

(2017) 01 KAR CK 0035
In the Karnataka High Court
Case No : M.F.A. No. 128 of 2011 (MV)

Manager, ICICI Lombard General Insurance Company Limited	APPELLANT
Vs	
Smt. Mangala	RESPONDENT

Date of Decision : 02-01-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, Section 173

Citation : (2017) 1 TAC 627

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Shri A.N. Krishna Swamy, Advocate, for the Appellant; Shri Suresh M. Latur and Shri Ravi L. Vaidya, Advocates, for the Respondents No. 1 and 2; Ravi L. Vaidya, Advocate, for the Respondents No. 4

Final Decision : Dismissed

Judgement

B. Manohar, J. - ICICI Lombard General Insurance Company filed this appeal challenging the legality and correctness of the judgment and award dated 21st June, 2010 made in MVC No. 6567/2008 passed by the Motor Accident Claims Tribunal, Bangalore (hereinafter referred to as "the Tribunal" for short) fastening the liability on them to compensate the claimants.

2. The respondent Nos. 1 to 3 herein filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 ("the Act" for brevity) contending that husband of the first claimant, son of the claimant No. 2 and father of claimant No. 3 deceased Mani @ Subramani was working as a coolie. On 9th May, 2008 at about 4.30 p.m. while the deceased was unloading the Refrigerators from the lorry bearing Registration No. KA-01/A-5470, the said Mani lost balance and fell down from the lorry. Due to which, he has sustained fatal injuries to the vital parts of the body. Immediately after the accident he was shifted to Victoria Hospital, wherein he was declared dead. In the claim petition, it was contended that at the time of death, the deceased was aged about 30 years and earning sum of Rs.6,000/- p.m., they have spent Rs.25,000/- towards funeral expenditure.

Wilson garden police registered a case in UDR Cr. No. 20/2008 under Section 174 of the Criminal Procedure Code. The family has lost the bread earner and sought for compensation of Rs.15,00,000/-.

3. In response to the notice issued by the Tribunal, though the owner of the offending vehicle was served with notice, he remained unrepresented. The Second respondent-Insurance Company filed written statement denying the entire averments made in the claim petition and also contended that while the deceased was unloading the refrigerators from the vehicle he slipped, fell down and sustained grievous injuries and subsequently succumbed to the same. Apart from that the claimant was a casual labour and his annual income was more than Rs.40,000/-. Hence, the claim petition filed under Section 163-A of the Act is not maintainable. Further the death of the deceased was not on account of use of the insured vehicle. However, having lost control, the deceased himself fell down and succumbed to injuries Hence, the Insurance Company is not liable to compensate the claimants. The Insurance Company disputed the age, avocation, monthly earning and also relationship of the claimants with the deceased. Due to his own fault, the deceased had fallen down and he was a tortfeasor. The claimants has to invoke the provisions of the Workmen's Compensation Act and the provisions of the Motor Vehicles Act are not applicable and sought for dismissal of the claim petition.

4. On the basis of pleadings of the parties, the Tribunal framed necessary issues.

5. In order to prove their case, the first claimant got examined herself as P.W. 1 and got marked the documents as Ex. P1 to Ex. P9. On behalf of the respondent-insurer, one of the officials of the Insurance Company was examined as R.W. 1 and got marked the documents as Ex. R1 to Ex. R4.

6. The Tribunal, after appreciating the oral and documentary evidence let in by the parties and taking into consideration copy of the complaint, charge-sheet and FIR and also the Ration Card produced by the claimants held that the deceased while performing the duty as a coolie had fallen down from the vehicle. The accident had arisen out of use of the motor vehicle. The claimants are the legal representatives of the deceased; they are dependants of the deceased and they are entitled for compensation. With regard to quantum of compensation is concerned, though the claimants claimed that the deceased was earning Rs.6,000/- p.m., no document has been produced to substantiate the same. In view of that, taking income as Rs.100/- per day and Rs.3,000/- p.m., deducting 1/3rd towards his personal expenditure, applying the multiplier of 17 having regard to his age as 30 years as on the date of accident, the tribunal has awarded a sum of Rs.4,08,000/- towards loss of dependency, Rs.5,000/- towards loss of consortium; Rs.2,500/- towards loss of estate; Rs.2,000/- towards funeral expenses. In all, the Tribunal has awarded compensation of Rs.4,17,500/- with interest at the rate 6% p.a. Since the insurance policy was in force as on the date of accident, the liability was fastened on the Insurance Company to compensate the claimants. The Insurance Company being aggrieved by the

judgment and award passed by the Tribunal has filed this appeal.

