

(2016) 02 KL CK 0152
In the High Court Of Kerala
Case No : M.A.C.A. No. 812 of 2005

P. Janardhanan @ Babu (Died)	Vs	APPELLANT
P.K. Kunhiraman		RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Citation : (2017) 1 ACC 499 : (2016) ACJ 2529 : (2016) 4 CivillJ 55 : (2016) 2 KerLJ 683 : (2016) 3 KHC 160 : (2016) 2 KLT 764 : (2016) 4 TAC 144

Hon'ble Judges : P.R. Ramachandra Menon and Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : B. Krishnan and R. Parthasarathy, Advocates, for the Appellant; M.A. George, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—Interference declined by the Motor Accidents Claims Tribunal, dismissing the claim petition filed by the appellant/injured holding that the same is not maintainable under Section 163A of the Motor Vehicles Act is under challenge in this appeal.

2. The appellant was riding his scooter bearing No.KL.11. 8636 on 10.02.1994 by 3.00 p.m. When he reached the place of occurrence, a pedestrian allegedly crossed the road abruptly. The appellant applied the brake and swerved the scooter, where upon he lost control and fell on the road sustaining serious injuries. This resulted in an alleged disability to an extent of 30% by virtue of eye-droop. The loss was sought to be compensated by filing claim petition against the owner of the vehicle and the insurer, who were shown as respondents 1 and 2 in the claim petition filed under Section 163A of the Act as aforesaid.

3. Despite completion of service of notice, the first respondent/owner did not choose to contest the matter by filing any written statement. The respondent insurance company filed a detailed written statement disputing the liability on several grounds, including that the claim was not maintainable under Section

163A; that accident had occurred much prior to introduction of the said provision and further that it was barred by limitation, besides the challenge on quantum and such other aspects. The evidence adduced before the Tribunal consists of Exts. A1 to A6 produced from the part of the claimant; besides Exts.X1 certificate of permanent disability issued from the Medical College Hospital, Calicut, which was marked as a court exhibit. The respondent Insurance Company produced Ext.X1 and marked Exts.B1 and B2, which are photocopies of the policy and that of the charge sheet. No oral evidence was adduced from either side.

4. The maintainability of the claim petition was considered by the Tribunal, placing reliance on the judgment of the Supreme Court in (2003) 8 SCC 718 (Maitri Koley v. New India Assurance Co.). It was held that the law has to be applied with reference to the position as it existed on the date of accident. Admittedly since the accident in the instant case was on 10.02.1994 and the enabling provision under Section 163 A (whereby negligence was never to be pleaded or proved by the claimant/victim) was introduced only with effect from 14.11.1994, it was held in paragraph 8 that the claim petition was not maintainable.

5. Yet another aspect considered by the Tribunal was whether the petitioner was a person coming within the purview of Section 163A of the Act; by virtue of his declared annual income. The factual position noted was that, as per the claim petition, the income of the claimant was stated as Rs. 42000/- and hence the appellant/claimant belonged to a higher category/class. In so far as the beneficiaries of Section 163A were concerned, it was intended only for such persons who were having maximum annual income of Rs. 40000/- and as per the decision of the Supreme Court reported in (2004) 5 SCC 385 (Deepal Girishbhai Soni v. United India Insurance Co. Ltd.) it was not possible to fix a cap or ceiling to the monthly income so as to have it limited to Rs. 40000/- and to have claimed the benefit flowing therefrom without the need or necessity to consider or establish the aspect of negligence. It was held that the claim petition was not maintainable on this ground as well. The claim petition was accordingly dismissed, without venturing into quantification of the loss resulted because of injuries. The above finding and reasoning are under challenge in this appeal.

6. Heard Mr. B. Krishnan, the learned counsel for the appellant as well as Ms. Deepa George, the learned counsel appearing on behalf of the Insurance Company.

