

Uttarakhand High Court

Mangat Singh And Another vs Sh. Amit Terathwal And Others on 25 May, 2022

Reserved Judgment

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Appeal from Order No. 108 of 2012

Mangat Singh and Another ... Appellants
Vs.
Sh. Amit Terathwal and others ... Respondents
Advocates : Mr. Tapan Singh, Advocate, for the appellants
Mr. Pulak Aggarwal, Advocate, for respondent No. 3/Insurance
Company

Reserved on : 21.04.2022

Delivered on : 25.05.2022

Hon'ble Sharad Kumar Sharma, J.

This is a claimants Appeal from Order, which has been preferred invoking Section 173 of the Motor Vehicles Act, wherein the claimants, have put a partial challenge to the impugned award dated 21st December 2011, which was rendered by the learned Additional District Judge/FTC-7/Motor Accident Claims Tribunal, Dehradun, in MACT Case No. 107 of 2007, Shri Mangat Singh Terathwal and another Vs. Shri Amit Terathwal and others.

2. The claimants to the present Appeal from Order, had prayed for, that the impugned award, which had been rendered by the learned Motor Accident Claims Tribunal wherein, only a partial award has been rendered in their favour to the tune of Rs. 2,22,000/- along with 9% interest, payable on it, which has been directed to be made payable to them from the date of presentation of the application, may be enhanced to the amount, which was claimed by the claimants, in their claim petition to the tune of Rs. 10.00 lakh.

3. Brief facts of the case are, that the claimant have contended in their claim petition, which had been filed before the learned Court below on 4th May 2007 initially, by invoking the provisions contained under Section 163A of the Motor Vehicles Act, 1988, but, later on voluntarily, by the amendment sought for by the claimants, the claim petition was got amended and instead of claim petition being preferred under Section 163A of the Act, the same has been amended to be treated as to be the claim petition which has been preferred under Section 166 of the Motor Vehicles Act. As per the provisions of the Motor Vehicles Act, the two distinct provisions i.e. Section 163A, which is extracted hereunder, it includes the determination of compensation based upon the principles for the payment of compensation, on the basis of structured formula, as provided in the Second Schedule. Section 163A of the Motor Vehicles Act, reads as under:-

"[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 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.] Whereas under the Motor Vehicles Act. Section 166 of the Motor Vehicles Act, 1988 is extracted herein below deals with the determination of compensation based on establishment of negligence:-

166. 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 authorised 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.

(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.]"

4. Meaning thereby, at the stage when the claimants have instituted the claim petition, they had pressed for the grant of compensation claimed for by them by attracting the structured formula, which is attracted to be made applicable by the provisions of Section 163A of the Motor Vehicles Act. In that eventuality, had the claim petition proceeded under Section 163A, under which, it was initially instituted, the determination of the compensation could have been, attracted to be made applicable based on the structured formula on the basis of the parameters as it has been indicated in the 2nd Schedule of the Act.

5. But, when the claimants themselves admittedly had made an amendment and had brought the claim petition, under Section 166 of the Motor Vehicles Act, it completely changes the complexion of the parameters which were to be adopted for determining the quantum and adequacy of compensation, which is exclusively depending upon the determination and establishment of the fact by evidence on record only on the establishment of a fact of negligence, on part of the driver of the offending vehicle, in order to provide the compensation to the legal representation of the deceased and hence once the claimants have altered the claim petition as to be one under Section 166, the burden of proof of negligence shifts upon the claimants who have to established the same based upon the evidence on record, to be adduced by them in order to determine the proportionality of payment of compensation.

6. In nutshell, when the compensation has been altered to be paid under Section 166 and that too apparently, by a voluntary act of the claimants, the claimants would be estopped to claim for compensation, on the basis of attracting the structured formula as provided under Section 163A of the Motor Vehicles Act. The claimants, on institution of the claim petition before the learned Motor Accidents Claims Tribunal on 4th May 2007, have factually contended that in an accident, which had chanced on 20th April 2007, the son of the claimants late Mr. Akhil Kumar Terathwal, had met with an accident, due to which, he died, on the spot and thus they would be entitled for the determination of an appropriate compensation, which they have claimed on the ground, that since their late son Mr. Akhil Kumar Terathwal, who was of 24 years of age and was working as a sepoy in the Indian Army and he was at the relevant point of time was deployed in Hisar, Haryana and at that relevant of point of time, it was contended that he was drawing a monthly salary of Rs. 11060/- per month, which too was an amended enhanced salary, which was initially pleaded as to be Rs. 8000/- per month.

