

MRS. HAFIZUN BEGUM
v.
MD. IKRAM HEQUE & ORS.

JULY 24, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Motor Vehicles Act, 1988, Section 166:

Motor Accident—Death—Claim Petition—Legal heirs not dependent on deceased—Entitlement to—Held: All or any of the legal representatives of the deceased became entitled to claim compensation and could file a claim petition in connection thereof in terms of provisions under Section 166(1)(c) of the Act—Liability does not cease because of absence of dependency—Since the basic issue has not been elaborately dealt with by the High Court, the matter is remitted to the High Court for decision afresh—Code of civil Procedure, 1908; s. 2(11)—Arbitration and Conciliation Act, 1996—s. 2(1)(g).

The question which arose for determination in this appeal was as to whether the legal representatives/legal heir, not dependent on the deceased are entitled to claim compensation under the provisions of Motor Vehicles Act, 1988.

Appellant, wife of the deceased, contended that the brothers of the deceased were not dependent on the deceased, therefore, they had no right to file a claim petition; and that the widow of a Muslim who has no issue is entitled to get one fourth share in the property of the deceased-husband and remaining part would go to the brothers.

Disposing of the appeal, the Court

HELD: 1.1. In terms of clause (c) of sub-section (1) of Section 166 of the Motor Vehicles Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased

A by impleading those legal representatives as respondents.

[Para 8] [490-H; 491-A]

B 1.2. The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same. [Para 10]

C 1.3. According to Section 2(11) of Code of Civil Procedure, 1908, "legal representative" means a person who, in law, represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative as defined u/s. 2(1)(g) of the Arbitration and Conciliation Act, 1996.

[Para 11] [491-H; 492-A]

D *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique*, AIR (1989) SC 1589 and *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr.*, AIR (1987) SC 1690, relied on.

E 1.4. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. [Para 13] [492-D]

F 1.5. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. [Para 13] [492-E]

2. Since the basic issue has not been elaborately dealt with by the High Court, the matter is remitted to the High Court to decide it afresh in the light of the decision of this Court in the case of *Manjuri Bera v. The Oriental Insurance Co. Ltd. & Anr.*, [Para 16] [492-G]

G *Smt. Manjuri Bera v. The Oriental Insurance Co Ltd. and Anr.*, JT (2007) 5 SC 78, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3216 of 2007.

H From the Judgment & Order dated 27.06.2005 of the High Court of Gauhati at Gauhati in MAC Appeal No. 155 of 2005.

Rana Mukherjee, Azim H. Laskar, Anand and Abhijit Sengupta for the Appellant. A

Pravir Choudhary for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted. B

2. An interesting question has been raised in this appeal about the acceptability of claim for grant of compensation when the relatives are legal heirs but are not dependants of the deceased, before the Motor Accident Claims Tribunal, Darrang, Mangaldoi (in short "Tribunal"). C

3. Appellant claimed to be the wife of one Md. Nurul Hoque. She assailed the validity of the order dated 30.5.2005 in Petition No.382/2005 filed by the brothers of aforesaid Md. Nurul Hoque (hereinafter referred to as the 'deceased') in MAC Case No.139/2001 filed under the Motor Vehicles Act, 1988 (in short the 'Act'). D

4. Learned counsel for the appellant submitted that the brothers of the deceased did not depend on him and they had no right to file a petition which was allowed. The High Court found that the widow of a Muslim who has no issue will get one fourth share in the property of the deceased-husband and remaining part will go to the brothers. Question was about the right of the brothers who were not dependants on the deceased to get their share in the compensation awarded. Accordingly, the appeal was dismissed. E

5. Learned counsel for the appellant submitted that the High Court was not justified in rejecting the stand of the appellant. Learned counsel for the respondents, however, supported the order. F

6. Even if there was no dependence, there is a loss to the estate and a person who is a legal representative but not dependant can yet be a beneficiary of the estate. It was, therefore, submitted that a realistic and pragmatic view should be taken. G

7. Section 166 of the Act corresponds to Section 110 of the Motor Vehicles Act, 1939 (hereinafter referred to as the 'Old Act') and the same reads as follows:

"Application for compensation:- (1) An application for compensation H

A arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

B (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be.

C Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

D (2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

E Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

F xx xx xx

G (4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act."

H 8. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on

behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. A

9. Section 168 of the Act reads as follows:

"Award of the Claims Tribunal:- On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be: B C

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X. D

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award. E

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct." F

10. The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same. G

11. According to Section 2(11) of Code of Civil Procedure, 1908 (in short the 'CPC'), "legal representative" means a person who, in law, represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative H

A character, the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996, i.e. under Section 2(1)(g).

12. As observed by this Court in *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique*, AIR (1989) SC 1589 the definition contained in Section 2(11), CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead, it stipulates that a person who may or may not be legal heir, competent to inherit the property of the deceased, can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr.*, AIR (1987) SC 1690 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

D 13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. E Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

F 14. Section 165 of the Act also throws some light on the controversy. The explanation includes the liability under Sections 140 and 163-A.

15. These aspects were highlighted in *Smt. Manjuri Bera v. The Oriental Insurance Co Ltd. and Anr.*, JT (2007) 5 SC 78).

G 16. Since the basic issue has not been elaborately dealt with by the High Court, we remit the matter to the High Court to decide it afresh in the light of the decision in *Manjuri's* case (supra).

17. The appeal is disposed of accordingly. No costs.

H S.K.S.

Appeal disposed of.