was justified. The appellants filed a

claim petition (MVC 1404/92) before the District Judge and MACT, Chitrandurga under section 166 of the Motor

> "Vehicles Act seeking compensation for the death of Nagaraj. The appellants' petition, along with four other claim petitions (filed by the heirs of the other three occupants dying in that car accident and the fifth occupant who suffered injuries in that accident), was disposed of by the Tribunal by a common order dated May 9, 1996. From the order of the Tribunal, it appears that in four of the five cases before it, including MVC 1404/92, IAs were filed seeking interim compensation of rupees twenty five thousand (Rs.25,000.00) only (as the law stood at that time) in terms of section 140 of the Act. For some reason, however, no order was passed on the IAs and the Tribunal proceeded to examine the claimants' claim on merits under section 166 of the Act."

7. The Tribunal, in its order summarized the cases of each of the five claimants separately, noting the facts peculiar to the four deceased and the fifth injured occupant of the ill fated car. It also framed the issues arising in each case separately. In regard to Nagaraj, the son of the appellants, it noted that at the time of his death he was eighteen years old. According to the appellants, he worked at a sweetmeat stall and earned rupees eight hundred (Rs.800.00) only per month. He was going to Anjaneya temple in the car being driven by Basavaraj and in the accident he died on the spot. The appellants claimed compensation of rupees one lakh (Rs.1,00,000.00) only.

> "In his case the Tribunal framed four issues which are as under:
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> 1. Whether the petitioners prove that Nagaraj died due to injuries sustained in a motor accident that occurred on 28.10.92 at 11:45pm near Bheemasamudra Cross on Holalkere road due to rash and negligent driving of the car MYG 1624 by its driver?
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> 2. Whether the petitioners prove that they are the legal representatives of Nagaraj, the deceased and are entitled to compensation?
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> 3. What is the quantum of compensation to which the petitioners are entitled and from which of the respondents?
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> 4. Whether the respondents prove that the accident did not occur during the course of employment of the driver of the car MYG 1624 and that they are not vicariously liable to pay compensation?"

8. The first two issues in the case of Nagaraj, as in all the other cases, were answered by the Tribunal in the affirmative. On issue no.3 appellant no.1, the father of the deceased Nagaraj stated on oath that his son was aged eighteen years and used to work in the hotel of one Siddappa who paid him rupees thirty (Rs.30.00) only per day, but the Tribunal disbelieved him and rejected his testimony. On the basis of the post mortem report, the Tribunal held that

Nagaraj, at the time of his death, was aged about fifteen years. It further held that there was no evidence to show that at the time of his death Nagaraj earned anything, pointing out that in paragraph 22 of the claim petition nothing material was mentioned about the loss of earning due to his death. Then, rather gratuitously it fixed the amount of compensation at rupees thirty thousand plus two thousand (Rs.30,000.00 + Rs.2,000.00) observing as follows:

> "Hence the maximum compensation that can be granted to the petitioner herein would be only about Rs.30,000-00 as being just and reasonable and a sum of Rs.2,000-00 toward funeral and obsequious expenses etc. and therefore the petitioners are granted sum total compensation amount of Rs.32,000-00."

9. Having, thus, put the worth of the life of Nagaraj at rupees thirty thousand (Rs.30,000.00) only the Tribunal proceeded to consider whether the appellants were entitled to receive even this amount from the owner of the car or the insurance company (second part of issue no.3 and issue no.4).

> "It held that neither the owner of the car nor the insurance company was liable to pay anything to any of the claimants, including the appellants, because Basavaraj had taken out the car of his employer unauthorisedly and against his express instructions and had caused the accident by driving the car very rashly after consuming liquor. At the time of accident the car had been taken completely away from the control of its owner. In a sense it was stolen by the driver, even though temporarily. The accident was, thus, completely outside the insurance policy. No compensation was, therefore, payable to any of the claimants under section 166 of the Motor Vehicles Act."

10. Up to this stage no exception can be taken to the view taken by the Tribunal. But surprisingly the Tribunal also rejected the express prayer made on behalf of the appellants and other claimants to at least grant the `no fault compensation' as provided under section 140 of the Act. The Tribunal discussed the issue over six pages in its judgment before turning down the claim. It seems to have taken the view, that had the claim for `no fault compensation' been made at the beginning of the proceeding, it might have considered it favourably. But the claim was pressed at a belated stage when it was considering the claim for compensation under section 166 of the Act and more importantly had found that the owner of the car had no responsibility for the accident. In this connection, the Tribunal observed as follows:

> "However, in these cases as already referred to above, if at the initial stage itself if the learned counsel Sri. M. Gnana Swamy had pressed the Tribunal to pass interim award on I.A.I in all the four cases, then the I.A.I filed in all four cases would have been definitely allowed and this Tribunal would have directed both the respondents 1 & 2 and more particularly respondent No.2 to deposit the interim compensation amount leaving open the liability aspect at the fag end of these cases i.e., at the arguments stage. Now that stage is already over and as such now this Tribunal has to consider equally as to whether at this stage as per the principle of no fault liability under s.140

of the *Motor Vehicles Act, 1988,* these petitioners are entitled for the interim in compensation amount.

.....

"Now as regards the no fault liability as already referred to above, perhaps the petitioners would have been granted the interim compensation amount at the initial stage, but now it cannot be done, since the merits of the cases are being dealt with after hearing the arguments at the final stage and the main cases are being disposed of on merits as such."

.....

