
(2016) 04 KAR CK 0141
In the Karnataka High Court
Case No : MFA No. 31270 of 2013(MV)

Branch Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Maruti and another

RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 128, 163A

Citation : (2016) AAC 1448 : (2016) 5 ALLMR 41

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

Bench : Single Bench

Advocate : Sri S.S. Aspalli, Advocate, for the Appellant; Sri Sanganagouda V. Biradar, Advocate, Served but unrepresented, for the Respondent

Final Decision : Dismissed

Judgement

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

2. These appeals are filed by the insurer challenging the Judgment and Award passed by the Motor Accidents Claims Tribunal No. VII Bapur, in M.V.C. Nos. 66, 67 and 68 of 2012. Since, common Judgment is passed by The Tribunal, these matters are clubbed, heard together and disposed of by this common Judgment.

3. The facts in brief are that the claimants are the rider and pillion riders of the motor cycle bearing Regn. No. KA-28-W-8398 and the said motor cycle met with an accident with a truck bearing Regn. No. KA-29-578 due to which the claimants sustained injuries. Claim petitions were Filed by the injured claiming the compensation u/Sec. 163-A of the Motor Vehicles Act, 1988 ("the Act" for short). The insurer of the said truck contested the matter and denied the liability to pay the compensation.

4. The Tribunal appreciating the evidence of the parties, allowed the claim petitions awarding compensation, fastening the liability on the appellant-insurer to satisfy the award.

5. Being aggrieved, the insurer is before this Court challenging the liability saddled on it to satisfy the award. The learned counsel appearing for the appellant firstly contends that the accident was due to the rash and negligent driving of the rider of the motor cycle. E.P-1, Ex.P-2 and Ex.P-5 i.e. FIR. Complaint and Charge-sheet respectively reveals that the alleged accident occurred only due to the rash and negligent driving of the rider of the motor cycle Sri. Maruti. The principles of Section 163-A of the Act is not to protect tort-feasor; The tort-feasor is not entitled to claim compensation u/Sec. 163-A of the Act; The victim and the tort-feasor cannot be one and the same. It is further contended that the driver of the truck has been examined as RW-1, who has clearly stated that the accident occurred due to the rash and negligent driving of the rider of the motor cycle. In such situation, the Tribunal allowing the claim petition filed u/Sec. 163-A of the Act, awarding the compensation and fastening the liability on the appellant is totally unsustainable. In support of his contention, the learned counsel placed reliance on the following Judgments :-

1) Oriental Insurance Company Limited, Bangalore v. Sharada G. and others, reported in 2009(1) Karnataka Accident Claims Journal 68 (Kar).

2) P.S. Somaiah and another v. Director, Bangalore Diary and others, reported in (AIR 2003 Kar 258).

3) National Insurance Co. Ltd. v. Sinitha and others, reported in (AIR 2012 SC 797).

6. Per contra, learned counsel appearing for the claimants would contend that the claim petitions were filed u/Sec. 163-A of the Act. Section 163-A of the Act is self contained Code based on "No Fault Liability". It is a specific provision enacted by Act No. 54/1994 w.e.f. 14-11-1994 to provide a social security based on pre-determined structured formula for payment of compensation to road accident victims.

7. It is contended that in the present case, two vehicles were involved in the accident. The claimants are the third parties as far as the offending vehicle truck is concerned. The claimants are entitled to claim compensation against the owner/insurer of the offending vehicle i.e. the other vehicle involved in the accident. The learned counsel would contend that no matter two pillion riders were accompanied with the rider of the motor cycle at the time of the accident, based on No Fault Liability, claim petition u/Sec. 163-A of the Act is maintainable. These aspects are considered by the Tribunal in right perspective and compensation is awarded fastening the liability on the appellant which cannot be found fault with.

8. Heard the rival submissions of the parties and perused the material on record.

9. The undisputed facts are that the claimant in MVC No. 67/2012 being the rider of the motor cycle along with claimants in MVC Nos. 66 & 68/2012 pillion riders, met with an accident colliding with the truck. The claim petitions were filed by

the claimants u/Sec. 163-A of the Act. The main contention advanced on behalf of the appellants is that the police records establish the rash and negligent driving of the rider of the motor cycle which was the cause for the alleged accident. Under such circumstances, no liability can be fastened on the owner/insurer of the truck involved in the accident. The issue involved in these cases regarding the involvement of two vehicles in the accident is no more res-integra. The Division Bench of this Court in the case of Appaji (since deceased) and another v. M. Krishan and another, reported in 2004 AIR Kant HCR 945, has held at Para Nos. 7 & 24 as under :-

"7. Mr. Bhat, all the same argued that even when the accident may have been caused by the rash and negligent act of the deceased in the use of the motor vehicle, the claimants would in law be entitled to the payment of compensation on no fault basis under Section 163-A of the Motor Vehicles Act. In support of that submission, Mr. Bhat has placed considerable reliance upon the "non-obstante clause" appearing in Section 163-A of the Motor Vehicles Act to argue that any provision in the Motor Vehicles Act or any other law for the time being in force dis-entitling the claimants from payment of compensation in cases where the death or injury was caused on account of the rash and negligent act of the deceased or the injured person himself would stand neutralised and rendered in effective. What was according to Mr. Bhat important was whether the accident resulting in the death of the deceased had arisen out of the use of the motor vehicle regardless whether the same was on account of the rash and negligent act of the deceased himself or of some other person or agency. Section 163-A of the Act had, argued the learned counsel, revolutionised the concept of award of compensation and introduced a social security measure by which any loss of life or limb would entail payment of compensation on a no fault basis even when such loss had arisen on account of the rash and negligent act of the person who dies or suffers injury. Reliance in support of that contention was placed by Mr. Bhat upon a Division Bench judgment of the High Court of Himachal Pradesh in Kokla Devi v. Chet Ram, 2002 ACJ 650 (HP) and a similar Bench decision of the High Court of Gujarat in New India Assurance Co. Ltd. v. Muna Maya Basant,(AIR 2001 Guj 304) (Gujarat)."

