
(2013) 03 MP CK 0141

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1345 of 2007

Kailash

APPELLANT

Vs

Rajendra

RESPONDENT

Date of Decision : 25-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 4
Motor Vehicles Act, 1988 — Section 163, 163A, 166

Citation : (2014) ACJ 1350 : (2013) 3 MPHT 503

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : Manish Jain, for the Appellant; R.J. Pandit, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mody, J.—Being aggrieved by the award dated 7-4-07 passed by I MACT, Indore in Claim Case No. 118/05 whereby claim petition filed by the appellant was dismissed, present appeal has been filed. Short facts of the case are that appellant filed a claim petition before the learned Tribunal u/s 163-A of the Motor Vehicles Act on 26-9-05, wherein it was alleged that on 4-2-05 when appellant was going on a motor bike bearing registration No. MP 09 JB 8146, he met with an accident with another motor bike which was being driven by an unknown person who dashed the motor bike of the appellant with the result appellant sustained grievous injuries. Appellant was brought to hospital. It was alleged that the offending motor bike on which the appellant was going was owned by respondent No. 1 and insured with respondent No. 2. It was prayed that claim petition be allowed and compensation be awarded. Claim petition was contested by respondent No. 2 on various grounds including on the ground that the respondent No. 2-Insurance Co. was never informed about the accident by the respondent No. 1 or by the appellant. It was prayed that claim petition be dismissed. After framing of issues and recording of evidence learned Tribunal dismissed the claim petition against which the present appeal has been filed.

2. Mr. Manish Jain, learned Counsel for the appellant argued at length and submits that learned Tribunal committed error in dismissing the claim petition filed by the appellant. It is submitted that claim petition was also dismissed on the ground of negligence on the part of the appellant which is illegal as claim petition was filed u/s 163-A of the Motor Vehicles Act, wherein appellant is not required to plead or establish the negligence of any person for claiming the compensation. It is submitted that findings recorded by learned Tribunal against the appellant is incorrect, illegal and deserves to be set aside. It is submitted that ample evidence is on record to demonstrate that in the motor accident appellant sustained grievous injuries. It is submitted that in the facts and circumstances of the case there was no justification on the part of learned Tribunal in dismissing the claim petition filed by the appellant. Learned Counsel placed reliance on a decision in the matter of Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, wherein the Hon"ble Apex Court has observed that in Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of. It was further observed by the Hon"ble Apex Court that "In our opinion, the proceeding u/s 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs. 40,000/- can take the benefit thereof. Reliance is also placed on a decision in the matter of Sitabai and Others Vs. K.B. Saxena and Another,), wherein a Division Bench of this Court held that even if assuming that accident occurred due to negligent driving of deceased, then too it is immaterial for disposal of claim petition filed u/s 163-A of the Act. It was further held that since death occurred in motor accident by vehicle which was owned by respondent No. 1 and insured with respondent No. 2, they are liable to pay compensation. Reliance is also placed on a decision in the matter of United India Insurance Co. Ltd. Vs. Sushila Bai and Others, , wherein a Division Bench of this Court has held that claimant while claiming compensation u/s 163-A is required to prove the factum of accident and the claimant is required to plead or establish negligence or default of owner of vehicle or vehicles or of any other person. Reliance is also placed on a decision in the matter of Gitesh and Others Vs. Badri Prasad and Another, , wherein a Division Bench of this Court has held that question of negligence has no relevance in proceedings u/s 163-A of the Motor Vehicles Act. Reliance is also placed on a decision in the matter of Rai Singh Vs. Anil and Another, , wherein a Division Bench of this Court has held that where two vehicles are involved in accident, parties of both the vehicles were in the form of joint tortfeasors and claimants can sue any one u/s 163-A of the Act. It is submitted that in the facts and circumstances appeal filed by the appellant be allowed and the impugned award be set aside and adequate compensation be

awarded.

