New India Assurance Co. Ltd vs Shah Mahasukhlal Mafatlal on 1 March, 2019

Equivalent citations: AIRONLINE 2019 GUJ 823

Author: R.M.Chhaya

Bench: R.M.Chhaya, G.R.Udhwani, B.N. Karia

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          C/FA/2720/2005                                    JUDGMENT



               IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

                    R/FIRST APPEAL NO.          2720 of 2005

        FOR APPROVAL AND SIGNATURE:

        HONOURABLE MR.JUSTICE R.M.CHHAYA
        With
        HONOURABLE MR.JUSTICE G.R.UDHWANI
        and
        HONOURABLE MR.JUSTICE B.N. KARIA
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        1    Whether Reporters of Local Papers may be
             allowed to see the judgment ?

        2    To be referred to the Reporter or not ?

        3    Whether their Lordships wish to see the
             fair copy of the judgment ?

        4    Whether this case involves a substantial
             question of law as to the interpretation
             of the Constitution of India or any order
             made thereunder ?

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                    NEW INDIA ASSURANCE CO. LTD
                             Versus
               SHAH MAHASUKHLAL MAFATLAL & 2 other(s)
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        Appearance:
        MR SANDIP C SHAH(792) for the Appellant(s) No. 1
        MR SUNIL K SHAH(803) for the Defendant(s) No. 1,2
        RULE NOT RECD BACK(63) for the Defendant(s) No. 3
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            CORAM: HONOURABLE MR.JUSTICE R.M.CHHAYA
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                              and
         HONOURABLE MR.JUSTICE G.R.UDHWANI
                              and
         HONOURABLE MR.JUSTICE B.N. KARIA


                    Date : 01/03/2019


                    ORAL JUDGMENT
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(PER : HONOURABLE MR.JUSTICE R.M.CHHAYA)

1. The present appeal arises out of judgment and award dated 15.06.2005 passed by the Motor C/FA/2720/2005 JUDGMENT Accident Claims Tribunal (Main), Banaskantha District, Palanpur in MACP No.583 of 2000.

2. The matter was listed before the Division Bench comprising of Hon'ble Mr. Justice M.S. Shah and Hon'ble Mr. Justice K.M. Mehta (as their Lordships then were) and by an order dated 20.09.2006 passed in the present appeal, the Hon'ble Division Bench opined that the question as regards what amount of compensation would be payable to the parents of the non earning minor upto the age of 15 years, who dies on account of injuries received in an accident involving use of motor vehicle as provided in Section 163A read with Second Schedule of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The said question is referred to the present Bench for its consideration.

3. Heard Mr. Sandeep Shah, learned advocate for the appellant and Mr. M.T.M. Hakim, learned advocate for Mr. Sunil K. Shah, learned advocate for the original claimants.

4. Mr. Shah, learned advocate appearing for the appellant insurance company while referring to the order of reference has contended that section 163A of the Act provides that the compensation has to be determined as per the second schedule and the structured formula provided under the second schedule. Mr. Shah contended that the second schedule does not C/FA/2720/2005 JUDGMENT provide for annual income of Rs. 15,000/☐and therefore, even considering the income of the deceased minor as Rs.15,000/☐per annum, considering it to be notional income for compensation as a non☐earning person, applying multiplier of 15, as per the second schedule, the parents would be entitled to total compensation of Rs.2,04,500/☐which also includes Rs.5,000/☐towards loss of expectancy of life and Rs.2,500/☐as funeral expenses as provided under second schedule.

5. Mr. Shah further contended that the second schedule has to be read as it is and the method of determination of compensation by taking average is an erroneous method and the same is not as per the structured formula. Mr. Shah also further referred to the judgments of this Court in First Appeal No. 1951 of 2001 dated 29.01.2004, First Appeal No. 1657 of 2003 dated 08.09.2003 and First Appeal No. 7510 of 1999 dated 27.09.2000.

