

RUPA ROY

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v.

THE NEW INDIA ASSURANCE COMPANY LTD. & ANR.

(Civil Appeal No.5932 of 2019)

JULY 29, 2019

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[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Motor Vehicles Act, 1988 – ss. 166 and 173 – Enhancement of compensation – Appellant and her minor son were travelling in a rickshaw van, one Matador van came on high speed from opposite side and dashed the rickshaw van – All the occupants of the rickshaw van sustained serious injuries – Appellant's minor son suffered permanent disability in his body to the extent of 70% – Appellant filed claim petition u/s. 166 of the Act – Tribunal partly allowed the appellant's claim and awarded compensation of Rs.2,00,000/- – Appeal was dismissed by the High Court – On appeal held: High Court committed jurisdictional error in dismissing the appeal because it failed to appreciate the evidence and also failed to assign any reason for the dismissal of the appeal – Minor son of the appellant suffered permanent disability in his body to the extent of 70% and the same was proved by the doctor – Taking into consideration the age of the victim, the extent of disability suffered, the medical treatment so far taken, mental pain and suffering caused to the victim, the award of Rs.2,00,000/- enhanced to Rs.10,00,000/- – Code of Civil Procedure, 1908 – s. 96.

Allowing the appeal, the Court

HELD: 1. The High court committed jurisdictional error in dismissing the appeal because it failed to appreciate the evidence and also failed to assign any reason for the dismissal of the appeal. An appeal filed under Section 173 of the Motor Vehicles Act, 1988 is akin to Section 96 of Code of Civil Procedure, 1908. The scope of the appellate powers under Section 173 of the Act, how such powers should be exercised while hearing the appeal and why it is necessary for the Courts to assign the reasons for reaching to the conclusion while passing any order/judgment was examined by Supreme Court in various cases. [Paras 13, 14]

[331-B-C]

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- A *Uttar Pradesh State Road Transport Corporation v. Mamta & Ors., (2016) 4 SCC 172 ; G Saraswathi & Ors. v. Rathinammal & Ors. (2018) 3 SCC 340 : [2018] 2 SCR 548 ; Central Board of Trustees v. Indore Composite Pvt. Ltd., (2018) 8 SCC 443 : [2018] 7 SCR 1130 – referred to.*
- B 2. The High Court should have taken note of the law laid down by this Court in the aforementioned cases and should have decided the appeal accordingly. Since the High Court failed to do so and hence this Court is required to examine the case in the light of the evidence adduced by the appellant on the question as to the nature of injuries sustained by the victim-minor son of the appellant and the extent of permanent disability suffered by him on account of the injuries caused to him. [Para 15] [331-D]
- C 3. On perusal of the evidence, this Court finds that the victim, i.e., minor son of the appellant has suffered permanent disability in his body to the extent of 70%. The doctor has proved it. The minor was aged about 10 years at the time of accident. There is no evidence adduced in rebuttal by the respondents on this issue. [Para 17] [331-F-G]
- D 4. Taking into consideration the age of the victim, the extent of disability suffered by the victim in his early age, the medical treatment so far taken and to be taken in future to remedy the ailment, mental pain and suffering caused to the victim due to the injuries and lastly, the loss caused, the award of Rs.2,00,000/- by the Tribunal seems to be on lower side and the same deserves to be enhanced suitably. Accordingly, a lump sum amount of Rs. 10,00,000/- awarded to the appellant - she being the mother of victim. [Paras 18 and 19] [331-G-H; 332-A-B]

Case Law Reference

G	(2016) 4 SCC 172 [2018] 2 SCR 548 [2018] 7 SCR 1130	referred to referred to referred to	Para 14 Para 14 Para 14
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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5932 A
of 2019

From the Judgment and Order dated 04.08.2015 of the High Court
of Calcutta in F.M.A. No. 647 of 2009

Rauf Rahim, Ms. Manisha Pandey, Advs. for the Appellant.

A. Jain, Shiv Bhalla, Rameshwar Prasad Goyal, Advs. for the
Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This appeal is directed against the final judgment and order
dated 04.08.2015 passed by the High Court at Calcutta in F.M.A. No.647
of 2009 whereby the High Court dismissed the appeal filed by the
appellant herein and affirmed the award dated 16.02.2008 passed by
the Motor Accident Claims Tribunal & District Judge, Nadia in M.A.C.
Case No.3 of 2005.

3. A few facts need to be mentioned hereinbelow for the disposal
of this appeal, which involves a short point.

4. The appellant is the claimant (applicant) and the respondents
are the non-applicants in the claim petition filed before the Motor Accident
Claims Tribunal (hereinafter referred to as “the Tribunal”) out of which
this appeal arises.

5. On 19.07.2004, when the appellant with her husband and minor
son – Sourangshu was going towards Gachha Bazar Bus Stoppage on a
rickshaw van, one Matador van bearing No. WB 57/5270 came on a
high speed from opposite side and dashed the rickshaw van as a result
of which all the occupants of the rickshaw van suffered serious injuries.