7. The claim petition, which was thus instituted by the claimants, the factual backdrop, which was narrated by the claimants, they have contended that on the date of the accident i.e. 20th April 2007, their son, who was returning to home after attending a marriage party by the vehicle bearing registration No. UA-07-N-1082 i.e. the Hero Honda motorcycle, he was a pillion rider and which was being driven by another person and it was contended that on account of the rash and negligent driving of the rider of the motorcycle i.e. Amit Terathwal, it had met with an accident, and it has resulted into the death of Mr. Akhil Kumar Terathwal.

8. The fact, which was pleaded was, that while they were returning back and reached at the spot i.e. between the village Badowala and Bhoor near Thana Patel Nagar, District Dehradun, all of a sudden, a running cow came in the midst of the road, due to which the rider of the vehicle Mr. Amit Terathwal, lost his control over the vehicle of which the deceased was a pillion rider and since it was being driven rashly and negligently by the rider Amit Terathwal, the liability of payment of compensation was sought to be determined under Section 166 of the Motor Vehicles Act, which could have been only establishment of negligence on part of the rider of the motorcycle.

9. It was contended, that when the cow, all of a sudden, came in front of the vehicle and the rider of the vehicle tried to apply the brakes, when he lost his control due to which the motorcycle fell into a ditch which was adjoining the road, hence on account of the injuries, which had been suffered by the deceased Mr. Akhil Kumar Terathwal, due to the said accident which was caused on the head and body, he met with the sad demise.

10. The claim petition was contested by the insurance company i.e. the ICICI Lombard General Insurance Company, by filing its written statement being Paper Number 15B, apart from denying the pleadings, which has been raised in the claim petition, they have contended, that it is absolutely a wrong fact, which has been pleaded, that the motorcycle was being ridden by Amit Terathwal, as alleged, and further they denied the fact that it was because due to the rash and negligent driving of the rider of the vehicle the accident has chanced and rather it was the deceased Mr. Akhil Kumar Terathwal, himself and therefore the claimants cannot take advantage of the wrong of the deceased himself.

11. In the additional plea which was taken by the insurance company, it was alleged by the Insurance Company that the deceased himself, who was not holding a valid licence, at the time of the alleged accident, hence the answering insurance company submitted, that they would not be liable to pay any compensation to the pillion rider also, as stated in the claim petition, because the vehicle itself since was not being driven under the terms of a valid document i.e. a valid driving licence, they denied their liability to pay the compensation. In fact, it was submitted, that the claim petition suffered from the defect, because they have taken a plea that the claim petition suffered from the apparent defect of the Motor Vehicles Act, 1988, as it has been filed collusively, between the claimants and opposite party Nos. 1 and 2, therefore, the Insurance Company/respondent No. 3, reserved their defence to be raised under Section 170 of the Motor Vehicles Act, while contesting the claim petition.

12. The claimants submitted that when they got the knowledge of the accident having been chanced on 20th April 2007, that the pillion rider i.e. the deceased Mr. Akhil Kumar Terathwal, has suffered gracious injuries, he was immediately rushed to the CMI Hospital for his treatment; but, it was during the course of the treatment, that he met with the sad demise on 21st April 2007, and apart from claiming a compensation of Rs. 10.00 lakh, they have also claimed for a compensation towards the expenditures of treatment, which they had incurred prior to the death of Mr. Akhil Kumar Terathwal.

13. The opposite party Nos. 1 and 2, i.e. the driver /rider and the owner of the motorcycle, had filed their written statement, being paper number 6(b) and denied the major part of the pleadings which were raised in the claim petition; but, however, they only admitted the fact that the accident did chanced, and at the time when the deceased was sitting as a pillion rider on the offending vehicle in question and had met with an accident due to the story as narrated in the claim petition, due to which the rider of the vehicle lost his control over the motorcycle resulting into the accident.

14. During the course of the proceedings and particularly, after the amendment which was carried by the claimants, the insurance company filed an additional written statement i.e. paper number 39(b), in which they have denied the extent and intention of amendment, which is the amended pleading, contending thereof that the claim petition would not be tenable under Section 166 of the Motor Vehicles Act, as amended by the claimants and hence due to the amendment, which has been carried, in fact, the very cause of action of institution of the claim petition itself has lost its significance and the comparative determination which could have been made under Section 163A of the Motor Vehicles Act, cannot be made applicable. They further submitted, that the amendment, which was permitted to be carried by the learned Motor Accidents Claims Tribunal, was without providing any effective opportunity of hearing or an opportunity to raise an objection to the pleadings raised in the written statement and hence they denied the claim to be determined under Section 166 of the Motor Vehicles Act.