7. Sri. A.N. Krishnawamy, learned Counsel appearing for the appellants contended that the judgment and award passed by the Tribunal is contrary to law. In the claim petition, the claimants have sought for compensation assessing the income of the deceased at Rs.6,000/- p.m. In view of the Cap under Section 163-A of the Motor Vehicles Act, the claim petition itself is not maintainable. There is no nexus with the injuries sustained and death of the deceased. The motor vehicle was not involved in the accident. The lorry was in stationary condition as was not in use. Thus the accident has not arisen out of driving of the motor vehicle. Due to his own negligence, the deceased had fallen down from the vehicle during the course of unloading the refrigerators. Hence, the Insurance Company is not liable to compensate the claimants. In support of his contention he relied upon a judgment reported in 2004 A.C.J. 934 (Deepal Girishbhai Soni and others v. United India Insurance Company Limited) and sought for dismissal of the claim petition.

8. On the other hand Sri. Suresh M. Latur, learned Counsel appearing for Respondent Nos. 1 to 3 argued in support of the judgment and award passed by the Tribunal and contended that the accident and death of the deceased had occurred arising out of use of motor vehicle. While the deceased was unloading the refrigerators, he had fallen down and sustained grievous injuries to vital parts of the body. Under Section 163-A, the expression "arising out of" has been used which has a wider connotation. It indicates that casual relationship between the use of motor vehicle and the accident is not required to be direct and proximate and can be less immediate. If the accident occurs "arising out of" or "use of the motor vehicle" is sufficient. In the instant case, while unloading the refrigerators, the deceased had fallen down hence the Insurance Company cannot escape from their liability. He relied upon the judgments reported in 2001 A.C.J. 1528 (Guruanna Vadi and another v. General Manager, Karnataka State Road Transport Corporation and Another); 2006 A.C.J. 229 (Sharabai and another v. P. Shahebkhani and others); 2009 A.C.J. 696 (Oriental Insurance Company Limited v. Saraswathamma and others) and sought for dismissal of the appeal.

9. I have carefully considered the arguments addressed by the learned Counsel for the parties and perused the judgment and award, oral and documentary evidence adduced by the parties.

10. The records clearly disclose that while the deceased Mani was unloading the refrigerators from the lorry, he slipped, lost balance and succumbed to injuries. The claim petition has been filed under Section 163-A of the Act seeking compensation. In the claim petition, the claimants claimed that the deceased was earning Rs.6,000/- p.m. However, the Insurance Company defended the case contending that the death did not occur due to any accident, but the claimants themselves admitted that the deceased while unloading the refrigerators slipped, fell down and succumbed to injuries. Due to negligence on the part of deceased,

he died. Further, the annual income of the deceased, as claimed by the claimants is more than Rs.40,000/-, hence, the claimants cannot maintain the petition under Section 163-A of the Act. After trial, the Tribunal held that no document has been produced by the claimants to substantiate that he was earning Rs.6,000/- p.m., in the years 2008. Hence, the Tribunal has assessed the loss of income as Rs.3,000/- p.m., and Rs.36,000/- per annum.

11. Section 163-A of the Motor Vehicles Act provides for compensation the victims of road accident without the need to go into the long drawn procedure of proving negligence. The section commences with non-obstante clause, notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having force of law, the owner of the 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. The expression "accident arising out of use of motor vehicle" has been considered by the Hon'ble Supreme Court in various judgments. The Hon'ble Supreme Court held that the expression "use of motor vehicle" covers the accident which occurs both when the vehicle is motion and when it is stationary. The expression "caused by", the expression "arising out of" has a wide connotation. The Parliament has chosen to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 163-A, the casual relationship between the use of motor vehicle and accident resulting in death or permanent disablement is not required to be direct and proximate and can be less immediate. The construction of expression "arising out of use of motor vehicle" in Section 163-A of the Act, enlarges the field of protection made available to the victims of the accident and is in consonance with the beneficial object underlying the enactment. Section 163-A has been interpreted by the Full Bench of this Court in a judgment reported in 2001 A.C.J. 1528 referred to above. The Full Bench framed the following question :

(4) Whether a claim under Section 163A of the Act is tenable where the income of the victim was/is more than Rs.40,000/- per annum and where the actual medical expenses is Rs.15,000/-?

