
(2011) 09 CHH CK 0027
In the Chhattisgarh High Court
Case No : Misc. Appeal (C) No. 394 of 2011

Manoj Kumar Pandey

APPELLANT

Vs

Smt. Pushpa Devi and Others

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163(2), 163A, 166, 167

Citation : (2011) 2 CGBCLJ 151 : (2011) 5 MPHT 69

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : A.N. Bhakta, for the Appellant; Shantanu Kumar, Advocate for the Respondent No. 1 and Mr. R. Awasthi, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—Heard. The injured-claimant has filed this miscellaneous appeal against the award dated 7-3-2011 passed by the learned Motor Accident Claims Tribunal, Surguja, Ambikapur (for short "the Claims Tribunal") in Claim Case No. 126/03.

2. Facts of the case, in brief, are that on 24-7-2003 the appellant was returning to Ambikapur from Raipur by driving the vehicle bearing registration number CG 015-2610. When he reached near Dharsiva Highway, steering of the said vehicle got jammed due to which he lost control over the said vehicle and it collided with the truck bearing registration No. MP 23-B-3721, which was parked on the road side and was not visible. In the said accident, the appellant has suffered permanent disability and, therefore, he has filed a claim application before the Claims Tribunal seeking compensation and the same was dismissed by the Claims Tribunal, vide award dated 3-9-2004. Being aggrieved by the award dated 3-9-2004, the appellant has preferred an appeal before this Court bearing MA. No. 1055/04 and the same was partly allowed by this Court vide oral order dated 21-10-2010 and the matter has been remitted back to the Claims Tribunal with

certain observations and directions for deciding the claim application afresh. The Claims Tribunal vide impugned award has again dismissed the claim application of the appellant on the ground that the claim application u/s 163-A of the Act, 1988 is not maintainable and directed the appellant to approach the Commissioner under the Workmen's Compensation Act, 1923.

3. Learned Counsel for the appellant has submitted that the appellant should not have been denied legitimate compensation as Section 163-A of the Motor Vehicles Act, 1988 (for brevity "the Act, 1988") is a special provision where there is no necessity to plead or establish negligence or wrongful act or default and thus, the Claims Tribunal has committed an error in rejecting the claim of the claimants on the ground that the claimant failed to prove his case.

4. We have heard learned Counsel for the parties. We have also perused the records of the Claims Tribunal.

5. Before proceeding further, it is necessary to peruse Section 167 of the Act, 1988, which reads as under :--

167. Option regarding claims for compensation in certain cases.-- Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

6. In the instant case, the appellant-claimant has filed claim application before the Claims Tribunal u/s 163-A of the Act, 1988 stating therein that his annual income is Rs. 36,000/-. However, the Claims Tribunal has dismissed the claim application on the ground that the same is not maintainable and the claimant should approach the Commissioner under the Workmen's Compensation Act, 1923 for grant of compensation.

7. But, in view of the provisions made u/s 167, quoted above, we are of the opinion that the claim application filed by the appellant u/s 163-A of the Act, 1988 was maintainable and it could not have been dismissed by the Claims Tribunal as not maintainable with a direction to the appellant to approach the Commissioner under the Workmen's Compensation Act, 1923 for grant of compensation.

8. Further, the Claims Tribunal has committed a manifest error of law in holding that the injured claimant himself was negligent because in Section 163(2) of the Act, 1988 the Legislature has provided that "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". Further, in the matter of Deepal

Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, also the Hon"ble Supreme Court in Para 66 has held thus :--

66. We may notice that Section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, "under the provision of the Act", "provisions of this Act", "under any other provisions of this Act" or "any other law or otherwise". 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 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.

9. Thus, it is abundantly clear that Section 163-A covers the cases where even negligence is on the part of the victim. However, the Claims Tribunal could not make out difference between the provisions of Section 166 and Section 163-A of the Act, 1988 and, therefore, in a claim petition filed u/s 163-A of the Act, 1988 has considered negligence of the victim.

10. On the basis of above analysis, the instant appeal is allowed, impugned award is set aside and the matter is remitted back to the Claims Tribunal for taking decision afresh in light of the observations made in this order. The Claims Tribunal shall first decide as to whether there is any breach of policy condition or not and thereafter make the award. Needless to mention that the Claims Tribunal shall provide opportunity to the parties to adduce further evidence, if any, and amend the pleadings or to file documents or verify the documents already filed. The parties are directed to appear before the Claims Tribunal concerned on 12th October, 2011. The Claims Tribunal shall make an endeavour to decide the claim case expeditiously preferably within a period of three months from the date of appearance of the parties.

11. The Registry is directed to transmit record of the Claims Tribunal concerned without further delay. No order as to costs. Certified copy as per rules.