(2009) 08 JH CK 0011

In the Jharkhand High Court

Dr. Gauri Shankar Prasad Verma and Another — APPELLANT

Vs

The Presiding Officer, Motor Vehicle Accident Claims Tribunal and Others — RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 1, 10, 100, 101, 102

Citation : (2011) ACJ 297

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Prayer in this writ application is for quashing the order dated 30.7.2004 passed by the Presiding Officer, Motor Vehicle Accident Claims Tribunal, Ranchi in Comp. Case No. 77 of 1995, whereby the petitioners'' prayer made vide petition dated 6.7.2004 for conversion of their case filed u/s 163A of the M.V. Act into Section 166 of the Act, was rejected.

2. The claim case before the Tribunal was filed by the petitioners, claiming compensation for the death of their son Sanjay Verma on account of motor vehicle accident.

3. The respondent No. 2 is the Insurer of the vehicle involved in the accident, while the respondent No. 3 is the owner of the vehicle.

4. Though, the petitioners had claimed that the annual income of their deceased son was more than Rs. 2,37,000/-, yet claim for compensation for an amount of Rs. 27,20,000/- was filed u/s 163A of the Motor Vehicle Act.

5. The proceeding was allowed to progress and at the time when the proceeding was at the verge of conclusion after examination of the witnesses as well as arguments advanced on behalf of the parties, the petitioners filed a petition on 6.7.2004, praying for converting their application filed u/s 163A of the Motor Vehicle Act, into Section 166 of the Motor Vehicle Act.

6. The 3rd respondent being the owner of the offending vehicle did not appear to offer his contest. The 2nd respondent did appear and contested the petitioners'' claim, challenging the very maintainability of the case u/s 163A of the Motor Vehicle Act.

The 2nd respondent objected to the prayer of the petitioners on the ground that such conversion is not permissible under the law and also on the ground that such prayer for conversion has been filed at the very belated stage.

7. After hearing the parties, and accepting both the grounds of objection, as advanced by the 2nd respondent, the learned Tribunal rejected the prayer of the petitioners by its impugned order.

8. Learned Counsel for the petitioners would submit that though, the petitioners had filed their claim u/s 163A of the Motor Vehicles Act, as per their understanding of law, that a claimant can choose either of the provisions u/s 163A of the Motor Vehicles Act or u/s 166 of the Act to claim compensation, but by the recent judgment of the Supreme Court in the case of Deep, Pal Girishdhni Soni and Ors. v. United India Insurance Co. Ltd reported in 2004 AIR SCW 1864, the petitioners could understand that claim for compensation u/s 163A of the Act, can be made only in respect of such victims of the motor vehicle accident whose annual income is not more than Rs. 40,000/-. Since admittedly, the annual income of the deceased was more than 2,37,000/-, die petitioners had sought conversion of the case into a proceeding u/s 166 of the Motor Vehicle Act.

Learned Counsel submits further that even though, the scope and application of the provisions of Section 163A and 166 of the Motor Vehicles Act are distinct, yet, there is no prohibition for converting the application from Section 163A - 166 of the Act and discretion is certainly vested with the Tribunal to be exercised in the interest of justice. Learned Counsel submits further that while praying for conversion, the petitioners have also paid ad-valoram court fee on the claimed amount. Taking support of his arguments, learned Counsel for the petitioners would rely upon the following judgments of the High Courts.

1. New India Assurance Co. Ltd through its Senior Divisional Manager v. Smt. Ashabai and Ors. 2008 (3) TAC 564 (Bom.).

2. Ravindra and Anr. v. Subhash Chand and Ors. (2006 (2) TAC. 803 (P&H).

3. National Insurance Co. Ltd. v. V. Sujutha and Ors. 2005 (3) TAC 160 (A.P)

9. Countering the argument of the learned Counsel for the petitioners, learned Counsel representing the 2nd respondent would submit that as has been categorically explained by a catena of judgments including the judgment of the Supreme Court in the case Deep Pal Girishdhai Soni (Supra) the provisions u/s 163A of the Act is totally distinct and independent from the provisions of Section 166 of the Act and the claimants cannot pursue their remedy under both the provisions. Learned Counsel argues that even otherwise, the prayer for conversion has been made at a very belated stage and it cannot be allowed.

10. Section 163A of the Motor Vehicles Act, has been incorporated in the Statute Book by way of special provision as to the payment of compensation on structured formula basis.