6. Mr. Shah further relied upon the judgments of the Apex Court in the case of Sarla Verma vs. Delhi Road Transport Corporation reported in (2009) 6 SCC 121 and contended that the said case relates to a claim petition under section 166 of the Act and not under section 163A of the Act. Mr. Shah further candidly submitted that even as per the judgment of the Apex Court in C/FA/2720/2005

JUDGMENT the case of Sarla Verma (supra), in cases like the present case, the compensation has to be as per the structured formula only. Mr. shah also relied upon the judgment of the Apex Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 (16) SCC 680 and contended that the Supreme Court has clearly held that the multiplier and deduction towards the personal and living expenses should be as per paras 14 and 15 of the judgment in the case of Sarla Verma (supra) and so also the multiplier has to be as per the statement indicated in the judgment of Sarla Verma (supra). It was also contended that depending upon the age of the deceased, as held by the Hon'ble Court in the case of Pranay Sethi (supra), the selection of multiplier shall be as indicated in the judgment of Sarla Verma (supra). On the aforesaid grounds, it was asserted by Mr. Shah that the correct method to determine the compensation of deceased minor in an application under section 163A of the Act is as per the structured formula by considering the applicability of multiplier of 15 and considering the income of Rs.15,000/☐ the parents of minor who is a non☐earning person would be entitled to total compensation of Rs.1,54,500/☐ which includes Rs.7,500/☐towards expenses. Mr. Shah therefore contended that the view of this Court in First Appeal No.7510 of 1999 decided on 27.09.2000 and First Appeal C/FA/2720/2005 JUDGMENT No.1697 of 2003 decided on 08.09.2003 is erroneous and the view expressed by the Division Bench of this Court in First Appeal No. 1951 of 2001 dated 29.01.2004 is the correct view and it was contended that the reference be answered accordingly.

7. Per contra, Mr. MTM Hakim, learned advocate for the original claimants has contended that as provided under section 163A of the Act, the compensation is to be determined as per the structured formula. Relying upon the judgment of the Division Bench of this Court in in First Appeal No.7510 of 1999 decided on 27.09.2000 and First Appeal No.1697 of 2003 decided on 08.09.2003, it was contended by Mr. Hakim that the same is correctly decided. Mr. Hakim further submitted that even if the second schedule is considered, the multiplier of 15 is provided upto 15 years and as provided under the said schedule, the income of the deceased as non☐earning person is to be determined at Rs.15,000/☐per annum. Mr. Hakim contended that even though in the second schedule, the amount of Rs.15,000/☐is not provided for, in order to follow the second schedule, the mean between the next income, i.e., between Rs.18,000/☐p.a. and Rs.12,000/☐p.a. can be computed as done by the Division Bench in First Appeal No. 1697 of 2003 and the compensation has to be determined, accordingly Mr. Hakim further contended that C/FA/2720/2005 JUDGMENT even if the total of income of Rs.15,000/☐is accordingly bifurcated into Rs.12,000/☐and Rs.3,000/☐ the claimants would be entitled to total compensation of Rs.2,04,500/☐ Mr. Hakim also relied upon the judgment of the Apex Court in the case of National Insurance Company Ltd. Vs. Gurumallamma and Anr. reported in (2009) 16 SCC 43 and contended that the judgment in the case of Pranay Sehti (supra) as well as Sarla Verma (supra), relied upon by learned counsel appearing for the insurance company are judgments wherein the Hon'ble Apex Court has predominantly dealt with claim petition under section 166 of the Act, whereas in the case of Gurumulla (supra), the Hon'ble Apex Court has considered the provisions of section 163A of the Act and has held that the second schedule provides for a structured formula and same does not require any application of judicial mind which otherwise is necessary in application under section 166 of the Act and following the second schedule, the compensation in a claim petition under section 163A is calculated. Mr. Hakim also relied upon the judgment in the case of National Insurance C. Ltd. vs. Umeshbhai Visabhai Parmar passed by the learned Single Judge wherein the learned Single Judge relying upon the judgment of the Apex

Court in the case of Gurumulla (supra) has awarded Rs.2,04,500/☐ On the aforesaid grounds, Mr. Hakim contended that parents of minor upto 15 years age who is a C/FA/2720/2005 JUDGMENT non☐earning person would be entitled to Rs.2,04,500/☐as per the judgment of the Division Bench of this Court in First Appeal No. 7510 of 1999 dated 27.09.2000 and First Appeal No. 1657 of 2003 dated 08.09.2003 and contended that the reference made to this Bench be answered accordingly.

8. No other or further submissions have been made.

9. Before reverting to the submissions made by the learned counsels appearing for the parties, it would appropriate to quote section 163A of the Act.

> "[163A. Special provisions as to payment of compensation on structured formula basis.--
>
> 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.
>
> 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).
>
> (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 C/FA/2720/2005 JUDGMENT 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.
>
> (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.]"