"24. We may before parting make it clear that the accident in the instant case had taken place while the deceased was himself riding a two-wheeler. No other vehicle was involved in the accident against whose driver or owner could the claimant make a claim for payment of compensation on no fault basis under Section 163-A of the Act. There was no possibility of even accusing another vehicle or its driver of negligence or rashness. In cases where the accident involves two vehicles one accusing the other of negligence, it may be open to both to maintain a claim on no fault basis under Section 163-A of the Act. That is because such a claim will be permissible no matter the driver or the owner of the other vehicle involved in the accident may dispute his negligence in the matter. The argument that while the claimant may not be required to prove fault, the respondent can prove that the accident had not occurred on account of any fault

on their part must fail for once the respondent is allowed to set up that defence, the claimant will have to necessarily lead evidence to rebut the same by proving that the accident had indeed occurred on account of the fault of the respondents. Any such requirement of proving the fault having been dispensed with by sub-section (2) to Section 163-A, permitting the respondents to set up the defence that the accident was without their fault would amount to negating the effect of the statutory dispensing with proof of fault."

10. The Division Bench of this Court in the case of National Insurance Company Limited v. Honnappa and others, reported in (AIR 2008 Kar 85) has held as under:-

"In view of the clarification contained in Appaji's case (2004 AIR Kant HCR 945) (supra) and the law declared by the Hon'ble Supreme Court in S. Kaushnuma Begum's case (AIR 2001 SC 485) (supra), and also the fact that, in the accident two motor vehicles were involved and the petitioner sustained injuries, and he is the victim, we hold that, his claim petition under Section 163-A of the Act is maintainable."

11. In view of the clarification and law laid down in Appaji's case (2004 AIR Kant HCR 945) (supra) and Honnappa's case (AIR 2008 Kar 85) (supra) and also the fact that the two motor vehicles were involved in the accident the claim petition filed under Section 163-A of the Act is maintainable.

12. Much emphasise is placed by the learned counsel appearing on behalf of the appellant on the Division Bench Judgment of this Court in the case of Sharada G and others (supra). The said judgment of Sharada's case (supra) was rendered in the context of a pedestrian coming in front of the scooter suddenly and in order to avoid an accident the rider of the scooter turned towards the extreme left side of the road and dashed against the road divider thereby fell down and sustained injuries and later died in the hospital. It was a case of only one motor vehicle, one scooter involved in the accident. The accident was caused due to the rash and negligent riding of the scooter. It is trite law that the victim and tort-feasor cannot be the one and the same.

13. In the judgment of the Hon'ble Apex Court in Sinitha's case (AIR 2012 SC 797) (supra), their Lordship's were considering a case of motor cycle involved in the accident, while giving way to a bus coming from opposite side, motor cycle hit a large laterite stone lying on tar road. On impact, the motor cycle over turned thereby rider and also pillion rider suffered injuries. In that context, the Hon'ble Apex Court has held that "in a claim raised u/Sec. 163-A of the Act, the claimants neither to plead nor establish the negligence not (as also "wrongful act" and "default") can be established by the owner or the insurance company (as the case may be) to defeat a claim under Section 163-A of the Act. It was, therefore, imperative for the petitioner insurance company to have pleaded negligence and to have established the same through cogent evidence. This procedure would have afforded an opportunity to the claimants to repudiate the

same."

14. In the instant case, the claimants are not claiming compensation against the owner and insurer of the motor cycle. The claimants being third parties as far as the truck is concerned are claiming compensation against the owner/insurer of the truck. Hence, the Judgment relied on by the learned counsel for the insurer are not applicable to the facts of the present case. In view of the Honnappa's case (AIR 2008 Kar 85) (supra) and Appaji's case (2004 AIR Kant HCR 945) (supra), whereby it has been made clear that, in the case where the accident involves two vehicles, one accusing the other of the negligence, it may be open to them to maintain the claim on no fault basis u/Sec. 163-A of the Act, entertaining of the claim petitions by the Tribunal and fastening the liability on the insurer is justifiable.

15. Nextly, it is contended by the learned counsel for the appellant that RW-1, the driver of the truck was examined to prove that the alleged accident occurred due to the rash and negligent riding of the rider of the motor cycle. RW-1 is the driver of the truck. The evidence of RW-1 is self interested testimony to shield off any consequences of complaints or allegations to be made against him in causing the accident. Any ipse dixit statements of the RW-1 would not absolve the liability of the owner/insurer of the truck on No Fault Liability basis u/Sec. 163-A of the Act.

16. It is imperative from the records that two pillion riders i.e. the claimant in MVC Nos. 66 and 68 of 2012 were travelling on motor cycle along with the rider i.e. claimant in MVC No. 67/2012. Though there is contravention of Section 128 of the Act, the compensation u/Sec. 163-A of the Act cannot be exonerated in contravention of the provisions of the Act. It is for the authorities to take action against the claimants for contravention of the provisions of the Act.

17. The claimants are to be treated as third parties as far as the offending vehicle i.e. a truck is concerned. These material aspects are properly considered by the Tribunal and Tribunal foisting the liability on the appellant cannot be found fault with. I do not see any perversity or irregularity in the Judgment and Award passed by the Tribunal.

18. For the foregoing reasons, the appeals are dismissed as devoid of merits.

19. Amount in deposit, if any, shall be transmitted to the jurisdictional Tribunal for disbursement.