15. On exchange of pleadings, the learned Motor Accident Claims Tribunal on 10.07.2008, had framed the following issues:-

1- 24-4-2007 9 -07, 1082 21-4-2007 ?

2- ? 3 ?

3- , ?

16. The plaintiffs, in support of their contention to substantiate their pleadings in relation to Section 166 of the Motor Vehicles Act, had placed on record the list of documents through paper number 6(ga), whereby six documents were placed on record i.e. First Information Report; the post-mortem report; the death certificate; the registration documents of vehicle; the insurance cover note and the driving licence of the deceased. Apart from it, the plaintiffs, by virtue of paper list 19 (ga), had filed additional four documents on record i.e. family register in original; the insurance policy; the medical expenditure bills and the salary certificate of the deceased, which was being lastly drawn by him on

the date of the accident. Apart from it, the claimants had appeared in the witness box and recorded their statements as PW1 and PW2 and had also adduced the oral evidence of Mr. Devender Singh Chaudhary as PW3. The opposite party No. 3, i.e. the insurance company had adduced the documentary evidences through paper list number 42(ga) wherein the insurance policy was placed on record. But, however, as per the Lower Court Records and findings recorded, they have not adduced any oral evidence as such in support of their case and documentary evidence.

17. The learned Motor Accident Claims Tribunal proceeded with the matter and while deciding issue number 1, with regards to as to whether the cause of death of the deceased was as a consequence of the injuries suffered by him due to the accident dated 20th April 2007 or not? The learned Motor Accidents Claims Tribunal, after appreciating the oral statement, as well as the documentary evidences, which were on record, had observed that in view of the evidences, which had been led by the claimants, the fact of income accruing to the deceased, as well as, the dependency was a fact which stood established beyond any doubt, and also the fact that looking to the surrounding circumstances of the documents on record, the learned Motor Accidents Claims Tribunal decided issue number 1 in favour of the claimants.

18. On issue No. 2, which was a controversy raised by the insurance company in their written statement, about the validity of the driving licence of the rider of the vehicle, that is opposite party number 1 to the claim petition, it had been observed that opposite party No. 1, had placed on record the driving licence of Mr. Amit Kumar Terathwal, which was numbered as paper Number 12(ga), which was issued in his favour on 23rd February 2006, establishing the fact that DL Number 94747/9/2006, was validly issued and was surviving as per law on the date of the accident and consequently the Tribunal had observed that it was validly registered and was being driven under a valid licence and owing to the aforesaid fact, when the finding of the valid insurance and the vehicle, having being driven under a valid registration, the learned the Motor Accidents Claims Tribunal had rightly observed that since the insurance cover was valid from 05.05.2006 to 04.05.2007 and since it was valid on 20.04.2007, when the accident did chanced, the liability of payment of compensation, would fall upon the insurance company.

19. In the present Appeal from Order, apart from the above facts, the basic bone of contention, which has been agitated by the claimants would be confined to the findings, which has been recorded on Issue No. 3, from the perspective of a comparative scrutiny of Section 163A and 166 of the Motor Vehicles Act. The learned Motor Accident Claims Tribunal has observed, that when principally, the claim petition was filed under Section 163A of the Motor Vehicles Act and it was later on voluntarily amended by the claimants to be brought under Section 166 of the Motor Vehicles Act, in fact, the provisions of Section 166 of the Act, would not be made applicable because in that eventuality, the factum of negligence of driving was required to be proved and the rider of the vehicle Mr. Amit Terathwal, had not proved to the contrary, that he was in any manner negligent in driving the Motor cycle on the date of the accident because the accident had chanced under a peculiar circumstances, due to running of a cow, having come on the road due to which the rider lost his control over motorcycle, hence the element of negligence could not be proved as it was required under Section 166 of the Motor Vehicles Act.

20. But, still the claimant persisted in their argument, that since the insurance documents which were placed on record, it was an insurance cover under "the package policy", in that eventuality, the "package policy", itself would cover the fact and circumstances under which the accident had chanced and the claim petition would still fall to be under Section 166 of the Motor Vehicles Act. But, during the course of the proceedings of deciding issue No. 3, the learned Motor Accidents Claims Tribunal observed, that in view of the contention of the learned counsel for the Insurance Company, no claim under Section 166 would be tenable and if at all any amount was payable to it, it could have been under Section 163A only.

