
(2003) 07 AP CK 0006
In the Andhra Pradesh High Court
Case No : A.A.O. No. 2027 of 1999

National Insurance Co. Ltd.	Vs	APPELLANT
J. Yellappa and Others		RESPONDENT

Date of Decision : 15-07-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2004) 2 ACC 699 : (2004) ACJ 180 : (2003) 5 ALT 247

Hon'ble Judges : Devinder Gupta, C.J.;C.V. Ramulu, J

Bench : Division Bench

Advocate : A. Veeraswamy, for the Appellant; K. Rathangapani Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, C.J.—The reference, as visualized by the learned single Judge, is on the question that when the claimants filed two claim applications, one u/s 163-A and another u/s 166 of the Motor Vehicles Act, 1988 ("the Act" for brevity), whether the first application has to be treated as the only claim application or the second application has to be treated as the claim application.

2. The necessity to refer the question to a Division Bench has arisen in the circumstances hereinafter discussed:

The accident occurred on 21.5.1995 at 11.15 a.m. The deceased J. Sivanna was the owner of a tractor-trailer bearing registration No. AP 22-T-1683. He was taking his tractor from Kurnool to Sunkesula for getting sand. While the tractor was going on the left side near Sunkesula Cross, a lorry bearing registration No. AAQ 662, coming from the opposite side in a rash and negligent manner, dashed against the tractor. As a result, the deceased received injuries and breathed his last while on his way to the hospital. The claimants resorted to two remedies one by filing O.P. No. 396 of 1995 on 16.9.1995 u/s 163-A of the Act and the other by filing O.P. No. 499 of 1995 on 25.9.1995 u/s 166 of the Act. Under the first

application, claimants prayed for being compensated on structured formula basis and under the second application, the claimants sought a total compensation of Rs. 4,50,000 since, according to the petitioners, death resulted from the accident because of the rash and negligent act of the lorry driver. The applications were dealt with jointly by the Claims Tribunal. In the first application u/s 163-A of the Act as per the structured formula, the claimants were held entitled to a sum of Rs. 2,10,500. In the second application, the compensation was worked out at Rs. 2,22,000. But, in view of the findings recorded by the Tribunal that the accident had occurred due to contributory negligence of both the drivers of the tractor and the lorry, compensation was reduced to half and the claimants were thus held entitled to compensation of Rs. 1,11,000. The Tribunal was in a fix as to which of the two compensations the claimants would be entitled and it came to the conclusion that when two alternative claims are made by way of abundant caution and when two views are possible, the view favourable to the victims of the accident must be preferred. Therefore, the Tribunal proceeded to award Rs. 2,10,500 as compensation as determined in the petition filed u/s 163-A of the Act. Appeal was preferred against the said order and during appeal, the learned standing counsel for Oriental Insurance Co. Ltd. has relied on the decision of the Supreme Court in *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V. Kodala and Others etc. etc.*, wherein it was held that the compensation payable u/s 163-A of the Act as per structured formula basis is an alternative to determination of compensation payable in pursuance of any right or the principle of fault liability and the said provision would exclude the determination of compensation on the principle of fault liability. Therefore, the aforementioned point was referred to the Bench as a guide principle to the Tribunals in such like situation where two claim petitions are filed.

3. Under the Act, no provision is made as to what should be the guiding factor when two applications are filed, one u/s 163-A and the other u/s 166 of the Act. Though Section 167 makes a reference to the option regarding claim for compensation as to when compensation can be claimed under the provisions of the Workmen's Compensation Act, 1923 (Act 8 of 1923), where death or bodily injury to any person gives rise to a claim for compensation under the said Act and also when a claim can be lodged before the Motor Accidents Claims Tribunal, making it clear that notwithstanding anything contained in Workmen's Compensation Act, the person who is entitled to compensation may, without prejudice to the provisions of Chapter X, claim such compensation under either of those Acts, but not under both. The Supreme Court in *Hansrajbhai's case* (supra), also held that no specific mention is made in the Act that the remedy provided u/s 163-A of the Act is in addition or in the alternative to the determination of compensation on the basis of fault liability. Section 163-A was not there in the original Act of 1988 and was inserted by Act 54 of 1994 with effect from 14.11.1994. After referring to the legislative intent and the history, as well as the objects and reasons for inserting the provision, the Supreme Court came to the conclusion that the object underlying the amendment is to pay

compensation without there being any long-drawn litigation on a predetermined formula which is known as structured formula basis, which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever increasing motor vehicles accidents in a fast moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided u/s 140 for no fault liability and determination of compensation amount on fault liability was taking long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured formula basis. Further, if the question of determining compensation under fault liability is kept alive it would result in additional litigation and complications in case the claimants fail to establish liability of the owner of the defaulting vehicles.

4. The contention in that case on behalf of the claimants that right to get compensation u/s 163-A of the Act is in addition to claim of compensation under no fault liability was rejected on the following reasons:

(1) There is no specific provision in the Act to the effect that such compensation is in addition to the compensation payable under the Act. Wherever the legislature wanted to provide additional compensation, it has done so.

(Sections 140 and 141)

(2) In case where compensation is paid on no fault liability under Sections 140 and 161 in case of hit and run motor accidents, the legislature has provided adjustment or refund of the said compensation in case where compensation is determined and payable under the award on the basis of the fault liability u/s 168 of the Act. There is no such procedure for refund or adjustment of compensation paid where the compensation is paid u/s 163-A.

(3) The words "under any other law for the time being in force" would certainly have different meaning from the words "under this Act" or "under any other provision of this Act".

(4) In view of the non obstante clause "notwithstanding anything contained in this Act" the provisions of Section 163-A would exclude determination of compensation on the principle of fault liability.

(5) The procedure of giving compensation u/s 163-A is inconsistent with the procedure prescribed for awarding compensation on fault liability. u/s 163-A compensation is awarded without proof of any fault while for getting compensation on the basis of fault liability claimant is required to prove wrongful act, neglect or default of the owner of the vehicle or vehicles concerned.

(6) Award of compensation u/s 163-A is on predetermined formula for payment of compensation to road accident victims and that formula itself is based on

criteria similar to determining the compensation u/s 168. The object was to avoid delay in determination of compensation.

5. From the aforementioned ratio it would appear that the remedy provided u/s 163-A of the Act is in the alternative to determination of compensation on the basis of fault liability. Therefore, the underlying principles, as laid in Section 167, would apply that claimants would be entitled to lay the claim either u/s 163-A or u/s 166 of the Act and not simultaneously under both the provisions. A situation might arise where the claimants might file petitions both under Sections 163-A and 166, either one after the other or simultaneously. In that eventuality, the proper course to be adopted would be to give an opportunity to the claimants to exercise option as to which of the petitions is to be pursued and in case option is not exercised, it will be for the Tribunal to decide the question as to which of the applications should be processed and in normal course, the petition filed first in point of time should be taken as the petition for compensation whether it be u/s 163-A or 166 of the Act.

6. In this case, learned counsel for the claimants states that the claimants were not given such option and would like to exercise the option now and their application filed u/s 163-A of the Act be treated as the only application for compensation. Otherwise also, the application filed u/s 163-A of the Act was first in point of time. Therefore, the concluding result of Motor Accidents Claims Tribunal was right though reasoning is not correct when it proceeded to award the compensation as determined u/s 163-A of the Act. Except this argument, there are no other arguments addressed. Therefore, while answering the reference as aforementioned, we dismissed the appeal by upholding the order of the Motor Accidents Claims Tribunal, Kurnool, passed in O.P. No. 396 of 1995.