

(2008) 01 KAR CK 0052
In the Karnataka High Court
Case No : M.F.A. No's. 6346 and 7831 of 2004

National Insurance Co. Ltd.

APPELLANT

Vs

Honnappa Naik, Naveen, Devappa and K. Anand Shetty

 Honnappa Naik Vs Sri. Devappa, Sri. K. Anand Shetty
and National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 160, 163 A

Citation : (2008) ACJ 1459 : AIR 2008 Kar 85 : (2008) ILR (Kar) 959 : (2008) 5 KarLJ 697 : (2008) 4 RCR(Civil) 369

Hon'ble Judges : Chidananda Ullal, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : Arun Ponnappa, in M.F.A. No. 6346/2004 and P. Karunakar, in M.F.A. No. 7831/2004, for the Appellant; Bopanna and Giri for R. No. 1 in M.F.A. No. 6346/2004 and B.S.N. Bhat, for R. No. 2 in M.F.A. No. 7831/2004, for the Respondent

Judgement

1. These two appeals are listed today for hearing on admission after service of notice to the respondents in each of the appeals. Learned Counsel appearing on both the sides submit that the appeals be taken up for final disposal. With the consent of the learned Advocates appealing on both the sides, the appeals are heard for final disposal.

2. Brief facts of the case are:

Sri. Honnappa, the petitioner, while he was proceeding towards his residence in a scooter bearing registration No. MEG 1913 on 1-1-2000 at about 0.30 hours and when he had reached Bendoor-well circle, a motor cycle bearing registration No. MAW 1010 came from the opposite direction and dashed against the scooter of the petitioner, as a result, he was thrown out, he fell down and sustained injuries. After taking treatment, he filed a petition u/s 166 of the Motor Vehicles Act., 1988, (for short the Act) which later on was converted to one u/s 163A of

the Act claiming compensation from the owner and insurer of the motor cycle MAW 1010 i.e. the respondents. The insurer has contested the claim of the petitioner, including the age, occupation, income, the injuries, expenditure incurred, etc., apart from contending that the compensation amount claimed by the petitioner to be exorbitant and not based on any norms. Liability was denied contending that it is an Act Policy. Based on the pleadings, the Tribunal has framed issues and after enquiring into the matter, has passed the judgment and award dt. 20th May, 2004, awarding a total compensation of Rs. 3,54,000/-, together with interest thereon at 6% p.a. payable by the respondents. The petitioner being dissatisfied with the quantum of compensation awarded, has filed MFA No. 7381/2004. The Insurance Co. has questioned the judgment and award passed by the Tribunal by filing MFA No. 6346/2004. Since both the appeals arise out of the same judgment and award, they are together taken up for hearing and disposal. The parties shall be referred to with reference to their ranks in the claim petition before the Tribunal, for the sake of convenience.

3. We heard the learned Advocates appearing on both the sides and examined the judgment and award passed by the Tribunal.

4. Sri. P. Karunakar, learned Counsel appearing for the petitioner would contend that the award passed by the Tribunal is on a lower side and the petitioner is entitled for enhancement of compensation. Per contra, Sri. Arun Ponnappa, learned Counsel for the respondent-Insurance Co. would contend that the claim petition u/s 163A of the Act is not maintainable, in view of the fact that, the petitioner was the rider of scooter MEG 1913, involved in the accident and himself being the cause for the accident, cannot maintain the petition u/s 163A of the Act. Learned Counsel contended that the Tribunal having awarded Rs. 14,000/-, as loss of income for the period of treatment, thereby the annual income having exceeded Rs. 40,000/- p.a. was not justified in entertaining the petition u/s 163A of the Act and in passing the award on structured formula basis as per Schedule-II of the Act. Learned Counsel relied upon the decision rendered in the case of Appaji (since deceased) and Another Vs. M. Krishna and Another, to contend that the claim application cannot be maintained by the person who caused or met with the accident, due to his own negligence and sustained permanent disablement.