The bare reading of the said provision clearly indicates that the compensation in an application under 163A is required to be determined as indicated in the second schedule. The second schedule provides for different multipliers considering the age commencing from 15 years. Foir that age 15 multiplier is provided. It deserves to be noted that the second schedule also provides for different multipliers between the age of 15 to 20, 20 to 25, 25 to 30, 30 to 35, 35 to 40, 40 to 45, 45 to 50, 50 to 55, 55 to 60, 60 to 65 and 65 years and above. Similarly, the second schedule also provides for annual income in fatal cases which starts from Rs.3000, Rs.4,200, Rs.5,400, Rs.6,600, Rs.7,800, Rs.9,000, Rs.10,200, Rs.11,400, Rs.12,000, Rs.18,000, Rs.24,000, Rs.36,000 and Rs.40,000/☐ Over and above that, note below second schedule provides that the amount of compensation so arrived as per the structured formula in case of fatal accident claims shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself

had he been C/FA/2720/2005 JUDGMENT alive. The aforesaid makes it clear that the multiplier is fixed and the deduction towards personal expenses is provided in all cases, which is a departure from the multiplier as well as deduction in case of claim petition under section 166 of the Act more particularly as held by the Apex Court in the case of Sarla Verma (supra) and Pranay Sethi (supra). Over and above, the same, it is also provided that in case of death, the claimants would be entitled to funeral expenses to the tune of Rs.2,000/☐and loss of estate to the tune of Rs.2,500/☐ In case of death, it also further provides for loss of consortium if the beneficiary is the spouse and medical expenses incurred before death supported by vouchers.

10. The Hon'ble Apex Court in the case of Sarla Verma (supra) has observed thus ☐"17. The Motor Vehicles Act, 1988 was amended by Act 54 of 1994, inter alia inserting Section 163A and the Second Schedule with effect from 14.11.1994. Section 163A of the MV Act contains a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. The Second Schedule contains a Table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs.3,000/☐to Rs.40,000/☐ It does not specify the quantum of compensation in case the annual income of the deceased is more than C/FA/2720/2005 JUDGMENT Rs.40,000/☐ But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes upto 18, and then steadily comes down to 5. It also provides the standard deduction as one☐third on account of personal living expenses of the deceased. Therefore, where the application is under Section 163A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs.40,000/☐ by applying the formula : (2/3 x AI x M), that is two☐thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under Section 163A of MV Act. There are however discrepancies/errors in the multiplier scale given in the Second Schedule Table. It prescribes a lesser compensation for cases where a higher multiplier of 18 is applicable and a larger compensation with reference to cases where a lesser multiplier of 15, 16, or 17 is applicable. From the quantum of compensation specified in the table, it is possible to infer that a clerical error has crept in the Schedule and the `multiplier' figures got wrongly typed as 15, 16, 17, 18, 17, 16, 15, 13, 11, 8, 5 & 5 instead of 20, 19, 18, 17, 16, 15, 14, 12, 10, 8, 6 and 5. Another noticeable incongruity is, having prescribed the notional minimum income of non☐earning persons as Rs.15,000/☐per annum, the table prescribes the compensation payable even in cases where the annual income ranges between Rs.3000/☐and Rs.12000/☐ This leads to an anomalous position in regard to applications under Section 163A of MV Act, as the compensation will be higher in cases where the deceased was idle and not having C/FA/2720/2005 JUDGMENT any income, than in cases where the deceased was honestly earning an income ranging between Rs.3000/☐and Rs.12,000/☐per annum. Be that as it may."

11.The Hon'ble Apex Court has further observed in paras 18 to 20 as under ☐"18. The principles relating to determination of liability and quantum of compensation are different for claims made under section 163A of MV Act and claims under section 166 of MV Act. (See :

Oriental Insurance Co. Ltd. vs. Meena Variyal □2007 (5) SCC 428). Section 163A and Second Schedule in terms do not apply to determination of compensation in applications under Section 166. In Trilok Chandra, this Court, after reiterating the principles stated in Susamma Thomas, however, held that the operative (maximum) multiplier, should be increased as 18 (instead of 16 indicated in Susamma Thomas), even in cases under section 166 of MV Act, by borrowing the principle underlying Section 163A and the Second Schedule. This Court observed:

"Section 163A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged.

C/FA/2720/2005 JUDGMENT Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in Susamma Thomas case..... Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier......What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16..."

