
(2012) 09 DEL CK 0312

In the Delhi High Court

Case No : MAC. APP. No. 457 of 2005

Steel Wool Corporation and Another

APPELLANT

Vs

Husana Khatun and Others

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Motor Vehicles Act, 1988 — Section 140, 163, 163A, 166

Citation : (2012) 09 DEL CK 0312

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

**Advocate : C.N. Sreekumar with Ms. Resmitha R. Chandran, for the Appellant;
B.K. Mishra, for the Respondent**

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant Steel Wool Corporation who is the owner of maruti van No. DL-2CF-3308 which was involved in an accident resulting in fatal injuries to Mohd. Haider impugns a judgment dated 11.04.2005 whereby the Motor Accident Claims Tribunal (the Claims Tribunal) while holding that the Claimants (Respondents No. 1 to 4) were unsuccessful to prove the negligence on the part of the Second Appellant converted the Petition u/s 166 of the Motor Vehicles Act, 1988(the Act) to u/s 163-A and awarded the compensation on the basis of the structured formula. The Appellants grievance is that the Claims Tribunal was not empowered to convert the Petition filed u/s 166 of the Act to one u/s 163-A of the Act particularly when the Respondents No. 1 to 4 amended the Claim Petition so as to delete Section 163-A of the Act. In support of the contention, the Learned Counsel for the Appellants placed reliance on the Supreme Court report in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, .

2. Per contra, the Learned Counsel for the Respondents (Claimants) urged that the provisions of the Motor Vehicles Act dealing with award of compensation to

the victim of road accidents is a beneficial piece of legislation. The Claims Tribunal and Courts, therefore, can convert a Claim Petition from Section 166 to Section 163-A of the Act where the negligence is not proved. The Learned Counsel for the Respondents No. 1 to 4 places reliance on the judgment of this Court in *New India Assurance Co. Ltd. v. Amru Ram & Ors.*, (MAC. APP. 533/2008) decided on 12.11.2008.

3. First of all, I may refer to the factual position. A Claim Petition under Sections 166 and 163-A of the Act was filed by the Respondents No. 1 to 4 on 18.02.2003. An Application under Order VI Rule 17 CPC dated 10.12.2003 was moved by the Respondents No. 1 to 4 so as to delete Section 163-A. The said Application was allowed by an order of even date on the ground that the Petition could be amended at the initial stage of the inquiry. An amended Petition was filed on 10.12.2003 under Sections 166 and 140 of the Act. In *Deepal Girishbhai Soni*, it was held as under:

59. The question may be considered from different angles. As for example, if in the proceedings u/s 166 of the Act, after obtaining compensation u/s 163A, the Awarded fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefore as a consequence where to the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation u/s 166 of the Act, would it be at liberty to award compensation in terms of Section 163A thereof.

60. The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings u/s 163A of the Act, is interim in nature.

4. While examining the question of conversion of a Claim Petition u/s 166 to u/s 163-A of the Act, this Court in *Prem Devi & Ors. v. Jagdish Kumar & Ors.*, (FAO. 398/2000) decided on 02.07.2012 held that a Claimant is entitled to amend the Petition from one u/s 166 of the Act to u/s 163 of the Act in appropriate cases. But on interpretation of *Deepal Girishbhai Soni*, it was held that if negligence is not proved, the Claims Tribunal cannot suo motu convert a Petition u/s 166 to one u/s 163-A of the Act. Para 14 of the report in *Prem Devi* is extracted hereunder:

14. In my view, on the basis of Supreme Court report in *Girishabhai Soni* (supra) it can be said that the Claims Tribunal cannot suo moto convert a petition u/s 166 to the one u/s 163-A of the Act if negligence is not proved. *Girishabhai Soni* (supra) does not foreclose the right of a party to convert a Petition u/s 166 to u/s 163-A in an Appeal if a Claimant otherwise satisfies the Court that the

amendment should be allowed.

5. Thus, it is evident that the Claims Tribunal was not competent to convert the Claim Petition from u/s 166 to u/s 163-A of the Act without any prayer on behalf of the Respondents No. 1 to 4. Amru Ram relied on by the Learned Counsel for the Respondents No. 1 to 4 is not applicable as the Supreme Court report in Deepal Girishbhai Soni was not considered therein.