3. Learned Counsel for respondent No. 2 supports the award and submits that appeal be dismissed. It is submitted that appellant himself has not come with clean hands otherwise also it was a case of hit and run, therefore, the claim petition itself was not maintainable and has rightly been dismissed by the learned Tribunal. Learned Counsel placed reliance on a decision of this Court in the matter of Ku. Varsha Vs. Manager, Iffco Tokio, in M.A. No. 2776/05, decided on 6-11-12. Reliance is also placed on a decision in the matter of New India Assurance Co. Ltd. Vs. Rajendra Prasad Bhatt and others, wherein this Court has held that in a case of hit and run, Motor Accidents Claims Tribunal has jurisdiction to entertain application for compensation. Reliance is also placed on a decision in the matter of Oriental Insurance Co. Ltd. Vs. Vidya Devi and Others, , wherein Himachal Pradesh High Court has held that in a hit and run case, no authorities empowered under the scheme framed by Central Government u/s 163 are entitled to enquire into and decide such claims. It is submitted that in the facts and circumstances of the case, appeal filed by the appellant has no merits and the same stands dismissed.

4. From perusal of the record, it is evident that there are more than one reasons on the basis of which it can be said that no illegality has been committed by the learned Tribunal in dismissing the claim petition which are as under:--

(i) The claim petition was filed u/s 163-A of the Motor Vehicles Act on 26-9-05, in which it is alleged that appellant was coming on the offending motor bike which was owned by respondent No. 1 and insured with respondent No. 2. Appellant has not stated that who was driving the said motor bike. Appellant is also silent about the pillion rider.

(ii) In the FIR also, it is nowhere stated that who was driving the motor bike.

(iii) In the MLC dated 4-2-05 prepared at Jai Nursing Home, Indore, the information given to the Doctor was to the effect that appellant was hit by motorcycle and sustained injury.

(iv) Appellant has submitted affidavit under Order XVIII Rule 4, CPC on 17-8-06. In this affidavit also he has not stated that appellant was driving the motor bike. He has also not stated that Rajendra, respondent No. 1 was the co-passenger.

(v) Appellant was cross-examined on 25-8-06 and, thereafter, on 10-11-06. Thereafter, subsequently, supplementary affidavit was filed, wherein for the first appellant has stated that the motor bike was being driven by him and respondent No. 1 was the pillion rider.

(vi) Respondent No. 1 has also filed the affidavit under Order XVIII Rule 4, CPC on 10-11-06, wherein he has stated that at the relevant time he was the pillion rider. This witness has also stated that the Investigator was appointed by the respondent No. 2 who has not recorded the statement of appellant and respondent No. 1 but only the signatures were obtained on blank papers.

(vii) Appellant in his cross-examination has admitted that the facts stated by the appellant were recorded by the surveyor and was signed by him. He has also stated that the document on which the appellant signed was not a blank paper.

(viii) Shri Anil Ladda has been examined by respondent No. 2, who is the Investigating Officer and who has stated that he has recorded the statement of appellant and respondent No. 1. The statement recorded by the investigator are Exh. D-2 and Exh. D-3. In the statement of Rajendra respondent No. 1 recorded by the investigator, it is stated that at the relevant time respondent No. 1 was driving the motor bike.

(ix) It is also surprising that in the said accident respondent No. 1 who was the co-passenger sustained no injury. Respondent No. 1 has not stated that how he saved and no injury caused to him.

From the claim petition right from lodging of the FIR till filing of supplementary affidavit an attempt was made to obtain the compensation without disclosing whether the appellant was driving or was a pillion rider. It is true that in a claim petition u/s 163-A of the Motor Vehicles Act, it is not necessary to plead and prove the negligence of the injured or deceased but at the same time it is expected from the claimant to come with clean hands and not to file a cleverly drafted petition. After going through the record, this Court finds that the findings recorded by the learned Tribunal are based on due appreciation of evidence which requires no interference. In view of this, appeal filed by the appellant has no merits and the same stands dismissed. No order as to costs.