
(2009) 05 SC CK 0200

In the Supreme Court Of India

Case No : Civil Appeal No. 3538 of 2009 (Arising out of SLP (C) No. 24236 of 2008) and Civil Appeal No. 3540 of 2009 (Arising out of SLP (C) No. 25497 of 2008)

Ningamma and Another

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 158(6), 162, 163A, 163A(1)

Citation : (2009) ACJ 2020 : AIR 2009 SC 3056 : (2009) AIRSCW 4916 : (2009) 5 ALD 106 : (2010) 1 ALLMR 441 : (2009) 3 AWC 3045 Supp : (2009) 57 BLJR 2022 : (2009) CLT 1334 : (2009) 8 JT 262 : (2009) 6 KarLJ 62 : (2009) 156 PLR 796 : (2009) 8 SCALE 244 : (2009) 13 SC

Hon'ble Judges : S. B. Sinha, J;Mukundakam Sharma, J

Bench : Division Bench

Advocate : Shekhar G. Devasa, B.V. Pinto, Rohit Pandey, for V.N. Raghupathy, for the Appellant; K.L. Nandwani, for Debasis Misra, for the Respondent

Final Decision : Allowed

Judgement

Mukundakam Sharma, J.—Leave granted.

2. Since both these appeals arise out of the same set of facts and involve similar questions of law, we propose to dispose of both these appeals by this common judgment.

3. The present appeals arise out of a motor accident claim. The claimant No. 1 and 2 are the wife and son respectively of the deceased-Ramappa. On 09.09.2000, the deceased was traveling on Hero Honda Motor Cycle, which he borrowed from its real owner for going from Ilkal to his native place Gudur. When the said motor cycle was proceeding on Ilkal-Kustagl, National Highway, a bullock cart proceeding ahead of the said motor cycle carrying iron-sheet suddenly stopped and consequently deceased-Ramappa who was proceeding on the said motor cycle dashed against it. Consequent to the aforesaid incident, he sustained

fatal injuries over his vital part of body and on the way to Govt. Hospital, Ilkal, he died. The doctor of the general hospital, Ilkal conducted post mortem examination over dead body of the deceased and gave his opinion that the death of the deceased was caused due to hemorrhage and shock due to the injury to his liver. The aforesaid motor cycle in which the deceased was traveling at the time of accident was insured with the Insurance Company, namely, the United India Insurance Co. Ltd. and the said motor cycle was owned by one Paranagouda.

4. On 04.10.2000 Appellant No. 1, the wife of the deceased and Appellant No. 2 - minor son of the deceased filed a claim petition u/s 163A of Motor Vehicles Act, 1988 (in short 'the MVA') before the Motor Accident Claims Tribunal No. VI, Bijapur, Karnataka (in short 'the Tribunal') being M.V.C. No. 896/2000 praying for compensation of Rs. 8,10,000/- along with future interest etc. on the ground that at the time of accident the deceased was a healthy person, aged about 32 years and engaged in agriculture, earning Rs. 5,000/- per month and was the sole earning member in their family.

5. The Tribunal received evidence and tested the claim. The Tribunal held that in absence of definite and cogent proof of income, the income of the deceased was to be considered as Rs. 60/- per day as per the provisions of the Minimum Wages Act. Accordingly, the monthly income of the deceased was ascertained as Rs. 1,800/- and yearly income as Rs. 21,600/- from which 1/3 was to be deducted leaving thereby Rs. 14,400/- as the net income of the deceased. Since the age of the deceased was found to be in between 30 to 35 years, the relevant multiplier to be applied was '17'.

6. Accordingly, the Tribunal under its award dated 09.02.2005 partly allowed the claim petition filed by the appellants holding that the said appellants are entitled to receive a total compensation amount of Rs. 2,59,800/- along with interest at the rate of 8% p.a. from the respondent - Insurance Company. It is required to be stated at this stage that compensation as determined by the Tribunal was paid and received by the legal representatives of the deceased, namely the widow and the minor son.

7. Aggrieved by the said decision, the Insurance Company preferred an appeal being Miscellaneous First Appeal No. 4152/2005 before the High Court of Karnataka on the ground that the accident occurred due to the fault of the deceased and claim petition before the Tribunal was not maintainable as Section 163A of the Act is not applicable unless there was another vehicle involved in the accident. The other ground of challenge was that the Tribunal erred in allowing the claim petition when the total income of the deceased was stated to be more than Rs. 40, 000/- per annum.

