

(2007) 11 KAR CK 0034

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2537 of 2007

Oriental Insurance Co. Limited

APPELLANT

Vs

Smt. Salma and Others

RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163 A, 166, 167

Citation : (2008) 2 KCCR 675

Hon'ble Judges : V.G. Sabhahit, J;Jawad Rahim, J

Bench : Division Bench

Advocate : A.M. Venkatesh, for the Appellant; N. Gopalakrishna, for Respondents 1 to 4 and Musthaq Ahmed, for Impleading Applicant on I.A. No. III/2007, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal by the Insurance Company is directed against the Judgment and award passed by the Motor Accident Claims Tribunal, Court of Small Causes, Bangalore SCCH-7 in MVC No. 2943/2005 dated 18/5/2006 wherein the application filed by the Respondents u/s 163-A of the Motor Vehicles Act, has been allowed in part and compensation of Rs. 3,81,000/- has been awarded with interest at 6% per annum from the date of petition to the date of payment.

2. We have heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondents.

3. The learned Counsel appearing for the Appellant submitted that the compensation awarded by the Tribunal is in accordance with the structure formula and the schedule read with the provisions of Section 163-A of the Motor Vehicle Act. However, the main contention of the learned Counsel for the Appellant in this appeal is that the application filed by the Respondents seeking compensation towards the death of the driver of the car who was himself

negligent in driving the car, is not maintainable and wherefore, the Tribunal ought to have dismissed the petition filed u/s 163-A of the Motor Vehicles Act as not maintainable.

4. On the other hand the learned Counsel appearing for the claimants submitted that the petition u/s 163-A of the Motor Vehicles Act, is maintainable as it is inserted into the provisions of the Motor Vehicles Act as an exception to award compensation u/s 163-A based upon structure formula and mere fact that the accident occurred due to the negligence of the victim himself cannot be a defence in the application filed u/s 163-A of the Motor Vehicles Act and the petition cannot be said to be not maintainable merely on the ground that accident occurred due to the negligence of the victim.

5. In the present case, on 6-5-2004 at about 1.30 a.m., Rahiman @ Ibrahim who was driving Toyota Quallis bearing registration No. KA 19 A 4699 from Ankola to Yellapura and the vehicle suddenly went off the road and fell into the road side drainage due to which the drive sustained multiple injuries and later succumbed to the injuries and died. The claimants are the wife and children of Rahiman @ Ibrahim.

6. I.A.III/07 is filed for impleading the applicant alleging that applicant No. 1 is the second wife of the deceased and other applicants are children.

7. Having regard to the contentions urged, the only point that arises for determination is as to:

Whether the petition u/s 163-A of the Motor Vehicles Act is maintainable before the Motor Accident Claims Tribunal when the accident has occurred due to the negligence of the victim?

8. The learned Counsel appearing for the Appellant has relied upon the decision of this Court in the case of Appaji (since deceased) and Another Vs. M. Krishna and Another, wherein it is held that Section 163-A provides awarding compensation on structure formula and if death is caused due to the negligence of the victim himself, the petition is not maintainable. In subsequent judgment of Hon"ble Supreme Court in case of Deepal Girishbhai Soni and Ors. v. United India Insurance Co. Limited reported in 2004 ACJ 934, the 3 Judge Bench of the Supreme Court has held in para 66 of the Judgment as follows:

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", 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 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.

(underlining is ours).

In view of the above said principle laid down by the Hon"ble Supreme Court, it is clear that a petition u/s 163-A of the Motor Vehicles Act is maintainable even in case where negligence is on the part of the victim.

9. The learned Counsel appearing for the Appellant submitted that he said observation is not ratio descidendi or the principle laid down by the Supreme Court in the said case as in the said case, the Supreme Court was considering the question as to whether ceiling limit of Rs. 40,000/- for the purpose of calculating compensation to be awarded under structured formula.

10. There is no merit in the contention of learned Counsel for Appellant. It is well settled that even obiter dicta made in the decision of the Supreme Court is binding upon this Court and this Court is not competent to interpret the decision of the Supreme Court and in view of the above said observation made by the Supreme Court directly on the point that when Section 163-A of the Act covers the companies wherein negligence is on the part of the victim is binding upon this Court and wherefore the contention of the learned Counsel appearing for the Appellant cannot be accepted and we hold that the application u/s 163-A was maintainable before the Tribunal. Following the above said decision of the Supreme Court, the Division Bench of this Court had also held that petition u/s 163-A of the Act is maintainable even where the negligence is on the part of the victim and accordingly we hold that petition u/s 163-A was maintainable before the Tribunal and the question regarding quantum of compensation, the same has been awarded under structure formula u/s 163-A of the Act and we hold that there is no merit in this appeal and pass the following:

ORDER

11. The Miscellaneous First Appeal is dismissed. Since the appeal is dismissed, question of impleading the applicants in I.A. No. III/07 does not arise and it is open to them to work out heir remedy before the Motor Accident Claims Tribunal. The amount deposited by the Appellant while preferring the appeal shall be transmitted to the Tribunal for making payment to the claimants in terms of the award.