A CHANDRAKANTA TIWARI

v.

NEW INDIA ASSURANCE COMPANY LTD. & ANR.

(Civil Appeal No. 2527 of 2020)

B JUNE 08, 2020

[R. F. NARIMAN, NAVIN SINHA AND B. R. GAVAI, JJ.]

Motor Vehicles Act, 1988 – s.163A – Son of the claimant, allegedly a pillion rider, was killed in a road accident – MACT held C *the insurance company liable to pay Rs.1.99 lakhs with 6% interest thereon – Judgment set aside by High Court – Held: Claimant need not plead or establish that the death in respect of which the claim was made, was due to any negligence or default of the owner of the vehicle or of any other person – Thus, it is not relevant that the person insured must be the driver of the vehicle but may well have* D *been riding with somebody else driving a vehicle which resulted in the death of the person driving the vehicle – High Court wrong in stating that it was necessary u/s.163A to prove that somebody else was driving the vehicle rashly and negligently, as a result of which, the death of the victim would take place – Amount mentioned in MACT's judgment to be paid with the correction that the multiplier* E *instead of being 8 is now 17 – Interest also remains the same – Insurance company to pay the amount due to the claimant.*

Allowing the appeal, the Court

HELD: The claimant need not plead or establish that the F **death in respect of which the claim was made, was due to any negligence or default of the owner of the vehicle or of any other person. (emphasis supplied). It is not relevant that the person insured must be the driver of the vehicle but may well have been riding with somebody else driving a vehicle which resulted in the death of the person driving the vehicle. The High Court is clearly** G **wrong in stating that it was necessary under Section 163A to prove that somebody else was driving the vehicle rashly and negligently, as a result of which, the death of the victim would take place. [Paras 12, 13][872-F-H; 873-A]**

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2527 of 2020.

From the Judgment and Order dated 28.12.2016 of the High Court of Uttrakhand at Nainital in Appeal from Order No. 10 of 2010.

N. K. Sahoo, Naresh Kumar, Advs. for the Appellant.

Anshum Jain, Rameshwar Prasad Goyal, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. F. NARIMAN, J.

1. Leave granted.

2. On 18.03.2004, an incident took place, by which the son of the claimant, who allegedly was a pillion rider, was killed in a road accident. The Motor Accident Claims Tribunal, Dehradun (hereinafter referred to as 'MACT') after examining the evidence, came to the conclusion that the accident was due to the rash and negligent driving of respondent No. 2, who was the owner of the motor vehicle and who was driving the aforesaid motor vehicle. The victim was aged 28 years. Coming to the conclusion that a salary of Rs.3,000/- per month would be adequate, with a deduction of one-third, and taking the multiplier as 8 dependant upon the claimant's age, the MACT finally held the insurance company liable to pay a total of Rs. 1.99 lakhs + 6 per cent interest thereon.

3. In the appeal filed before the High Court of Uttarakhand, by the impugned order dated 28.12.2016, the High Court held that since the insurance company denied that the deceased was only a pillion rider and stated that he was, in fact, driving the vehicle himself; also since the claimant was not present at the spot; and since Shri Virender Bijalwan, respondent No. 2, who ought to have been called as he was the only surviving eye witness, not being called as a witness, therefore, proved fatal to the claim, as a result of which, the petition under Section 163A of the Motor Vehicles Act, 1988, would have to be dismissed. Further, the High Court also held that nothing was brought on record to show that the deceased was having a valid driving license. In this view of the matter, the appeal was allowed and the judgment passed by the MACT was set aside.

A 4. Shri N. K. Sahoo, learned counsel appearing on behalf of the petitioner, has argued that the petition being filed under Section 163A, it is clear that the liability is 'no fault', as a result of which, it is not necessary to prove the negligence or any rash and negligent driving on the part of the driver of the vehicle. He further argued that the multiplier of 8 is *ex-facie* incorrect since it was taken on the basis of the claimant's age and not the victim's age, stating that since the victim was only 28 years old, the multiplier should have been 17. He also argued that the High Court was wrong in placing the burden on the claimant, when MACT has held that, based on the examination and cross examination of the claimant, the facts could be elicited. Further, the validity of the driving licence under Issues Nos. 2 and 3, was given up by the insurance company but taken into account by the High Court.

5. Shri Anshum Jain, learned counsel appearing on behalf of the insurance company, reiterated the High Court's judgment and further argued that no fault liability under Section 163A is limited to Rs.1 lakh. At the relevant time, therefore, even if we were to uphold the MACT's judgment, the maximum that can be awarded on the facts of this case is Rs.1 lakh.