6. There is another aspect of the matter. In this case, it was established that the accident was not caused on account of rashness or negligence on the part of the Second Appellant. Rather, it was evident that the accident occurred on account of the deceased's own negligence. In this regard, I would like to refer to para 10 of the impugned judgment, which is extracted hereunder:

Evidence of PW2 Constable Rajesh Kumar makes it clear that no wrongful act or omission in the happening of the accident could be attributed to respondent No. 1. Evidence of RW1 Parvez Akhtar that the deceased suddenly emerged on to the road after jumping of scaling over the iron railing in the middle patri and lost his balance, is corroborated by the evidence of PW2 Constable Rajesh Kumar. If a pedestrian at dead of night suddenly emerges on the road from nowhere, there is no way that the driver of a vehicle could be said to be rash or negligent in causing the accident, whatsoever be the speed of the vehicle. Judicial cognizance of the fact could be taken that the place where the accident occurred remains busy with people and traffic till late hours of the day/night and the suggestion by the claimants that respondent No. 2 was driving the Maruti van at reckless fast speed, cannot be believed.

7. I have before me Constable Rajesh Kumar (PW2's) testimony which clearly shows that the maruti van was being driven at a normal speed and the accident occurred as the deceased jumped over the iron railing on the central verge and lost his balance. The iron railings are put on the central verge so as to dissuade the pedestrian from crossing the road at will from any place they like. Jumping over the railing on the central verge was a wrongful act on the part of the deceased himself, which caused the accident. Thus, the deceased himself was responsible for the accident.

8. In National Insurance Company Ltd. Vs. Sinitha and Others, , the Supreme Court drew distinction between award of compensation on the basis of no fault liability u/s 140 of the Act and payment of compensation u/s 163-A of the Act and laid down that the award of compensation u/s 163-A of the Act is not on no fault liability and that a Claim Petition u/s 163-A of the Act can be defeated by the concerned party (owner or Insurance Company) by pleading and proving wrongful act, neglect or default on the part of the victim/deceased. Para 16 of the report is extracted hereunder:

16. At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that Section 163A of the Act has an overriding effect on all other provisions of the Motor Vehicles Act, 1988. Stated in other words, none of

the provisions of the Motor Vehicles Act which is in conflict with Section 163A of the Act will negate the mandate contained therein (in Section 163A of the Act). Therefore, no matter what, Section 163A of the Act shall stand on its own, without being diluted by any provision. Furthermore, in the course of our determination including the inferences and conclusions drawn by us from the judgment of this Court in *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc.*, , as also, the statutory provisions dealt with by this Court in its aforesaid determination, we are of the view, that there is no basis for inferring that Section 163A of the Act is founded under the "no-fault" liability principle. Additionally, we have concluded herein above, that on the conjoint reading of Sections 140 and 163A, the legislative intent is clear, namely, that a claim for compensation raised u/s 163A of the Act, need not be based on pleadings or proof at the hands of the claimants showing absence of "wrongful act", being "neglect" or "default". But that, is not sufficient to determine that the provision falls under the "fault" liability principle. To decide whether a provision is governed by the "fault" liability principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or insurance company) by pleading and proving "wrongful act", "neglect" or "default". From the preceding paragraphs (commencing from paragraph 12), we have no hesitation in concluding, that it is open to the owner or insurance company, as the case may be, to defeat a claim u/s 163A of the Act by pleading and establishing through cogent evidence a "fault" ground ("wrongful act" or "neglect" or "default"). It is, therefore, doubtless, that Section 163A of the Act is founded under the "fault" liability principle. To this effect, we accept the contention advanced at the hands of the Learned Counsel for the Petitioner.

9. Thus, even otherwise on the basis of the principles laid down in *Sinitha & Ors.*, the Respondents were not entitled to any compensation except the compensation of Rs. 50,000/- on no fault liability.

10. The Appeal, therefore, has to be allowed and the impugned order is liable to be set aside. I order accordingly.

11. By an order dated 24.05.2005, the award amount was ordered to be deposited and 50% thereof was ordered to be released in favour of the Respondents No. 1 to 4. The Appellants would be entitled to restitution of the amount, except the amount of Rs. 50,000/- paid to the Respondents.

12. The Appeal is allowed in above terms.

13. Statutory amount of Rs. 25,000/-, if any, shall be refunded to the Appellant. Pending Applications stand disposed of.