
(2010) 12 CHH CK 0022
In the Chhattisgarh High Court
Case No : M.A. No. 231 of 2006

Ramgulal

APPELLANT

Vs

Santosh Kumar and Others

RESPONDENT

Date of Decision : 04-12-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 161, 163A, 163B, 166
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2011) 2 CGLJ 119 : (2011) 2 TAC 856

Hon'ble Judges : Prashant Kumar Mishra, J; I.M. Quddusi, J

Bench : Full Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This appeal has been filed by the Appellant/claimant against the impugned award dated 31.12.2005, passed by the Motor Accident Claims Tribunal, Rajnandgaon in Claim Case No. 250/2002.

2. The brief facts, in nutshell, are that the Appellant/claimant had filed a claim petition on 11.9.2002, u/s 163-A read with Section 166 of the Motor Vehicles Act, 1988 for award of a total compensation of Rs. 3,58,000/- on the ground that he had received grievous injuries in a motor accident on 30.4.2002. According to the claimant on 30.4.2002 he was going to Rajnandgaon from Dondilohara by driving the vehicle i.e. Metadoor, having registration No. C.I.S. 7545, at that time near village - Acholi the vehicle met with an accident, as a result of which the claimant received grievous injuries on right hip, left thigh and got fracture in leg. Relating to this accident a criminal case was registered against the claimant in Police Station Dondilohara for the offence u/s 279 and 337 of the Indian Penal Code.

3. The claim petition has been dismissed by the Tribunal, inter alia, on the ground that the claim petition u/s 163-A read with Section 166 of the Act, 1988 was not maintainable as both the claims could not have been filed in view of the decision of Hon''ble Apex Court in Deepal Girishbhai Soni and Others Vs. United

India Insurance Co. Ltd., Baroda, .

4. Hon"ble Apex Court in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, in paragraphs 52, 57. 61, 67 and 68 has held as under:

52. It may be true that Section 163-B provides for an option to a claimant to either go for a claim u/s 140 or Section 163-A of the Act, as the case may be, but the same was inserted *ex abundanti cautela* so as to remove any misconception in the minds of the parties to the lis having regard to the fact that both relate to the claim on the basis of no-fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims both u/s 163-A and Section 166 does not arise. If the submission of the learned Counsel is accepted the same would lead, to an incongruity.

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

61. It is, therefore, evident that whenever 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 u/s 166 of the Act, the same has 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 u/s 163-A of the Act, it must be held that the scheme of the provisions under Sections 163-A and 166 are distinct and separate in nature.

67. We, therefore, are of the opinion that Kodala has correctly been decided. However, we do not agree with the findings in Kodala 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 proceeding u/s 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs. 40,000 can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

68. However, in this case, we may notice that the parties have proceeded to file two applications - one, u/s 163-A and another u/s 166 of the Act. Both have been entertained. Both the Tribunal as also the High Court have proceeded on the basis that the amount of compensation u/s 163-A is by way of an interim award and the same would not preclude the claimant to proceed with his claim made in terms of Section 166 of the Act. It is submitted at the Bar that the Appellants have withdrawn 50% of the amount and rest of the amount has been invested. The Appellants have lost both their parents in the accident. Only one of

the Appellants at the relevant time was a major. It appears that 70% of the amount permitted to be withdrawn has been deposited in fixed deposit. We agree with the submission of Mr. Banerji that the claim of the Appellants made u/s 163-A be treated to be one u/s 140 of the Act and upon adjusting the amounts provided for thereunder, the Appellants may refund the rest thereof to the insurer.

5. In the impugned award the intention of the Tribunal was that the claim petition u/s 163-A read with Section 166 of the Act, 1988 was not maintainable.

6. We have perused the order sheets of the claim petition. The order sheet dated 14.9.2002 states that the claim u/s 163-A read with Section 166 of the Motor Vehicles Act, 1988 was admitted by the Tribunal and ordered for registration of the claim petition. At the very outset, when the claim petition was being entertained and ordered for registration, the Tribunal could have held that the same was not maintainable. In that situation it was open to the claimant to file another claim petition either u/s 163-A or u/s 166 but that has not been done rather the Tribunal proceeded with the claim petition and decided it on merits by framing issues, admittedly in a claim petition, which was not maintainable.

7. At this stage learned Counsel for the Appellant states that even if the Tribunal would have given an opportunity to choose the Section in which the same was to be filed and delete another section mentioned in the claim petition, the claimant would have done it accordingly. Further, in a claim petition which is not maintainable the claimant would not have become remediless and he could have filed a maintainable claim petition.

8. Considering the facts and circumstances of the case we allow this appeal in part and set-aside the impugned award dated 31.12.2005 and remit the matter back to the Tribunal. On the submissions of learned Counsel for the Appellant we direct that the claim petition shall be treated u/s 163-A of the Act and the claimant shall be permitted to delete another Section i.e. 166 in the claim petition.

9. We hereby clarify that we have not considered the case of the Appellant/claimant on merits one way or the other and the Tribunal has to decide the case on merits after providing opportunity of hearing to the parties to adduce further evidence, amend pleadings, file documents or get the documents verified etc.

10. Learned Counsel for the Respondent submits that in the statement of non-applicant No. 1 it has come that the claimant has filed a claim petition before the Commissioner for Workmen Compensation. The Tribunal may also look into the matter and to see that whether any petition is filed by the claimant before the Commissioner for Workmen Compensation or the claim was dismissed as not maintainable.

11. It is expected that the Tribunal would expedite the hearing and decide the claim petition, as indicated above, within a reasonable period.

12. Accordingly, the appeal is allowed in part to the above extent. No order as to

costs.

13. The Registry is directed to send back the papers, requisitioned from the Tribunal, forthwith.