5. In the light of the arguments advanced by the learned Counsel, the points that arise for our consideration are:

(i) Whether the claim petition u/s 163A of the Act was maintainable?

(ii) Whether the petitioner, is entitled for awarding of any enhanced compensation?

6. In the case of Appaji (supra), the facts were that the deceased Arun Kumar was riding a scooter on 8-7-97, he met with an accident, resulting in his death. Parents of the deceased filed the claim petition. It was averred in the claim petition that, the deceased was engaged as a driver by respondent No. 1, the

owner of the scooter, involved in the accident and the accident had taken place when the deceased was driving, to avoid a cyclist, who had suddenly emerged on the road. In the claim petition it was specifically stated that, the claimants were exercising their right of filing a claim petition before the MACT, instead of one under the Workmen's Compensation Act, 1923 and that the claim was in terms of Section 163A of the Act on "no fault basis" only. The owner of the scooter had contended that, the accident in question had taken place on account of the rash and negligent driving of the scooter by the deceased himself. The Insurance Co. had denied the liability and upon enquiry, the Tribunal had held that the claimants were entitled to Rs. 50,000/- only towards compensation u/s 140 of the Act "on no fault basis". The claim for payment of the amount in terms of Section 163A of the Act was negatived which was challenged in the appeal. While examining the correctness of the findings of the Tribunal, this Court has held as follows:

That does not, however, mean that claimant can maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make the insurance company pay for the same. Inasmuch as Section 163A dispenses with proof of fault, it does so only where the claimant is not solely responsible for the accident. The correct approach appears to us to be to find out whether in the absence of Section 163A, a claim could on the facts pleaded be maintained by claimant, if the answer is "no" because the claimant was himself the tortfeasor, the provisions of Section 163A would not come to his rescue and make; such a claim maintainable. If the answer is "yes" the beneficial provisions u/s 163A would absolve the claimant of the obligation to prove that the accident had taken place on account of the fault of the driver or owner of the vehicle provided he is willing to accept the amount of compensation offered according to the structured formula prescribed in the schedule. That is the only way in which the anomaly arising out of a contrary interpretation can possibly be avoided.

It is clear from the facts of Appaji's case, that the deceased himself was riding the vehicle and while avoiding a cyclist, accident occurred, resulting in fatal injuries. There was no second motor vehicle involved in the accident. Taking the said facts into consideration and finding that the deceased was not a victim, it was held that, the claim petition filed u/s 163A for his own wrong, is not maintainable.

7. In the very same decision, the position has been clarified as follows:

24. We may before parting make it clear that the accident in the instant case had taken place while the deceased was himself riding a two-wheeler. No other vehicle was involved in the accident against whose driver or owner could the claimant make a claim for payment of compensation on no fault basis u/s 163A of the Act. There was no possibility of even accusing another vehicle or its driver of negligence or rashness. In cases where the accident involves two vehicles one

accusing the other of negligence, it may be open to both to maintain a claim on no fault basis u/s 163A of the Act. That is because such a claim will be permissible no matter the driver or the owner of the other vehicle involved in the accident may dispute his negligence in the matter. The argument that while the claimant may not be required to prove fault, the respondents can prove that the accident had not occurred on account of any fault on their part must fail for once the respondent is allowed to set up that defence, the claimant will have to necessarily lead evidence to rebut the same by proving that the accident had indeed occurred on account of the fault of the respondents. Any such requirement of proving the fault having been dispensed with by Sub-section (2) to Section 163A, permitting the respondents to set up the defence that the accident was without their fault would amount to negating the effect of the statutory provision dispensing with proof of fault.

(Underlining by us for emphasis.)

Thus, it has been made clear that, in cases where the accident involves two vehicles, one accusing the other of negligence, it may be open to both, to maintain the claim on "no fault basis" u/s 163A of the Act.

