

(2016) 04 KAR CK 0142
In the Karnataka High Court
Case No : MFA No. 30898 of 2012 (MV)

Branch Manager, IFFCO-Tokio General Insurance Co. Ltd.,
Gulbarga

APPELLANT

Vs

Pundalik and others

RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2016) AAC 1467 : (2016) 5 ALLMR 25

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Sri Sudarshan M., Advocate, for the Appellant; Sri S.V. Biradar, Advocate, S.R. Nemagouda, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Mrs. S. Sujatha, J.— Heard the learned counsel for the parties.

2. This appeal is by the insurer challenging the judgment and award passed by the Motor Accident Claims Tribunal, Bijapur in MVC No. 2079/2010.

3. The learned counsel assailing the judgment and award of the Tribunal would contend that the Tribunal has fastened the liability on the appellant insurer ignoring the fact that the accident occurred due to the rash and negligent driving of the deceased. In view of the petition being filed under Section 163-A of the Motor Vehicles Act (the "Act" for short) no liability can be fastened on the insurer to indemnify the owner when the accident was caused due to the rash and negligent driving of the driver himself. Learned counsel challenging the liability would contend that Section 163-A of the Act is based on pre-determined structured formula, no compensation can be awarded more than the prescribed under Schedule-II to the Act. The Tribunal awarded the compensation exorbitantly contrary to the amount fixed under Schedule-II to the Act.

4. On the other hand, learned counsel appearing for the claimants would contend

that the claimants have claimed the compensation under Section 163-A of the Act, in the cases involving two vehicles more particularly, when the claim is based on no fault liability the owner/insurer of the opposite vehicle is liable to satisfy the award indemnifying the owner of the said vehicle. It is further contended that the quantum of compensation awarded by the Tribunal is just and proper and does not call for any interference by this Court.

5. Having heard the learned counsel for the parties and perused the material on record, it is clear that the claim petition is filed by the claimants under Section 163-A of the Act, which prescribes the structured formula for determining the quantum of compensation. However, it is trite law that where the accident involves two vehicles one accusing other of the negligence, it may be open to both to maintain the claim on no fault basis under Section 163-A of the Act i.e. because such a claim may be permissible no matter the driver or the owner of the other vehicle involved in the accident may dispute his negligence in the matter (Vide Appaji v. M. Krishna, reported in (2004 AIR Kant HCR 945) this proposition of law enunciated by this Court in Appaji's case (supra) has been followed by the Division Bench of this Court in the case of National Insurance Company Limited v. Honnappa and others, reported in ILR 2009 Kar 959 : (AIR 2008 Kar 85).

6. Thus, it is clear that when two vehicles are involved in the accident, it is open to both to maintain the claim under Section 163-A of the Act, on no fault basis. Applying the said principles of law, the arguments advanced by the learned counsel appearing for the appellant on the issue of liability deserves to be negated and accordingly rejected.

7. As regards the quantum of compensation awarded, it is significant to note that the Tribunal has awarded the compensation towards the loss of expectation of life @ Rs. 20,000/-, Rs. 10,000/- towards the loss of love and affection and Rs. 5,000/- towards the funeral expenses and medical expenses. Schedule-II of the Act makes it amply clear that compensation has to be awarded as per the structured formula. If the compensation awarded by the Tribunal is examined in the light of the Schedule-II, the same is not in conformity with the Schedule and thus requires modification as under :

Towards funeral expenses

Rs. 2,000/-

Towards loss of estate

Loss of dependency (confirmed as awarded by the Tribunal)

Rs. 1,98,000/-

Total

Rs. 2,02,500/-

Rounded off to Rs. 2,03,000/-

8. Thus, the compensation is reduced to Rs. 2,03,000/- as against Rs. 2,33,000/- awarded by the Tribunal.

9. In the result, the appeal is allowed in part to the extent indicated above.

10. The amount in deposit, if any, shall be transmitted to the Tribunal for disbursement.

11. It is needless to say that the appellant insurer shall satisfy the award with the proportionate interest awarded therein.