8. The High Court by its judgment and order dated 08.08.2007 allowed the appeal holding that the claim petition before the Tribunal was not maintainable as there was no tort-feasor involved. It was also held that the claim Section 163A

of the Act was barred when the income of the claimant is stated to be above Rs. 40,000/- per annum. Consequently, the High Court set aside the judgment and award passed by the Tribunal and directed the appellants herein to refund the amount of compensation to the Insurance Company.

9. Aggrieved by the aforesaid decision, the appellants filed a review petition bearing No. 337/2007. However the same was dismissed on 19.11.2007 by the High Court with costs of Rs. 500/-.

10. Consequently, the appellants preferred two Special Leave Petitions, one bearing No. 25497/2008 against the judgment and order dated 08.08.2007 passed in Miscellaneous First Appeal No. 4152/2005 by the High Court of Karnataka, Bangalore and another bearing No. 24236/2008 which is against the judgment and order dated 19.11.2007 passed in Review Petition No. 337/2007.

11. The counsel appearing for the appellants contended before us that the High Court erred in setting aside the judgment and order of the Tribunal as the Tribunal acted within its jurisdiction in directing payment of compensation on structured formula basis u/s 163A of the MVA. It was also submitted that the High Court erred in ignoring the jurisdiction of the Tribunal to determine the "Just Compensation" which must be done in accordance with law and not on the basis of the pleading of a party who invoked its jurisdiction. It was also contended that the High Court erroneously held that the Tribunal erred in law in not deciding the claim petition as one u/s 166 of the MVA.

12. On the other hand, the counsel for the respondent has argued that the High Court rightly set aside the judgment and order of the Tribunal since in order to become eligible for compensation for the loss caused due to the use of motor vehicle as provided u/s 163A of the MVA, the person who has suffered the loss must be a third party under the MVA and since in the present case the deceased or the appellants are not the third party, therefore, judgment rendered by the High Court did not call for any interference. It was further submitted that the driver is a representative of the owner if he was driving under the owner's instructions or permission and is thus owner qua insurance company and not a third party.

13. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation u/s 163A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative? Before dwelling further, it would be useful to discuss the relevant paras of Section 163A and 166 of the MVA applicable in the present case.

163A. Special provisions as to payment of compensation on structured formula basis.--

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of 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 motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

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(2) 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.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

166. Application for compensation- (1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be: Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

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14. Section 163A of the MVA was inserted by Act 54 of 1994 by way of a social security scheme. It is needless to say that the said provision is a code by itself. The said provision has been inserted to provide for a new predetermined structured formula for payment of compensation to road accident victims on the basis of age/income of the deceased or the person suffering permanent disablement. In view of the language used in said section there could be no manner of doubt that the said provision has an overriding effect as it contains a non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay compensation in the case of death or

permanent disablement due to accident arising out of the use of motor vehicle, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

15. A number of decisions have been rendered by this Court in respect of the Section 163A of the MVA. In Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, , one of us (Hon'ble Justice S.B. Sinha) has observed as follows:

42. Section 163A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs 40,000 having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

This Court further observed in The Oriental Insurance Company Limited Vs. Meena Variyal and Others, :

18. In New India Assurance Co. Ltd. v. Asha Rani this Court had occasion to consider the scope of the expression "any person" occurring in Section 147 of the Act. This Court held: (SCC p. 235, para 26)

...that the meaning of the words 'any person' must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

In other words, this Court clearly held that the apparently wide words "any person" are qualified by the setting in which they occur and that "any person" is to be understood as a third party.

27. We think that the law laid down in Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, was accepted by the legislature while enacting

the Motor Vehicles Act, 1988 by introducing Section 163A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a 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, and in a claim made under Sub-section (1) of Section 163A of the Act, 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 concerned. Therefore, the victim of an accident or his dependants have an option either to proceed u/s 166 of the Act or u/s 163A of the Act. Once they approach the Tribunal u/s 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 u/s 163A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

28. In Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, two of the learned Judges who constituted the Bench in Minu B. Mehta held that when a car is driven by the owner's employee on owner's business, the normal rule was that it was for the claimant for compensation to prove negligence. When the Manager of the owner while driving the car on the business of the owner took in a passenger, it would be taken that he had the authority to do so, considering his position unless otherwise shown. If due to his negligent driving an accident occurred and the passenger died, the owner would be liable for compensation. The Court noticed that the modern trend was to make the master liable for acts of his servant which may not fall within the expression "in the course of his employment" as formerly understood. With respect, we think that the extensions to the principle of liability have been rightly indicated in this decision.

16. The aforesaid decisions make it quite clear that the Parliament by introducing Section 163A in the MVA provided for payment of compensation on structured formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under Sub-section (1) of Section 163A of the MVA. In order to prove a claim of this nature the claimant would 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 concerned.