7. During the course of hearing, the learned counsel for the appellant submits that Section 163A is a substantive provision, which is a deviation from the normal concept of granting compensation in respect of injuries/death sustained in a road traffic accident involving motor vehicles and that the same stands on different pedestal where it is not at all necessary to plead or establish negligence. But it has to be borne in mind that Section 140 of the Motor Vehicles Act stipulates that amount of compensation payable under the said provision is

without any regard to negligence; however stipulating under sub-section(4) that no amount of compensation shall be reduced under section 140, even if negligence is established. No such provision (as sub-section (4) of Section 140) exists under Section 163A. In other words, under Section 163A, though it is stipulated that the claimant/victim need not plead or establish negligence, it does not say as to what will be the course, if negligence is pleaded and established by the opposite side to the effect that it was solely on the part of the deceased or injured. This aspect came to be considered subsequently by the Supreme Court and as per the decision reported in 2011(4) KLT 821 (SC) (National Insurance Company Ltd. v. Sinitha), it has been held that, it is open for the respondents to plead and establish negligence, though no such liability is there upon the victim or claimant and once it is established that it is because of the negligence on the part of the victim/deceased, no liability can be fastened upon the concerned respondents. The said decision was followed by a Full Bench of this Court as per the decision reported in 2012 (2) KLT 132(FB) (Oriental Insurance Co. Ltd. v. Joseph (to which one of us was also a member). This Court is aware of the fact that the decision rendered by the Supreme Court in Sinitha's case was subsequently doubted by another co-ordinate Bench and the matter is stated as referred to a Larger Bench as per the decision in United India Insurance Co. Ltd. v. Sunil Kumar, (2013 (4) KLT 488 (SC)). But the outcome of the said decision appears to be not relevant in the instant case, in so far as the issue involved herein is concerned and further since the legal position has been made clear by the Apex Court in the decision rendered by the Apex Court in Deepal Girishbhai Soni v. United India Insurance Co. (referred to by the Tribunal itself) holding that the benefit of Section 163A of the Motor Vehicles Act cannot be extended to anybody belonging to a higher class of income, by fixing an artificial cap or ceiling.

8. It has been held by the Apex Court in (1982) 1 SCC 613 (Padma Srinivasan v. Premier Insurance Co. Ltd.) that the law prevailing on the date of the accident is relevant and to be considered. The position was reiterated by the Apex Court in the subsequent decision in (2003) 8 SCC 718 (Maitri Koley v. New India Assurance Co. (paragraph 4). The accident in the instant case was admittedly on 10.2.1994, whereas the provision 163A was brought into the statute book only with effect from 14.11.1994, as per the amendment act 54 of 1994. By virtue of the ruling rendered by the Supreme Court in 2004(1) R.C.R.(Civil) 210 : (2003) 8 SCC 718, the provision to be applied shall be with reference to the date of accident and as such, Section 163A was not available on the date of the accident occurred in the instant case. As a natural consequence, it cannot but be held that the verdict passed by the Tribunal that the claim is not maintainable in the said context is perfectly within the four walls of law and does not require any interference.

9. As observed by the Tribunal, the annual income of the claimant was declared as Rs. 42000/- in the claim petition. The case of the appellant is that he had already limited the same to Rs. 40000/- so as to bring it within the purview of

Section 163A. Whether such a course is permissible is the question. Answer to this question is contained in the verdict passed by the Apex Court in Girishbhai soni's case (cited supra) Paragraph 67 of the said verdict is relevant, which is extracted below :

"67. We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annum shall be treated as a cap. In our opinion, the proceedings under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act."

From the above, it is quite clear that the benefit of Section 163A introduced by the law makers to provide speedy remedy to the deserving lot without any normal course of adjudication involved in pleading and establishing negligence was sought to be given a "go-bye" and compensation was provided on a pre-determined formula/structured formula as given in the second schedule to the Act. This was intended only for the particular group of persons, who came within the income category, i.e., upto a maximum of Rs. 40000/-. In the words of the Apex Court, it was never open for anybody having a higher income, to have it scaled down or limited to Rs. 40000/- by fixing a cap or ceiling and to seek for the benefits of Section 163A; which otherwise is intended to a different class. This being the position, the claim preferred by the appellant, who admittedly was having a higher annual income of Rs. 42000/- i.e. above the ceiling limit, but causing the same to be limited to Rs. 40000/-, was rightly rejected by the Tribunal. Since the course pursued by the Tribunal is based on the verdict passed by the Supreme Court, which is the law of the land, there is nothing wrong or arbitrary in having dismissed the claim. We find absolutely no merit in the appeal.

10. The learned counsel for the appellant submits that the issue herein is likely to be considered by the Apex Court pursuant to the reference made in United India Insurance v. Sunil Kumar, 2013 (4) KLT 488 (SC) along with such other points, which are stated as pending on reference. We decline interference and dismiss the appeal. However, as we have made it clear in other similar cases, if the reference pending before the Supreme Court comes to be answered in favour of the parties like appellant herein, it will be open for the appellant to cause the matter to be re-opened. With the above observations, it is held that there is no merit in the appeal and accordingly, same stands dismissed.