
(2010) 05 P&H CK 0176
In the Punjab And Haryana At Chandigarh
Case No : First Appeal Order No. 2466 of 2010

ICICI Lombard General Insurance Company Limited	APPELLANT
Vs	
Jagdish	RESPONDENT

Date of Decision : 13-05-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2010) 3 CivCC 923 : (2010) 4 PLR 20 : (2010) 3 RCR(Civil) 672

Hon'ble Judges : Vinod K.Sharma, J

Judgement

Vinod K.Sharma, J.

1 This application under Section 5 of the Limitation Act, has been moved for condoning the delay of 119 days in filing the appeal.

2 For the reasons stated in the application, the CM. is allowed, the delay of 119 days in filing the appeal is condoned. F.A.O. No. 2466 of 2010 & CM. No. 12344CI of 2010

3 This appeal by the Insurance Company is directed against the award dated 24.8.2009, passed by the learned Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as "the Tribunal"), vide which the claim petition filed by the claimant under Section 163A of the Motor Vehicles Act, 1988 (herein after referred to as "the Act"), was allowed.

4 The respondent/claimant filed a claim petition under Section 163A of the Act by pleading therein, that on 5.3.2008, he was going on vehicle in question bearing registration No. HR614557, which was being driven by his son Sher Mohammad. All of a sudden, window of his vehicle opened, and while he was trying to close it, his hand was entangled therein. Three fingers of his right hand were crushed, and he also received injuries on the left foot. The fingers of the claimant were amputated. DDR qua the accident was also lodged. The claimant claimed, that a sum of Rs. 25,000/ (Rupees twenty five thousand only) was spent on his treatment including special diet, transportation and hospital charges. He was said

to be earning Rs. 3,300/ (Rupees three thousand and three hundred only) per month, and was 61 years of age.

5 The claim petition was contested by the Insurance Company, by challenging the jurisdiction of the learned Tribunal, to try and decide the petition. The plea of estoppel was also raised, and it was also pleaded, that the claimant/respondent being the owner of the vehicle was not entitled to any compensation. The petition, therefore, was said to be false and frivolous.

6 On the pleadings of the parties, the learned Tribunal framed the following issues :

"1. Whether petitioner received injuries during the use of Tata Specio as alleged ? OPP

2. If issue No. 1 is proved, whether claimant is entitled for compensation, if so, to what amount and from whom ? OPP

3. Whether no cause of action accrued to the petitioner to file this petition ? OPR

4. Whether the petition is vague, indefinite and is not filed in accordance with provisions of law and is not maintainable ? OPR

5. Whether this Tribunal has no jurisdiction to try this petition ? OPR

6. Whether petitioner is estopped from filing this petition by his act and conduct ? OPR

7. Whether driver of the tata specio was not having a valid driving licence and the vehicle was being driven in violation of the terms and conditions of the insurance policy at the time of accident ? OPR

8. Relief.

7 On appreciation of evidence, the learned Tribunal held, that the claimant received injuries during the use of Tata Specio bearing registration No. HR614557, and in view of the finding on issue No. 1, the claimant was held entitled to compensation to the tune of Rs. 40,000/ (Rupees forty thousand only) along with interest @ 7% per annum from the date of passing of award till realization.

8 Issues Nos. 3,6 & 7 were decided against the appellant being not pressed.

9 The driver of the offending vehicle was said to be holding a valid driving licence, and further, that the vehicle was not being driven in violation of the terms and conditions of the insurance policy, at the time of accident. The learned Tribunal also held, that it had the jurisdiction to entertain and try the petition.

10 Mr. Mrigank Sharma, learned counsel appearing on behalf of the appellant challenged the finding of the learned Tribunal, on issues Nos. 4 & 5 by pleading therein, that the claimant being the owner of the vehicle was not entitled to

maintain a petition, as there was no liability of the Insurance Company to pay compensation to the owner. In support of this contention the learned counsel for the appellant placed reliance on the judgment of the Hon,ble Supreme Court in the case of Oriental Insurance Co. Ltd. v. Rajni Devi & Ors. 2008(4) R.C.R.(Civil) 905 : 2008(6) R.A.J. 396 : 2009(1) AICJ 473 : (2008) 5 SCC 736, wherein the Hon"ble Supreme Court was pleased to lay down, that Section 163A of the Act would have no application in regard to an accident, wherein the owner of the vehicle himself involved, as the liability under Section 163A of the Act is on the owner of the vehicle, as a person cannot be both, a claimant as also a recipient.

11 There can be no dispute with regard to the proposition of law, as it was also held by the Hon,ble Supreme Court in the case of Ningamma & Anr. v. United India Insurance Co. Ltd., 2009(3) R.C.R.(Civil) 435 : 2009(4) R.A.J. 164 : 2009(2) AICJ 128 : JT 2009(8) SC 262, wherein the Hon"ble Supreme Court while considering the scope of Section 163A of the Act was pleased to held as under :

"13. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163A of MVA or under any other provisions) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative? Before dwelling further, it would be useful to discuss the relevant paras of Section 163A and 166 of the MVA applicable in the present case.