"Hence in view of my finding that the car was being used totally outside the course of the employment of the driver of the car and totally without the knowledge and consent of the 1st respondent, I hold that even as regards this no fault liability claim also, the 1st respondent or for the matter 2nd respondent amount to any of the petitioner's hearing. Hence this being the position, I am constrained to observe and hold that although as per the available evidence on record the petitioners are entitled for compensation amount as granted to them, in view of my earlier finding on issue No.3 in all the petitions, but all the same these petitions have got to be dismissed on account of the fact that neither the first respondent nor the second respondent is liable to pay compensation amount to any other petitioners herein."

11. The appellants took the matter in appeal but the High Court in its brief order did not at all advert to this aspect of the matter.

12. Coming back to the order passed by the Tribunal, we are completely unable to appreciate the reasons assigned for denying the appellants the `no fault compensation' as provided under section 140 of the Act. The Tribunal was gravely in error in taking the view that a claim for compensation under section 140 of the Act can succeed only in case it is raised at the initial stage of the proceedings and further that the claim must fail if the accident had taken place by using the car without the consent or knowledge of its owner.

"Section 140 is the first section of chapter X of the Act. It is a small chapter consisting of only five sections (from 140 to 144) and has the marginal heading "Liability without Fault in Certain Cases". Section 140 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 163A."

On a plain reading of the provisions it is evident that all that is required to attract the liability under section 140 is an accident arising out of the use of a motor vehicle(s) leading to the death or permanent disablement of any person. Sub-section (2) provides for a fixed amount as compensation. [In case of death, currently it is rupees fifty thousand (Rs.50,000.00) only; at the time the accident from which the appeal arises took place the fixed amount in case of death was rupees twenty five thousand (Rs.25,000.00) only]. Sub- section (3) provides that even though the death or permanent disablement resulting from the motor accident might not be due to any wrongful act, neglect or default of the owner of the vehicle, it would have no effect either on his liability or on the amount of compensation. Sub-section (4) conversely provides that the motor accident resulting in the death or permanent disablement might be entirely due to the wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim is made but that too would have no effect either on the right to receive the compensation or the amount of compensation.

Sub-section (5) which begins with a non obstante clause makes it further clear that the liability under section 140 is independent of the liability of the owner of the vehicle to pay compensation under any other law for the time being in force. The proviso to sub-section (5), of course, provides that the amount of compensation under any other law would be reduced from the amount of compensation payable under section 140 or under section 163A of the Act."

13. Then there is section 141 which reads as under:

"141. Provisions as to other right to claim compensation for death or permanent disablement.

(1) The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in section 163A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first- mentioned compensation and- (a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second- mentioned compensation, he shall not be liable to pay the second-mentioned compensation."

Sub-section (1) of section 141 makes the compensation under section 140 independent of any claim of compensation based on the principle of fault under any other provision of the Motor Vehicles Act or under any other law but subject to any claim of compensation under section 163A of the Act.

> Sub-sections (2) and (3) further provide that even while claiming compensation under the principle of fault (under section 166) one may claim no fault compensation under section 140 and in that case the claim of no fault compensation shall be disposed of in the first place and the amount of compensation paid under section 140 would be later adjusted if the amount payable as compensation on the principle of fault is higher than it."

14. Finally, section 144 gives overriding effect to the provisions of Chapter X. Section 144 reads as follows:

> "144. Overriding effect.-The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force."

15. Seen in isolation the above provisions might appear harsh, unreasonable and arbitrary in as much as these create the liability of the vehicle(s) owner(s) even where the accident did not take place due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned but entirely due to the wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made but the above provisions must be seen along with certain provisions of Chapter XI. Section 146 forbids the use of the vehicle in a public place unless there is in force, in relation to the use of the vehicle, a policy of insurance complying with the provisions of that chapter. Section 147 contains the provisions that are commonly referred to as `Act only insurance'. The provisions of sections 146 and 147 are meant to create the large pool of money for making payments of no fault compensation. Thus the liability arising from section 140 would almost invariably be passed on to the insurer to be paid off from the vast fund created by virtue of sections 146 and 147 of the Act unless the owner of the vehicle causing accident is guilty of some flagrant violation of the law.

16. Seen thus, the provisions of chapter X together with sections 146 and 147 would appear to be in furtherance of the public policy that in case of death or permanent disablement of any person resulting from a motor accident a minimum amount must be paid to the injured or the heirs of the deceased, as the case may be, without any questions being asked and independently of the compensation on the principle of fault.

17. The provisions of section 140 are indeed intended to provide immediate succour to the injured or the heirs and legal representatives of the deceased. Hence, normally a claim under section 140 is made at the threshold of the proceeding and the payment of compensation under section 140 is directed to be made by an interim award of the Tribunal which may be adjusted if in the final award the claimants are held entitled to any larger amounts. But that does not mean, that in case a claim under section 140 was not made at the beginning of the proceedings due to the ignorance of the claimant or no direction to make payment of the compensation under section 140 was issued due to the over-sight of the Tribunal, the door

would be permanently closed. Such a view would be contrary to the legal provisions and would be opposed to the public policy.

18. In light of the discussions made above, we are unhesitatingly of the view, that the Tribunal was completely wrong in denying to the appellant, the compensation in terms of section 140 of the Act. We find and hold that the appellant (as well as the other 3 claimants) were fully entitled to no fault compensation under section 140 of the Act. We, accordingly, direct the insurance company to pay to the appellant Rs.25,000/- along with simple interest @ 6% p.a. from the date of the order of the Tribunal till the date of payment. The other 3 claimants are not before this Court, but that is presumably because they are too poor to come to this Court. Since, we have allowed the claim of the appellants, there is no reason why this order should not be extended to the other 3 claimants as well. We, accordingly, do so. The insurance company is directed to make the payment as directed in this judgment within 3 months.

19. In the result, the appeal is allowed but with no order as to costs.