8. In the instant case, it is not in dispute that, scooter bearing No. MEG 1913 and motor cycle bearing registration No. MAW 1010, were involved. The accident as such, involving the said two vehicles, has not been disputed. The petitioner has sustained the injuries on account of the accident and is the victim. Jurisdictional Police had registered the case for rash and negligent driving against the rider of the motor cycle MAW 1010, which is evident, from Ex. P.1, the F.I.R. in Crime No. 1/2000 of Mangalore East Police Station, Ex. P. 3, the particulars furnished u/s 160 of the Act regarding the accident particulars, Ex. P.5 the charge sheet filed against the rider of the motor cycle. Thus, it is clear that the said two motor vehicles were involved in the accident and on account of the accident, the claimant sustained injuries. In such a situation, the claim petition u/s 163A of the Act is permissible, no matter, the driver or the owner of the vehicle involved in the accident, may dispute his negligence in the matter. In view of Sub-section (2) of Section 163A, the claimant need not plead or establish that the permanent disablement in respect of which the claim has been made, was due to wrongful act or negligence or default of the owner of the vehicle or vehicles concerned or of any other person.

9. In the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , while examining the issue concerning the maintainability of claim petition u/s 163A of the Act, in which case the facts were that, a claim was made on the basis of an accident involving a Jeep, which capsized while it was in motion, the cause of the capsize was attributed to the bursting of the front tyres of the jeep and in the process of capsizing, the vehicle hit against a pedestrian, who was crushed and subsequently succumbed to the injuries sustained in that accident and the claim for compensation was made by his L.Rs. On considering the matter, the Hon"ble Supreme Court has held as

follows:

20. "No Fault Liability" envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the Rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permits that compensation paid under "no fault liability" can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them.

(Underlining is by us for emphasis.)

In view of the clarification contained in Appaji's case (supra) and the law declared by the Hon'ble Supreme Court in S. Kaushanuma Begum case (supra), and also the fact that, in the accident, two motor vehicles were involved and the petitioner sustained injuries, and he is the victim, we hold that, his claim petition u/s 163A of the Act is maintainable.

10. The Tribunal, while awarding the loss caused on account of undergoing treatment and petitioner not being able to attend to work i.e. under the head "loss of income for actual period of total disablement" has awarded Rs. 14,000/-. But while quantifying the total loss of income on account of permanent partial disablement, the actual income of the petitioner has been taken as Rs. 40,000/- only. The petitioner was 35 years old at the time of accident On account, of partial permanent disability, he has lost his income at the rate of Rs. 20,000/- p.a. Having regard to the age of the petitioner, the multiplier applicable being "16", the total loss of income on account of partial permanent disablement suffered by the petitioner has been computed at Rs. 3,20,000/- by the Tribunal. There is excess award of Rs. 2,000/- under the head "loss of income during the treatment period of total disablement To the said extent, the contention put forth by the learned Counsel, Sri. Arun Ponnappa is justified.

11. The Tribunal by applying the structured formula for awarding compensation to the petitioner, has applied the correct multiplier, has allowed Rs. 5,000/- towards pain and suffering, Rs. 15,000/- towards medical expenses being the fixed sums. Thus, the Tribunal has not committed any error in entertaining the petition u/s 163A of the Act and in passing the award, on the structured formula basis and granting the damages as applicable in the case of injuries and disabilities.

12. The appeal filed by the petitioner is devoid of merit, as his entitlement has

been considered and awarded on structured formula basis in terms of Schedule-II of the Act.

13. In the result, MFA No. 6346/2004 filed by the Insurance Co. is allowed in part, the compensation awarded under the head "loss of income for actual period of total disablement" is reduced by Rs. 2,000/- and it is held that the appellant is entitled to total compensation of Rs. 3,52,000/-, together with interest thereon at 6% p.a. from the date of petition till the date of deposit by the respondents jointly and severally. In all other respects, the appeal filed by the Insurance Co. is held to be devoid of merit and should fail. Consequently, MFA No. 7831/2004 filed by the petitioner is devoid of merit, fails and is hereby dismissed, but in the circumstances, we direct the parties to bear their respective costs.

Office is directed to draw the modified award in terms hereof.