"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 of 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.

(2) In any claim for compensation under subsection (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."

166. Application for compensation (1) application for compensation arising out of an accident of the nature specified in subsection (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.

14. Section 163A of the MVA was inserted by Act 54 of 1994 by way of a social security scheme. It is needless to say that the said provision is a code by itself. The said provision has been inserted to provide for a new predetermined structured formula for payment of compensation to road accident victims on the basis of age/income of the deceased or the person suffering permanent disablement. In view of the language used in said section there could be no manner of doubt that the said provision has an overriding effect as it contains a non obstacle clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay compensation in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, as indicated in the Second Schedule, to the legal heirs or the Victim, as the case may be.

15. A number of decisions have been rendered by this Court in respect of the Section 163A of the MVA. In *Deepal Girishbhai Soni v. United India Insurance Co. Ltd.*, 2004(2) R.C.R.(Civil) 466 : [JT 2004(4) SC 83 : 2004(5) SCC 385], at page 402, one of us (Hon'ble Justice S. B. Sinha) has observed as follows: "42. Section 163A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs 40,000 having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature.

The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation onethird thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to

negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

15. 1. This Court further observed in *Oriental Insurance Co. Ltd. v. Meena Variyal*, 2007(2) R.A.J. 307: [JT 2007(5) SC 65 : (2007) 5 SCC 428]:

"18. In *New India Assurance Co. Ltd. v. Asha Rani* this Court had occasion to consider the scope of the expression "any person" occurring in Section 147 of the Act. This Court held: "... that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

In other words, this Court clearly held that the apparently wide words "any person " are qualified by the setting in which they occur and that "any person " is to be understood as a third party.

27. We think that the law laid down in *Minu B. Mehta v. Balkrishna Ramchandra Nayan* was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a 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 the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under subsection (I) of Section 163A of the Act, 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 concerned. Therefore, the victim of an accident or his dependents have an option either to proceed under Section 166 of the Act or under Section 163A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependents to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

28. In *Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd.*, two of the learned Judges who constituted the Bench in *Minu B. Mehta* held that when a car is driven by the owner's employee on owner's business, the normal rule was that it was for the claimant for compensation to prove negligence. When the Manager of the owner while driving the car on the business of the owner took in a passenger, it would be taken that he had the authority to do so, considering his position unless otherwise shown. If due to his negligent driving an accident

occurred and the passenger died, the owner would be liable for compensation. The Court noticed that the modern trend was to make the master liable for acts of his servant which may not fall within the expression "in the course of his employment" as formerly understood. With respect, we think that the extensions to the principle of liability have been rightly indicated in this decision ".

16. The aforesaid decisions make it quite clear that the Parliament by introducing Section 163A in the MVA provided for payment of compensation on structured formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under sub section (1) of Section 163A of the MVA. In order to prove a claim of this nature the claimant would 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 concerned.

17. However, in the facts of the present case, it was forcefully argued by the counsel appearing for the respondent that the claimants are not the "third party", and therefore, they are not entitled to claim any benefit under Section 163A of the MVA. In support of the said contention, the counsel relied on the decision of this Court in the case of *Oriental Insurance Co. Ltd. v. Rajni Devi*, [2008 (5) SCC 736; and *New India Assurance Co. Ltd. v. Sadanand Mukhi and Ors.*, 2009(1) R.A.J. 472;2009(1) AICJ 602: [2009(2) SCC 417].

18. In the case of *Oriental Insurance Company Ltd. v. Rajni Devi and Others*, (supra), wherein one of us, namely, Hon"ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof It was held in the said decision that Section 163A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer *res Integra*. The liability under section 163A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the

motorbike."

12 The reading of the judgment of the Hon"ble Supreme Court in the case of Ningamma & Anr. v. United India Insurance Co. Ltd. (supra) shows, that the Hon"ble Supreme Court also held, that under the Motor Vehicles Act the owner of the vehicle cannot claim compensation for himself but the Hon"ble Supreme Court further held, that the parties would be governed by the terms of their policy. It is not in dispute, that the policy taken out by the claimant was comprehensive policy covering all types of risks. Once in the policy the respondent/claimant was entitled to claim the compensation under the insurance policy then it cannot be said, that the learned Tribunal committed an error in granting the compensation for the injuries suffered under the comprehensive policy.

13 The contention of the learned for the appellant could only be accepted, if the insurance policy taken out was not covering the personal risk of the owner of the vehicle.

14 Consequently, finding no merit, this appeal is dismissed in limine. Appeal dismissed