21. The learned Motor Accidents Claims Tribunal, has assigned adjudicatory logic, that under the Motor Vehicles Act, that wherever the claim petition has to be filed, which is a beneficial legislation, to defend the deceased person and since the death of the deceased, who was working in the Indian Armed Forces was of 24 years of age, the claim would be covered by the principles of 'no fault liability', and accordingly, by bringing the claim petition within an ambit of Section 163A, the learned Motor Accidents Claims Tribunal had arrived at a conclusion that the annual income of the deceased has to be treated as to be Rs. 40,000/- per annum, based on which, the compensation could be made determinable by applying the standardised formula of Schedule 2 of the Act.

22. Admittedly, and as per the findings which had been recorded too, it was that the deceased was unmarried and in view of the principles laid down in Sarla Verma's judgment, as reported in 2009 (6) SCC, 121, Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and Another. It has laid down that where the deceased was unmarried, a deduction of 50% of wages, has to be made and the dependency would only be confined to be determined to be 50% i.e. in the instant case, in that eventuality, it would be Rs. 2,000/- per annum. But, however, the learned Motor Accidents Claims Tribunal, has erred at law in proceeding to apply the multiplier of '11', based upon the age of the claimants i.e. parents of the deceased and hence the claim awarded by applying the multiplier '11' would be illegal, because if the learned Motor Accidents Claims Tribunal on its own logic had applied the principles enshrined under Section 163A, in that eventuality, the multiplier, which ought to be applied has had to be of '17', as per 2nd Schedule relating to the fatal accidents. Thus the application of multiplier of '11', would be illegal.

23. The learned counsel for the appellant had supported his argument from the principles, as it has been laid down by the Hon'ble Apex Court in the judgment reported in 2012 (13) SCC 792, Oriental Insurance Company Ltd. Vs. Surendra Nath Loomba and others, and particularly, he has made reference to para 2 of the said judgment. In fact, if para 2, is taken into consideration, it was a case where the offending vehicle has dashed against a tree due to the negligent driving of the driver of the vehicle and in the accident, the windscreen of the car was smashed into pieces due to the impact of accident, which entered into the eyes of the claimant, who was working as a Senior Manager in Punjab National Bank in the said case.

24. If the ratio laid down therein, in the light of the provisions contained under Section 147, it had laid down that an act or policy, which covers the third party liability and neither a pillion rider nor a co-passenger would cover the pillion rider or the co-passenger and the liability would be of the insurer, only as it has been observed in para 14 of the said judgment. Para 2 and 14 are extracted

hereunder:-

"2. The facts which are requisite to be stated are that on 9.10.1998 about 4.30 a.m. claimant, Surendra Nath Loomba, was travelling in a Maruti Esteem Car bearing Registration No. DL 8C-5096 belonging to the respondent No. 3, Savita Matta, and driven by the respondent No. 2, Raj Loomba, the son of the claimant. Near the President Body-guard House, Rajpur Road, the vehicle dashed against a tree and in the accident the windscreen (front) of car was smashed and its pieces got inserted into the eyes of the claimant as a consequence of which he lost his both eyes. As set forth, at the time of the accident the claimant was working as a Senior Manager in Punjab National Bank and his gross salary was Rs.18,949.86 per month and various perquisites were also attached to the service. Keeping in view his salary and other perquisites he filed an application under Section 166 of the Motor Vehicles Act, 1988 before the tribunal putting forth a claim of Rs.62,00,000/- with 18% interest as compensation.

14. We have quoted in extenso to reiterate the legal position. In the case at hand, the policy has not been brought on record. The learned counsel for the appellant-insurer would submit that it is an "Act Policy". The learned counsel for the respondent would seriously dispute and submit that extra premium might have been paid or it may be a "Comprehensive/Package Policy". When Certificate of Insurance is filed but the policy is not brought on record it only conveys that the vehicle is insured. The nature of policy cannot be discerned from the same. Thus, we are disposed to think that it would be appropriate to remit the matter to the tribunal to enable the insurer to produce the policy and grant liberty to the parties to file additional documents and also lead further evidence as advised, and we order accordingly."