17. However, in the facts of the present case, it was forcefully argued by the

counsel appearing for the respondent that the claimants are not the 'third party', and therefore, they are not entitled to claim any benefit u/s 163A of the MVA. In support of the said contention, the counsel relied on the decision of this Court in the case of Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others, ; and New India Assurance Company Ltd. Vs. Sadanand Mukhi and Others, .

18. In the case of Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others, , wherein one of us, namely, Hon'ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability u/s 163A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.

19. We have already extracted Section 163A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided u/s 163A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation u/s 163A of the MVA.

20. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation u/s 163A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case. However, the question remains as to whether an application

for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased; or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. When an application of the aforesaid nature claiming compensation under the provisions of Section 166 is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 162, by determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs. In this context reference could be made to relevant paras of Section 147 of the MVA which reads as follows:

147. Requirements of policies and limits of liability- (1) In order to comply with the requirement of this Chapter, a policy of insurance must be a policy which-

- (a) is issued by a person who is an authorised insurer; or
- (b) insurer the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-
 - (i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
 - (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of his death of, or bodily injury to, any such employee-
- (a) engaged in driving the vehicle, or
- (b) if it is a public service vehicle engaged as conductor of the vehicle or in

examining tickets on the vehicle, or

(c) if its is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

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(2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand: Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

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(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

21. Section 147 of the MVA provides that the policy of insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorised representative carried in the vehicle or arising out of the use of vehicle in the public place.

22. When we analyze the impugned judgment of the High Court in terms of aforesaid discussion, we find that the counsel for the insurance company himself contended before the High Court that the policy of insurance was an Act policy and the risk that is covered is only in respect of persons contemplated u/s 147 of the MVA. It is the finding of fact which we have also upheld in this Judgment that the deceased was authorised by the owner of the vehicle to drive the vehicle. When we examined the facts of the present case in view of the aforesaid submission made, we are of the opinion that such an issue was required to be considered by the High Court in the light of the facts and evidence adduced in the case. On consideration of the Judgment and Order passed by the High Court we find the same to be sketchy on the aforesaid issue as to whether the claim could be considered under the provisions of Section 166 of the MVA. In this connection, reference can be made to a judgment of this Court in the case of

Oriental Insurance Company Ltd. v. Rajni Devi and Ors. (supra), wherein, it was held that where compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof.

23. Recently, this Court in the case of Raj Rani and Others Vs. Oriental Insurance Co. Ltd. and Others, pronounced on 06.05.2009, wherein one of us (Hon'ble Justice S.B. Sinha) has taken the view that it is not necessary in a proceeding under the MVA to go by any rules of pleadings or evidence. Section 166 of the MVA speaks about "Just Compensation". The court's duty being to award "Just Compensation", it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not. It was further observed in the aforesaid case that although the multiplier specified in the Second Schedule appended to the MVA are *stricto sensu* not applicable in a case u/s 166 of the MVA, it is not of much dispute that wherever the court has to apply the appropriate multiplier having regard to several factors in mind. The Court has placed reliance on earlier judgment of this Court in Nagappa Vs. Gurudayal Singh and Others, , wherein it was observed as follows in para 7:

7. Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is -- it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to Sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. The other important part of the said section is Sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under Sub-section (6) of Section 158 as an application for compensation under this Act". Hence, the Claims Tribunal in an appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

24. There are indeed cases like New India Assurance Company Ltd. Vs.

Sadanand Mukhi and Others, , wherein, the son of the owner was driving the vehicle, who died in the accident, was not regarded as third party. In the said case the court held that neither Section 163A nor Section 166 would be applicable.

25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made u/s 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court.

26. While entertaining the appeal, no effort was made by the High Court to deal with the aforesaid issues, and therefore, we are of the considered opinion that the present case should be remanded back to the High Court to give its decision on the aforesaid issues. The High Court was required to consider the aforesaid issues even if it found that the provision of Section 163A of MVA was not applicable to the facts and circumstances of the present case. Since all the aforesaid issues are purely questions of fact, we do not propose to deal with these issues and we send the matter back to the High Court for dealing with the said issues and to render its decision in accordance with law. The High Court will also consider the question of quantum of compensation, if any, to which the claimants might be entitled to, having regard to the earning capacity of the deceased and "Just Compensation", if any. Since the claim is a very old claim, we request the High Court to consider the matter as expeditiously as possible.

27. In terms of the aforesaid order, we remand back both the matters to the High Court to dispose of the same. The appeals are disposed of in terms of the aforesaid order.