19. In New India Assurance Co. Ltd. vs. Charlie [2005 (10) SCC 720], this Court noticed that in respect of claims under section 166 of the MV Act, the highest multiplier applicable was 18 and that the said multiplier should be applied to the age group of 21 to 25 years (commencement of normal productive years) and the lowest multiplier would be in respect of persons in the age group of 60 to 70 years (normal retiring age). This was reiterated in TN Road Transport Corporation Ltd. vs. Rajapriya [2005 (6) SCC 236] and UP State Road Transport Corporation vs. Krishna Bala [2006 (6) SCC 249]. The multipliers indicated in Susamma Thomas, Trilok Chandra and Charlie (for claims under section 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under section 163A of MV Act (with appropriate deceleration after 50 years):

Age of the Multiplier Multiplier Multiplier Multiplier Multiplier deceased scale as scale as Scale in specified in actually used envisaged in adopted in Trilok second in Second Susamma Trilok Chandra as column in Schedule to MV Thomas Chandra clarified in the Table in Act (as seen Charlie Second from the Schedule to quantum of MV Act Compensation) (1) (2) (3) (4) (5) (6) C/FA/2720/2005 JUDGMENT

20. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under section 166 and not under section 163A.

12. Thus, the Hon'ble Apex Court has predominantly C/FA/2720/2005 JUDGMENT considered a claim petition under section 166 of the Act in the case of Sarla Verma (supra), however, has made the aforesaid observations as regards the provisions of Section 163A of the Act.

13. Similarly, the Apex Court in the case of Pranay Sethi (supra), has considered a case under Section 166 of the Act.

14. Thus, keeping in mind the provisions of section 163A, while deciding claim petition under the said provision, the Tribunal is supposed to follow the structured formula and as held by the Apex Court in the case of Gurumallamma (supra), section 163A is a special measure. The Hon'ble Apex Court has further held that multiplier figures are applicable only in injury cases, and as such for fatal cases, second schedule provides for specific compensation depending on the age of the deceased. Only because Rs.15,000/□income does not find place in second schedule, it would not mean that even in fatal cases, straightway multiplier of 15 is required to be applied and compensation is required to be calculated as provided in the second schedule which works out to Rs.1,54,500/□ The Hon'ble Apex Court in the case of Reshma Kumari v. Madan Mohan, reported in (2013) 9 SCC 65, has provided that in cases where the age of deceased is upto 15 years, irrespective of section 166 or 163A C/FA/2720/2005 JUDGMENT under which the claim for compensation has been made, the multiplier of 15 and assessment as indicated in the second schedule subject to correction as pointed out in column 6 of the table in Sarla Verma (supra) should be followed. In Sarla Verma (supra), column No.6 provides for multiplier of 20. The Motor Vehicles Act is a beneficial legislation and considering the ratio laid down by the Apex Court in the case of Sarla Verma (supra), Reshma Kumari (supra) and Gurumulla (supra), even if the notional income of the non□earning person who has died in the accident is fixed at Rs.15,000/□per annum as per the second schedule, the mean of Rs.12,000/□as income and Rs.18,000/□can be taken which in our opinion would be just, proper and adequate compensation. Considering the provisions of section 163A of the Act and also the scheme of the second schedule and the different slabs provided thereunder, in case of a claim petition by parents of the minor upto the age of 15 years who is a non□earning member, who

succumbs to injuries sustained during the vehicular accident, would be entitled to compensation which is to be determined by considering Rs.15,000/□as notional income and by calculating mean of the slab of income provided for Rs.12,000/□per annum and Rs.18,000/□per annum as compensation and thus, in such cases, the claimant would be entitled to compensation by taking average of Rs.12,000/□and Rs.18,000/□C/FA/2720/2005 JUDGMENT which comes to Rs.3,00,000/□and after deducting 1/3rd, the parents of the minor would be entitled to Rs.2,00,000/□and in addition to the same Rs.4,500/□towards loss of estate and funeral expenses and thus, would be entitled to Rs.2,04,500/□ As provided herein above, even if the compensation is determined as per the judgment of the Apex Court in the case of Reshma Kumari (supra) by applying 20 multiplier, the claimants would be entitled to Rs.3,00,000/□and after deducting 1/3rd, the parents of the minor would be entitled to Rs.2,00,000/□and in addition to the same, Rs.4,500/□towards loss of estate and funeral expenses and thus, would be entitled to Rs.2,04,500/□ Thus, in our opinion, the view taken by the Division Bench of this Court in First Appeal Nos. 1697 of 2003 and 7510 of 1999, is correct.

15. The reference is answered accordingly. The First Appeal be placed before the appropriate court for its final determination as per this judgment.

(R.M.CHHAYA, J) (G.R.UDHWANI, J) (B.N. KARIA, J) BIJOY B. PILLAI