25. If the impugned award is read in the context of the principles laid down in para 14 of the aforesaid judgment of Surendra Nath Loomba (Supra), it was rather the onus, which was required to be proved and discharged by the person who was trying to claim the benefit by interpreting the insurance policy, as to how it would relatively affect the grant of person once it is an "Act Policy" or a "Comprehensive/Package Policy". In fact, if the award is taken into consideration, no efforts of any nature, whatsoever, was ever made by the claimants to substantiate their arguments from the said perspective particularly, when as per the documents itself which has been placed on record, the insurance policy, and when itself was made as part of an evidence before the Court below by the Insurance Company, placing the same on record by way of paper No. 42(ga). But, in the absence of any efforts being made to determine the policy as to be an 'Act Policy', or a 'Comprehensive Policy/Package Policy', the benefit of the judgment of Surendra Nath Loomba (Supra), will not be attracted to be made applicable, because the precondition for extension of benefit of a comprehensive/packaged policy, could only be, when the fact of a correlated payment of premium is established by evidence which is led in the proceedings before the learned Motor Accidents Claims Tribunal.

26. The learned counsel for the appellant has made reference to yet another judgment, as reported in 2012 (11) SCC 738, Amrit Bhanu Shali & Others Vs. National Insurance Co. Ltd. and others, where in a proceeding under Section 166 of the Motor Vehicles Act, the parameters of deduction for the personal expenses on oneself and the dependency of the parents of the deceased, the deduction of 50 percent was made applicable, and the multiplier of '17' was applied based on the age of deceased as per schedule to the Act, rather than on the age of the claimants.

27. The learned counsel for the appellant had made reference to para 9 of the said judgment, wherein in the said case, the deceased was 29 years of age and was married by that time. But, still based on the principles of Sarla Verma's judgment (supra), the deduction of 50 percent was made applicable and the multiplier of '17', was applied. The relevant para 9 of the said judgment, is extracted hereunder:-

"9. While dealing with issue No. 2, the Tribunal adverted to the statement made by the appellant No.1 in his cross examination and held that the appellant No.3 Mamta Bhanu Shali cannot be treated as dependant upon the deceased because she was aged about 29 years and was married by that time. The rest of the appellant Nos. 1 and 2, the parents, were accepted as dependents. The Tribunal taking into consideration the fact that the deceased was unmarried and 26 years old young man at the time of accident and his salary was Rs.99,000/- per annum, deducted 50% of the income and applying the multiplier of 17 as per the decision of this Court in "Sarala Verma v. Delhi Transport Corporation" (2009) 6 SCC 121 held that the appellants are entitled to get compensation of Rs.8,66,000/-. Rest of the issues were decided in favour of the appellants."

28. The application of the multiplier of '17', apart from the fact, that it is supported by the principles of the ratio of Sarla Verma's judgment, it would also be made applicable as per Schedule 2 to the Motor Vehicles Act, which was made applicable on the date of the accident where a multiplier of '17', is contemplated to be paid to the deceased, who is falling within the age slab provided therein which includes the deceased of the present case also. Hence, this Court is of the view that the application of multiplier of '11', has had to be correspondingly increased to multiplier of '17', and accordingly, the dependency of Rs. 20,000/- per month, which has been assessed, has had to be increased to multiplier of '17'. Thus the impugned award would stand modified to that extent that the determination of compensation has had to be made after applying the multiplier of '17', and accordingly, the compensation ought to be enhanced proportionately.

29. The learned counsel for the appellant had made reference to yet another judgment, which, in fact, was dealing with the principles in the context of Section 166 of the Motor Vehicles Act, where the determined compensation, therein is not on a statutorily formula, which could be adopted as contemplated under Schedule 2 of the Act, which is only attracted in the claim petition which has been preferred under Section 163A of the Motor Vehicles Act and hence the determination of compensation always depends upon the evidence, which is available on record or led by parties, therefore the formula as suggested would normally be not applied in a claim petition which has been filed under Section 166 of the Motor Vehicles Act, thus on an overall scrutiny of the case as projected

by the claimants, in fact, the awarded amount has had to be assessed on the basis of the annual dependency of Rs. 2,000/- per month for the claimants/parents of the deceased and a multiplier of '17, has to be applied based on the principles of Sharla Verma's judgment (Supra), as well as, as per Schedule 2 of the Motor Vehicles Act.

30. Accordingly, the impugned award stands partly modified to the extent of applicability of multiplier only which is enhanced to be made awarded from '11', to '17'. The learned Motor Accidents Claims Tribunal is directed to amend and modify the award and determine the adequacy of compensation, after applying the multiplier of '17'.

31. Thus, the Appeal from Order partly succeeds to that extent only.

(Sharad Kumar Sharma, J.) 25.05.2022 Mahinder/