6. The appellant’s minor son-Sourangshu aged around 10 years,
who was travelling with the appellant-his mother, suffered multiple injuries
on his body. He was taken to the hospital where he received the treatment
for a long time. After treatment, it was certified that he was Orthopedically
disabled with post-traumatic paraplegia and weakness in his right hand.
The permanent disability in his body was diagnosed to the extent of 70%
due to injuries caused to him in the accident.

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- A 7. This gave rise to filing of the claim petition by the appellant against the respondents, i.e., owner/driver and insurer of the offending vehicle under Section 166 of the Motor Vehicles Act, 1988(hereinafter referred to as “the Act”) claiming compensation for the disabilities caused to her son due to injuries.
- B 8. It was *inter alia* alleged that the accident occurred due to rash and negligent driving of the driver/owner of the offending vehicle-respondent No. 2 and that it was insured with respondent No. 1 on the date of accident. It was alleged that due to permanent disability suffered by the appellant’s son, the appellant is entitled to claim suitable compensation for him.
- C 9. The respondents contested the claim. By award dated 16.02.2008, the Tribunal partly allowed the appellant’s claim petition and awarded a compensation of Rs. 2,00,000/- to the appellant. The appellant felt aggrieved and filed an appeal before the High Court at Calcutta. By impugned order, the High Court dismissed the appeal which gives rise to filing of the present appeal by way of special leave by the appellant (claimant) in this Court.
- D 10. Heard Mr. Rauf Rahim, learned counsel for the appellant and Mr. A. Jain, learned counsel for respondent No.1.
- E 11. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order modify the award passed by the Tribunal and accordingly enhance the compensation to the extent indicated hereinbelow in favour of the appellant.
- F 12. On perusal of the impugned order, we find that the High Court did not assign any reason for dismissal of the appellant’s appeal, which reads as under:
- “We have gone through the award so pronounced by the Motor Accident Claims Tribunal and we are of the opinion that there is no perversity or illegality in the award so passed by the Tribunal.”**
- G 13. In our view, the High court committed jurisdictional error in dismissing the appeal because it failed to appreciate the evidence and also failed to assign any reason for the dismissal of the appeal. In the
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absence of any discussion and the reasoning, we are at a loss to know A
as to what persuaded the High Court to dismiss the appeal.

14. An appeal filed under Section 173 of the Act is akin to Section 96 of Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”). The scope of the appellate powers under Section 173 of the Act, how such powers should be exercised while hearing the appeal and why it is necessary for the Courts to assign the reasons for reaching to the conclusion while passing any order/judgment was examined by this Court in the case of **Uttar Pradesh State Road Transport Corporation vs. Mamta & Ors.**, (2016) 4 SCC 172, **G. Saraswathi & Ors. vs. Rathinammal & Ors.**, (2018) 3 SCC 340 and **Central Board of Trustees vs. Indore Composite Pvt. Ltd.**, (2018) 8 SCC 443.

15. In our view, the High Court should have taken note of the law laid down by this Court in the aforementioned cases and should have decided the appeal accordingly. Since the High Court failed to do so and hence we are required to examine the case in the light of the evidence adduced by the appellant on the question as to the nature of injuries sustained by the victim-minor son of the appellant and the extent of permanent disability suffered by him on account of the injuries caused to him.

16. Therefore, the only question, which is involved in this appeal, is whether the Courts below were justified in awarding a sum of Rs.2,00,000/- to the appellant(claimant) for the injuries sustained by her minor son. So far as the other issue is concerned, such as liability of the Insurance Company, the same need not be considered because the Insurance Company has not questioned it.

17. On perusal of the evidence, we find that the victim, i.e., minor son of the appellant has suffered permanent disability in his body to the extent of 70%. The doctor has proved it. The minor was aged about 10 years at the time of accident. There is no evidence adduced in rebuttal by the respondents on this issue.

18. Taking into consideration the age of the victim, the extent of disability suffered by the victim in his early age, the medical treatment so far taken and to be taken in future to remedy the ailment, mental pain and suffering caused to the victim due to the injuries and lastly, the loss

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- A caused, the award of Rs.2,00,000/- by the Tribunal seems to be on lower side and the same deserves to be enhanced suitably.

19. We accordingly consider it just and proper to award a lump sum amount of Rs10,00,000/- to the appellant - she being the mother of victim. It will enable her to take care of her son and for his upbringing
B and also towards the amount which the appellant and her husband has so far spent on the treatment of their son and is required to spent in future. While awarding the lump sum amount, we have taken into account all the aforementioned factors, which are relevant.

20. The sum awarded by this Court (Rs.10,00,000/-) would carry
C 6% interest which will be payable to the appellant from the date of the impugned order of the High Court. Respondent No. 1 would pay the awarded sum to the appellant after adjusting Rs.2,00,000/- together with interest awarded by the Tribunal, if already paid to the appellant. Let the amount be worked out and be paid as awarded by this Court within 3 months.

- D 21. The appeal is accordingly allowed. The impugned order is set aside. Counsel fees Rs.10,000/- payable by respondent No.1 to the appellant.

Ankit Gyan

Appeal allowed.