11. In the case of The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., the Supreme Court while explaining the scope of Section 163A of the Motor Vehicle Act, had held tin it income of Rs. 40,000/- per annum operates only as a cap and a claimant can always notionally bring down the income of Rs. 40,000/-.

However, setting at rest the controversy, a larger Bench of the Supreme Court in the case of Deep Pal Girishdhai Soni (Supra), while disagreeing with the view taken in the Kodala Case (Supra), has held as follows:

In our opinion, the proceeding u/s 163A being a social security provision, providing for a distinct claim, only those whose annual income is up to Rs. 40,000/-, can take the benefit thereof. All other claims are required to be determined in terms of Chapter-XII of the Act.

In a claim petition u/s 166 of the Act, the claimant is required to plead and establish negligence on the part of the driver of the offending vehicle.

The provision of Section 163A of the Act creates an exception to the requirement of section 166 of the Act.

The benefits of Section 163A is relevant only to persons of the category whose annual income does not exceed Rs. 40,000/- and it provides a speedy and effective remedy to such class of persons.

12. From the facts of the present case, as it appears, the claimant had though declared the annual income of the deceased as more than Rs. 2,37,000/-, but had preferred to file the claim for compensation u/s 163A of the Motor Vehicles Act. Since after the declaration of the law in Deep Pal Girishdhai Soni (Supra), the petitioners'' claim u/s 163A of the Act, cannot be maintainable, the petitioners had now been compelled to seek conversion of their application from Section 163A into Section 166 of the Motor Vehicles Act. It is in this context, the question as to whether the claimants can be allowed to convert their petition from Section 163A of the Act into Section 166 of the Act, has to be seen.

13. No doubt, provisions of Section 163A of the Act and Section 166 of the Act operate entirely in different, distinct and independent fields. The claimant has therefore to opt either of the two provisions.

It follows therefore that even if, the claim petition u/s 163A of the Act is dismissed on the ground of non-maintainability, the claimants can resort ''o the provisions of Section 166 of the Act. If this is acceptable in the law, then I see no reason as to why the Tribunal cannot exercise its power to allow conversion of claim petition u/s 163A into a claim petition u/s 166 of the Act. Such power is vested with the Tribunal by way of a discretionary power which may be exercised judiciously.

14. As observed in the instant case, the claimants had filed this case in the year 1995 on the basis of their understanding of law relating to the provisions of Section 163A of the Act and upon such legal advice received by them. The conduct of the claimants in opting for invoking the provisions of Section 163A of the Act, is apparently bonafide. By the exposition of law, as declared in the Deep Pal Girishdhai Soni (Supra), the petitioners'' claim u/s 163A of the Act cannot succeed basically on account of the fact that the annual income of the deceased was admittedly more than Rs. 2,37,000/- per annum. Under such circumstances, should the claimant suffer detriment because they had wrongly opted for invoking the provisions of Section 163A of the Act under improper legal advice?

15. The Tribunal has certainly the discretionary power-to allow conversion of the claim petition u/s 163A of the Act into a claim petition u/s 166 of the Act. After all, the above provisions of the Act are by way of beneficial legislation which provides compensation to the legal representatives of the victims of the motor vehicle accident. To use the oft repeated phrase, the procedure is always a hand maid of justice. The Tribunal does have the discretionary power which albeit has to be exercised judiciously.

16. No doubt, as the facts would indicate, the prayer for conversion has been made at a very belated stage, but this in itself, should not be taken as a ground to reject the prayer for conversion. When the circumstances indicate that the claimants have all along acted bonafidely, the mere conversion would certainly not affect the merit of the claim petition u/s 166 of the Act. The same line of defence which would have been available to the respondents/defendants, had the claim petition been filed separately u/s 166 of the Act, would certainly be available to them even after allowing the conversion.

17. In the light of the above discussion, this application is allowed with the following directions:

1. The impugned order dated 30.7.2004 passed by the Presiding Officer, Motor Vehicle Accident Claims Tribunal, Ranchi in Comp. Case No. 77 of 1995, is hereby quashed and set aside.

2. The Tribunal will allow the petitioners/claimants to carry out necessary amendments in their claim petition filed u/s 163A of the Motor Vehicle Act for converting it into Section 166 of the Motor Vehicle Act.

3. It would be open to the respondents in the claim petition to file written statement/supplementary written statement.

