
(2008) 05 AHC CK 0122

In the Allahabad High Court

Case No : First Appeal From Order No. 513 of 2008

National Insurance Company Ltd.

APPELLANT

Vs

S.L.Sharma and others

RESPONDENT

Date of Decision : 19-05-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2008) 05 AHC CK 0122

Hon'ble Judges : Amitava Lala, J and V.K.Shukla, J

Final Decision : Disposed Of

Judgement

Amitava Lala, J.—This appeal arises out of an award passed by the concerned Motor Accident Claims Tribunal, Ghaziabad dated 31st May, 2007 awarding a sum of Rs. 2,00,000/ and interest towards compensation in the case of injury of the victim while he was travelling as pillion rider on a motor cycle insured under the appellant/insurance company. Admittedly the application has been made by the claimant under section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") in which the compensation is awarded. Section 163A of the Act, unlike section 166 of the Act, is limited in case of death or permanent disablement due to accident. No wrongful act, negligence or default by other/s is/are required to be proved thereunder.

2. By preferring this appeal, the insurance company contended before this Court that as the injured himself stated in the Tribunal that he has not faced any permanent disablement, the claim petition under section 163A of the Act does not lie. Moreover the injured sustained injury as a pillion rider. The insurance policy does not cover the accident of pillion rider. Therefore, the victim is not entitled to claim any amount from the insurance company.

3. So far as the question of pillion rider is concerned, the same has been elaborately discussed by the Tribunal and ultimately came to a conclusion that the insurance policy appears to be comprehensive in nature which includes pillion rider. Principle of "third party risk" has also been made applicable in respect of

such pillion rider in view of the cited judgments therein. Good, bad, indifferent, we are of the view that since the Tribunal has already discussed and come to a conclusion upon framing the issues with regard to liability of pillion rider, we do not want to interfere with the same at present due to other contingency. The contingency is whether the claimant not being permanently disabled, can get compensation from the insurance company under section 163A of the Act? The insurance company has relied only on a solitary statement of the victim. However, the Tribunal has overlooked the same and made an award in favour of the victim/claimant. Although such inference could have been seen to be negligible but when we have come across several judgments with regard to differentiation between section 163A and section 166 under the Act, we can not ignore the point.

4. In three Judges Bench judgment of the Supreme Court as Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd. Baroda 2004 (55) ALR 462 (SC)=2004 (17) AIC 35=(2004) 5 SCC 385 it was held as follows:

"57. We, therefore, are of the opinion that remedy for payment of compensation both under sections 163A and 166 being final and independent of each other as statutorily provided, a claimant can not pursue his remedies thereunder simultaneously. One thus, must remedies thereunder simultaneously. One thus, must opt/elect to go either for a proceeding under section 163A or under section 166 of the Act, but not under both.

59. The question may be considered from different angles. As for example, if in the proceedings under section 166 of the Act, after obtaining compensation under section 163A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefor as a consequence where to the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under section 166 of the Act, would it be at liberty to award compensation in terms of section 163A thereof.

60. The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under section 163A of the Act is interim in nature.

61. It is, therefore, evident that whenever the Parliament intended to provide for adjustment or refund of the compensation payable on the basis of no-fault liability, as for example, sections 140 and 161 in case of hit and run motor accident, from the amount of compensation payable under the award on the basis of fault liability under section 168 of the Act, the same was expressly been

provided for and having regard to the fact that no such procedure for refund or adjustment of compensation has been provided for in relation to the proceedings under section 163A of the Act, it must be held that the scheme of the provisions under sections 163A and 166 are distinct and separate in nature.

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 Acts, 1923, he cannot claim compensation under both the Act. 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 163A, 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 nonobstante clause of wide nature which would mean that the provisions of section 163A would apply despite the contrary provisions existing in the said act or any other law for the time being in force. Section 163A 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."

5. However, the Supreme Court ultimately held, not as a precedent, that awarding of compensation under section 163A by way of ad interim award would not preclude the claimant to proceed with his claim made in terms of section 166 of the Act when found both the proceedings were available before the Tribunal and Tribunal and High Court both proceeded under section 163A of the Act as an interim measure. Again in *Oriental Insurance Co. Ltd. v. Meena Variyal and others* AIR 2007 SC 2362 it was further held by the Supreme Court as follows:

".....the victim of an accident or his dependents have an option either to proceed under section 166 of the Act or under section 163A of the Act. Once they approach the Tribunal under section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under section 163A of the Act, the compensation will be awarded in terms of the schedule without calling upon the victim or his dependents to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

6. Therefore, in totality we are of the view that the matter will have to be remanded to the Tribunal to test the veracity of the evidence in detail to come to an appropriate conclusion, accordingly, such order is passed hereunder. Consequently, the judgment and award of the Tribunal impugned in this appeal is set aside. The claim petition will be heard and disposed of by the appropriate Tribunal as early as possible preferably within a period of three months from the date of communication of this order by giving fullest opportunity of hearing to all the parties and without granting any unnecessary adjournments.

7. Appeal is, accordingly, disposed of at the stage of admission.

8. No order is passed as to costs.

9. The statutory deposit of Rs. 25,000/ made before this Court under this appeal be remitted back to the concerned Tribunal to be adjusted with the awarded amount. In any event, if any amount has already been paid to the claimant, the same will not be recovered from the claimant without finalization of the claim petition. Appeal Disposed Of.

V.K. Shukla, J. I agree.