

Manjuri Bera vs Oriental Insurance Company Ltd. And Anr on 30 March, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1474, 2007 (10) SCC 643, 2007 AIR SCW 1962, 2007 (2) ALJ 503, 2007 (2) AIR JHAR R 866, (2007) 55 ALLINDCAS 268 (SC), (2007) 68 ALL LR 148, (2007) 3 GUJ LR 2395, (2007) 3 JCR 128 (SC), (2007) 37 OCR 435, (2007) 2 ACJ 1279, (2007) 2 ALL WC 1222, 2007 (5) SCALE 193, 2008 (1) SCC (CRI) 585, (2008) 2 KER LT 873, (2007) 2 HINDULR 468, 2007 (55) ALLINDCAS 268, (2007) 4 ICC 634, (2008) 1 MAD LW 832, (2007) 1 ALL RENTCAS 708, (2007) 52 ALLINDCAS 692 (ALL), (2007) 2 ACC 365, (2007) 2 PUN LR 611, (2007) 2 RAJ LW 1384, (2007) 2 TAC 431, (2007) 3 ALL WC 2158, (2007) 67 ALL LR 148, (2007) 4 MAD LJ 906, (2007) 3 ANDHLD 55, (2007) 3 SUPREME 620, (2007) 2 RECCIVR 674, (2007) 5 SCALE 193, (2007) 2 WLC(SC)CVL 36, (2007) 2 UC 898, (2007) 4 CIVLJ 236, (2007) 2 CURCC 344, (2007) 2 CAL LJ 84, (2007) 2 CAL LJ 14

Author: Arijit Pasayat

Bench: Arijit Pasayat, S. H. Kapadia

CASE NO.:

Appeal (civil) 1702 of 2007

PETITIONER:

Manjuri Bera

RESPONDENT:

Oriental Insurance Company Ltd. and Anr.

DATE OF JUDGMENT: 30/03/2007

BENCH:

Dr. Arijit Pasayat & S. H. Kapadia

JUDGMENT:

JUDGMENT 2007 AIR 1474 = 2007(4) SCR 590 =2007(10) SCC 643 = 2007(5) JT 78 =2007(5) SCALE 193 (Arising out of SLP (C) No. 14943 of 2004) Arijit Pasayat, J.

1. Leave granted.

2. An interesting question is involved in this appeal. By the impugned judgment the Calcutta High Court held that though the appellant, a married daughter of Bata Krishna Mondal (hereinafter

referred to as the 'deceased') could maintain a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988 (in short the 'Act') she was not entitled to any compensation as she was not dependant upon the deceased.

3. Factual position is undisputed and needs a brief reference.

On 11.5.1998 deceased lost his life in a vehicular accident and the offending vehicle, a Mini Truck registration No.WB-29/0185 belonged to respondent No.2. As the deceased had no other legal heir, a claim petition was lodged claiming compensation. Respondent No.1 (hereinafter referred to as the 'insurer') with whom the offending vehicle was the subject- matter of insurance filed a written statement taking the stand that since the claimant was not dependant upon the deceased, there was no question of any compensation being paid. The Motor Accident Claims Tribunal, Midnapore at Tamluk, District Midnapore (in short the 'Tribunal') dismissed the claim petition accepting the stand of the insurer.

4. An appeal was filed before the Calcutta High Court questioning the correctness of the Tribunal's view. The High Court by the impugned judgment held that the appeal was without merit and dismissed the same. It was held that though a married daughter can be covered by the expression "legal representative" appearing in Section 166 of the Act, she was not entitled to any compensation unless he or she was dependant on the deceased. The expression "legal representative" has not been defined either in the Act or the West Bengal Motor Vehicles Rules, 1989 (in short the 'Rules'). The widest meaning, therefore, can be ascribed to it in terms of Section 2(11) of the Code of Civil Procedure, 1908 (in short 'CPC').

5. When the matter came up for hearing considering the importance of the question, Mr. Jayant Bhushan, learned senior counsel was requested to act as Amicus Curiae. He has with reference to various provisions submitted that the view taken by the Tribunal and the High Court is super technical. 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.

Learned Counsel for the insurer supported the judgment of the Tribunal and the High Court.

6. 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 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

(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.

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.

(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:

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.

Xx xx xx (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.

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. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.

7. 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:

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. (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.

(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.

8. 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.

9. According to Section 2(11) of 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 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).

10. As observed by this Court in *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique* [1989]2SCR810 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.* [1987]3SCR404 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.

11. 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. 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. Section 165 of the Act also

throws some light on the controversy. The explanation includes the liability under Sections 140 and 163A.

12. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned Amicus Curiae.

S.H. Kapadia, J.

13. Although I agree with the operative part of the judgment proposed to be delivered by my esteemed brother Dr. Arijit Pasayat, J, I would like to give my own reasons.

14. In the present case the married daughter of the victim (deceased) filed the claim under Section 140(2) of the Motor Vehicles Act, 1988 praying for statutory compensation on account of the death of her father. As stated, the application was made under Section 140 of the said Act. That Section makes it clear that "No Fault Liability is cast on the owner of the vehicle and not directly on the insurer. Before an order is passed under Section 140, the Tribunal must be satisfied that the accident arose out of a motor vehicle which resulted in permanent disablement or death and that the claim is made against the owner and the insurer of the offending motor vehicle.

15. In the present case, as stated above, the victim's married daughter has made her claim under Section 140 of the said Act saying that she has five children; that they are minors; that she was brought up by her uncle; that after her mother's death the deceased lived in the same house in which the claimant was living with her uncle before her marriage; that the deceased was a mason that after her marriage she lived with her husband and, therefore, she was entitled to get statutory compensation under Section 140 of the said Act.

16. In the impugned judgment the High Court has correctly drawn a distinction between "right to apply for compensation" and "entitlement to compensation". The High Court has rightly held that even a married daughter is a legal representative and she is certainly entitled to claim compensation. It was further held, on the facts of the present case, that the married daughter was not dependent on her father. She was living with her husband in her husband's house. Therefore, she was not entitled to claim statutory compensation. According to the High Court, the claimant was not dependent on her father's income. Hence, she was not entitled to claim compensation based on "No Fault Liability".

17. In my opinion, "No Fault Liability", envisaged in Section 140 of the said Act, is distinguishable from the rule of "Strict Liability". In the former, the compensation amount is fixed. It is Rs. 50,000/- in cases of death [Section 140(2)]. It is a statutory liability. It is an amount which can be deducted from the final amount awarded by the Tribunal. Since, the amount is a fixed

amount/crystallized amount, the same has to be considered as part of the estate of the deceased. In the present case, the deceased was an earning member. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under "No fault Liability" in terms of Section 140 of the said Act. My opinion is confined only to the "No Fault Liability" under Section 140 of the said Act. That section is a Code by itself within the Motor Vehicles Act, 1988.

18. For the above separate reasons, I agree with the conclusion, namely, the appeal be allowed with no order as to costs.