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(2021) 12 KL CK 0062

In the High Court Of Kerala

Case No : M.A.C.A. No.1727 Of 2014

Simi W/o Late Biju @ Baiju — APPELLANT

Vs

Benoy S/o Paily Joseph — RESPONDENT

Date of Decision : 08-12-2021

Acts Referred:
Motor Vehicles Act, 1988 — Section 140(4), 163A

Citation : (2021) 12 KL CK 0062

Hon'ble Judges : T.R.Ravi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.R. Ravi, J

1. The claimants before the Tribunal have preferred this appeal. On 28.2.2009, the motorcycle which was driven by the 1st appellant's husband skidded and hit against an electric post. He was taken to Medical College Hospital, Kolenchery, where he succumbed to the injuries on 7.3.2009 while under treatment. A claim petition was filed before the Tribunal, which was dismissed finding that the negligence was on the part of the deceased. Though the claim was under Section 163A of the Motor Vehicles Act, the Tribunal relied on the decision in National Insurance Co. Ltd. v. Sinitha [2011(4)KLT 821] to hold that it is open to the insurer to defeat a claim raised under Section 163A by establishing any one of the 3 faults namely wrongful act, neglect or default.

2. The counsel for the appellant submitted that the issue is no longer res integra. The decision in Sinitha (supra) was doubted and referred to a Larger Bench of the Apex Court. The Larger Bench has thereafter considered the issue and in the judgment in United India Insurance Co. Ltd. v. Sunil Kumar, reported in [(2019) 12 SCC 398] held that grant of compensation under Section 163A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any

proof of negligence of the driver/owner of the vehicle(s) involved in the accident. It was further held that though the Section does not specifically exclude a possible defence of the insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time-frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability were taking an unduly long time. On the above reasoning, the Larger Bench answered the reference by stating that it is not open for the insurer to raise any defence of negligence on the part of the victim.

3. In the above circumstances, the appeal is allowed and the matter is remitted back to the Tribunal to pass fresh orders on the basis of the subsequent development in law, as seen from Sunil Kumar (supra). The parties shall appear before the Tribunal on 17.01.2022. The Tribunal shall endeavour to pass the fresh award within 6 months from the date of appearance of the parties as directed above.

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