6. Having heard learned counsel for the parties, we may only extract the order of the MACT as follows:

> "13. P.W. 1 Smt. Chandra Kanta Tiwari was cross-examined at length on behalf of O.P. No. 2 i.e. Insurance Company and none appeared to cross-examine her on behalf of the O.P. No. 1. Whatever cross-examination has been made on behalf of O.P. No. 2, it has again been proved that the deceased was the pillion rider and O.P. No. 1 was driving the ill- fated vehicle at the time of accident in a rash and negligent manner due to which he received grievous injuries which resulted into his death on the spot.
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> 14. It will be relevant to mention here that no controverting evidence on this issue or on issue no. 2 has been adduced by any of the opposite parties though they have made the pleadings otherwise in their written statement hence it has not been proved on record by any of the opposite parties that at the time of the accident, the deceased was driving the vehicle, it is also relevant to mention here that according to written statement of O.P. No. 1, he himself

sustained injuries in this accident and he has also admitted the date, time and place of the accident. Therefore, it was legally incumbent upon him to prove his case before the Tribunal as he was the best person to make clear how this accident occurred but as no evidence has been adduced by the O.P. No. 1 in this regard, therefore, there is no reason to disbelieve the evidence adduced on behalf of the claimants by way of P.W.1.

15. Admittedly this petition has been moved u/s. 163A of the M.V. Act, therefore, legally the claimants are not supposed to prove the rash and negligent act of driving by O.P. No. 1 and in such a petition legally, the claimants are not required even to plead or establish that the death, in respect of which the claim has been made, was due to any wrongly act or negligence or default of the owner driver of the vehicle or any other person and in such a petition, the owner of the vehicle or the authorised insurer is legally liable to make the payment of compensation."

7. So far as issues 3 and 4 are concerned, they read as follows:

"3. Whether at the time of accident the deceased was not having a valid driving license?

4. Whether at the time of accident the OP No. 1 was not having a valid driving license?"

8. The Tribunal then records in paragraph 17 that both the opposite parties did not press these issues during arguments.

9. Finally, given that the deceased was aged 28 years and that income was not proved, income was taken to be Rs.36,000/- per annum minus one-third, which made it Rs.24,000/- per annum. The Multiplier was taken to be 8, keeping in view the old age of the claimant and accordingly, a sum of Rs.1,92,000/- was arrived at. In addition thereto, Rs.2000/- was given as funeral expenses, Rs.5000/- as loss of consortium, making it a total of Rs.1,99,000/- together with simple interest at the rate of 6 per cent per annum on this amount from the date of filing of the claim petition up to the date of actual payment.

10. The High Court, by the impugned judgment, allowed the appeal of the insurance company stating that the claimant, not being an eye witness, could not possibly give evidence as to the accident that took place, as a result of which, the Section 163A petition would have to be

A dismissed. Also, nothing was brought on record to show that the deceased was having a valid driving license. This would also, therefore, take the case outside the insurance policy, as a result of which, the appeal would deserve to be allowed on this ground also.

11. Section 163A reads as follows:

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> 163A. Special provisions as to payment of compensation on structured formula basis.—
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> (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 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 motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
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> 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 (8 of 1923).
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> (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.
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> (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.
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12. A perusal of this provision would show that Shri Sahoo is correct in stating that the claimant need not plead or establish that the death in respect of which the claim was made, was due to any negligence or default of the owner of the vehicle or <u>of any other person</u>.

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(emphasis supplied)

13. In this view of the matter, it is not relevant that the person insured must be the driver of the vehicle but may well have been riding with somebody else driving a vehicle which resulted in the death of the person driving the vehicle. The High Court, therefore, is clearly wrong

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in stating that it was necessary under Section 163A to prove that somebody else was driving the vehicle rashly and negligently, as a result of which, the death of the victim would take place. A

14. Further, it is also clear, as has been pointed out hereinabove, that so far as the driving licence aspect of the case is concerned, it was squarely given up by the insurance company before the MACT, but then utilised by the High Court to disentitle the claimant to relief. On this ground also, the High Court is incorrect. B

15. Coming to the argument based on the maximum liability being Rs.1 lakh, this argument was never taken before in all the courts below, as a result of which, we do not allow the insurance company to take up the point for the first time before us at this stage. C

16. We would have restored the MACT's judgment as it stands but for the fact that there is a glaring mistake in the multiplier, as has been pointed out by Shri Sahoo. The amount that will be paid will now be the amount mentioned in the MACT's judgment with the correction that the multiplier instead of being 8 is now 17. The interest figure also remains the same. As a result, the appeal stands allowed. The insurance company is to pay the amount due to the claimant as per our judgment within a period of three months from today. D

Divya Pandey Appeal allowed.