

(2010) 01 CHH CK 0034
In the Chhattisgarh High Court
Case No : M.A. No. 325 of 2003

Jai Prakash Vaishnav

APPELLANT

Vs

Sanju Mathu and Another

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Bar Councils Act, 1926 — Section 2

Motor Vehicles Act, 1988 — Section 161, 161(1), 162, 163A

Citation : (2010) 3 MPJR 14

Hon'ble Judges : S.K. Agnihotri, J; R.L. Jhanwar, J

Bench : Full Bench

Judgement

Satish K. Agnihotri, J.—The present appeal arises out of award dated 29.01.2003 passed by the 2nd Additional Motor Accidents claims Tribunal, Durg (henceforth "the Tribunal") in Claim Case no 86/1999 whereby and where under the claim case of the appellant filed u/s 163A of the Motor Vehicles Act, 1988 (for short the "Act") was dismissed as not maintainable.

2. Brief facts, in nutshell, relevant for disposal of this case are that on 07.02.1999 at night 6:30 p.m. the appellant, who is pillion rider, was going towards Otebandh on Hero Honda Motor Cycle bearing registration No. MP.24 R.A. 5236 (for short "the motor cycle"), which was driven by one Viju Vargese. The said motor vehicle is owned by respondent No. 1 and insured by respondent No. 2. At Khapparwad bridge near Baloda road one unknown truck which was being driven rashly and negligently cashed the motor cycle, as a result of which, Viju Vargese died instantaneously and the appellant sustained grievous injuries on his right leg, right hand, body and head. Incident was reported to Police Station Pulgaon, District Durg and Crime No. 51/1999 was registered. The appellant, thereafter, filed an application u/s 161 of the Act and was granted a sum of Rs. 12,500/- on the basis of receiving grievous hurt resulting from hit and run.

3. After having receipt of the amount of compensation, the appellant again filed

an application u/s 163A of the Act claiming compensation from the owner of the motor cycle and the insurance company which has insured the motor cycle on account of sustaining permanent disability. The appellant claimed compensation of Rs. 12,93,000.00 stating inter alia that on account of injury sustained on his right leg, he has become permanently disabled and his right hand is not working properly.

4. On the other hand, the Respondents denied all the averments made against them and prayed that the claim of the appellants be declared as not maintainable.

5. Learned Judge of the Tribunal has, after affording opportunity to the counsel for both the parties and after appreciating the evidence available on record, dismissed the claim of the appellant.

6. Learned counsel for the appellant submits that the impugned order is bad in law since despite evidence led by the appellant relating to his permanent disability, the Tribunal did not award any compensation. On the other hand, learned counsel of respondent No. 2 submits that the matter be remitted back to the Tribunal for its fresh consideration.

7. We have heard learned counsel for the parties at length, perused the impugned order and record of the Court below.

8. Section 163A of the Act is an overriding provision in case of conflict. It is a non - obstante clause i.e., "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 authorized 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 of the victim, as the case may be." Section 163A of the 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 authorized 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 purpose of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923, (18 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.

9. In so far as the concept of the non - obstante clause is concerned, three Judge Bench of the Hon''ble Supreme Court in the matter of R.S. Raghunath Vs. State of Karnataka and another, defined the scope and applicability of the same in the following terms:

11. In Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, it was observed as under: (SCR pp. 21-22)

It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non- obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment.

It was further held that: (SCR p. 24)

Nor can we read the non - obstante clause as specifically repealing only the particular provisions which the learned Judges below have been at pains to pick out from the Bar Councils Act and the original Side Rules of the Calcutta and Bombay High Courts. If, as we have pointed out, the enacting part of Section 2 covers all advocates of the Supreme Court, the non - obstante clause can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment, although the draftsman appears to have had primarily in his mind a particular type of law as conflicting with the new Act. The enacting part of a statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it. *Posteriori leges priores contraries abrogant* (Broom's Legal Maxims, 10th edn., p. 347).

In *Dominion of India (now the Union of India) v. Shrinbai A. Irani*, AIR 1954 SC 506 it was observed as under: (AIR pp. 599-600, para 10)

While recognizing the force of this argument it is however necessary to observe that although ordinarily there should be a close approximation between the non-obstante clause and the operative part of the section, the non of stante clause need not necessarily and always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof a non - obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non - obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment.

(Emphasis supplied)

In Union of India (UOI) and Another Vs. G.M. Kokil and Others, , it was observed as under: (SCC p. 203, para 11)

It is well-known that a non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.

In Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, , the scope of non-obstante clause is explained in the following words (SCC p. 477-78 para 67)

A clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment.

On a conspectus of the above authorities it emerges that the non -obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non- obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non - obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.

10. Section 162 of the Act provides for refund in certain cases of compensation paid u/s 161 of the Act, which reads as under:

162 - Refund in certain cases of compensation paid u/s 161, - (1) The payment of compensation in respect of the death of, or grievous hurt to, any person u/s 161 shall be subject to the condition that if any compensation (hereafter in this subsection referred to as the other compensation) or other amount in lieu of or by way of satisfaction of claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law or otherwise so much of the other compensation or other amount aforesaid

as is equal to the compensation paid u/s 161 shall be refunded to the insurer.

(2) Before awarding compensation in respect of an accident involving the death of, or bodily injury to, any person arising out of the use of a motor vehicle or motor vehicles under any provision of this Act (other than section 161) or any other law, the Tribunal Court or other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid u/s 161 or an application for payment of compensation is pending under that section, and such Tribunal, Court or other authority shall -

(a) if compensation has already been paid u/s 161, direct the person liable to pay the compensation awarded by it to the insurer, so much thereof as is required to be refunded in accordance with the provisions of sub -section (1):

(b) if an application for payment of compensation is pending u/s 161 forward the particulars as to the compensation awarded by it to the insurer.

Explanation - For the purpose of this sub-section, an application for compensation u/s 161 shall be deemed to be pending-

(i) if such application has been rejected, till the date of the rejection of the application, and

(ii) in any other case, till the date of payment of compensation in pursuance of the application.

11. The learned Judge without examining the provisions of Section 161 and 162 of the Act dismissed the appeal as not maintainable under provisions of Section 163A of the Act. On bare perusal of provisions of Section 162 of the Act, it is clear that if the appellant claims compensation under other provisions of the Act and if the same is awarded, the amount granted under provision of Section 161 of the Act shall be refunded. The facts have not been examined from this angle. In view of the clear provisions of Section 161, 162 and 163A of the Act, the case requires to be remitted back for fresh consideration.

12. Without expressing any opinion on the merits of the case, the impugned award dated 29.01.2003 is quashed and set aside. The matter is remitted back to the Tribunal for considering afresh in accordance with law on its own merits.

13. There shall be no order as to costs.