12. In paragraphs 32 and 33 of the judgment, the Full Bench of this Court held as under :

Question No. 4 :

32. The Legislature intended to extend the benefit of this provision to a chosen class of persons. The intention to limit it to a certain class is exemplified in the Schedule appended to the statute. The Schedule forms part of the statute and it often gives the details and forms for working out the policy underlying the statute. The division of a statute into section and Schedules is a mere matter of convenience and the Schedule, therefore, has to be treated as a substantive

enactment which, sometimes may even go beyond the scope of a section to which the Schedule is appended. The Second Schedule limits the operation of the section a limited class of persons whose income is Rs.40,000/- or less per annum. The prescription of the outer limit of Rs.40,000/- under the Schedule does not take away the right of the person to claim compensation under any other provision of the Act. The Legislature in its wisdom has thought it fit to provide the luxury of choice to persons whose income does not exceed Rs.40,000/- in order to obviate the need for such persons to involve themselves in a long drawn litigation, the cost and consequences of which may work to their disadvantage and ultimate failure of justice. Such a beneficial provision which is more in the nature of advancement of social justice, keeping in view a select class of citizens, cannot be construed by Courts as applicable to all class of citizen. But, in case the person with the higher income notionally brings down his income to Rs.40,000/- in order to present his claim under Section 163-A the same can be permitted.

33. It is one of the principles of statutory interpretation that what has not been provided for in a statute cannot be supplied by Court. To do so will amount to legislating which is not the function of the Court. That it would be more logical to enlarge the application of a provision to a class of citizens by itself would be no ground for the Courts to read something into a provision not intended by the Legislature as it would amount to usurpation of the legislative function under the disguise of interpretation.

13. Further, the Division Bench of this Court in judgment reported in 2006 A.C.J. 229 (supra) at paragraph 6 has clearly held as under :

6. Admittedly, the appellants-claimants made application only under Section 163-A made of the Act. The argument of the learned Counsel for the Insurance Company is that since in the said application it was claimed by the claimants that the deceased was earning yearly income of Rs.1,00,000/- and since that income is more than Rs.40,000/-, the application filed by them is not maintainable and that application ought to have been treated as the one filed under Section 166 of the Act and dealt with accordingly. This submission is not acceptable to us for more than one reason. The pleading of a party can never be placed on the pedestal of a law. Simply because the claimants have under a wrong perception or appreciation of the facts asserted a fact which they cannot prove, that circumstance itself without anything further has no legal efficacy to determine the jurisdiction of the Motor Accident Claims Tribunal. The jurisdiction of the Motor Accident Claims Tribunal is determined by the law and not by pleading of a party who invokes its jurisdiction. Be that as it may, it is not a finding of the Motor Accident Claims Tribunal that the yearly income of the deceased was more than Rs.40,000/-. On appreciation of oral and documentary evidence, the Tribunal has recorded a finding that the deceased was earning only Rs.2,400/- per month. That means that the deceased was earning Rs.28,800/- per annum. Therefore, we hold that the Tribunal had jurisdiction to entertain the application

filed by the appellants-claimants under Section 163-A of the Act and that in entertaining that application the Motor Accident Claims Tribunal has not committed any illegality as contended by the learned Standing Counsel for the Insurance Company.

14. Section 163-A which has a overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A of the Act contains non-obstante clause in terms whereof, the owner of the motor vehicle or authorised insurer is liable to pay in the case of death or permanent disablement "due to accident arising out of the use of motor vehicle," the compensation as indicated in the Second Schedule to the legal heirs or the victim, as the case may be. The expression "accident arising out of use of motor vehicle" has received a pragmatic interpretation from the Hon"ble Supreme Court in a decision reported in 1991 A.C.J. 777 (S.C.) in the case of Shivaji Dayanu Patil and others v. Vatschala Uttam More, there Lordships held that the expression "use of motor vehicle" covers accidents which occur both when the vehicle is in motion and when it is stationery.

15. In view of the law declared by the Full Bench as well as Division Bench of this Court interpreting Section 163-A of the Motor Vehicles Act held that even though the claimants claimed more compensation, the Tribunal has to consider the reasonable income and award just and fair compensation. Further, even though the vehicle is not in motion, accident is to be considered as arising out of use of motor vehicle. Hence, the Insurance Company cannot be exonerated from its liability. The Tribunal, after appreciating the oral and documentary evidence let in by the parties awarded just and fair compensation. The judgments relied upon by Sri. A.N. Krishnaswamy is not applicable to the facts of this case. In Deepal Girishbhai Soni case, the Hon"ble Supreme Court has dealt with the claim petitions filed both under Section 163-A as well as Section 166 of the Motor Vehicles Act, wherein it was held that the claimant cannot pursue his claim both under Sections 163-A and 166 of the Act. That is not the situation in the present case. I find no infirmity or irregularity in the judgment and award passed by the Tribunal. Accordingly, the appeal is dismissed.

The amount in deposit is directed to be transferred to the Motor Accident Claims Tribunal, Bangalore for disbursement.