

(2008) 11 KL CK 0012
In the High Court Of Kerala
Case No : M.A.C.A. No. 1229 of 2005

Suresh

APPELLANT

Vs

Vasantha Shetty and Another

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 163A, 167
Penal Code, 1860 (IPC) — Section 279, 337, 338
Workmens Compensation Act, 1923 — Section 3(1)

Citation : (2008) 11 KL CK 0012

Hon'ble Judges : Harun-UI-Rashid, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : I.V. Pramod, for the Appellant; V.P.K. Panicker, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Appeal is filed challenging the order of the MACT rejecting Appellant's claim for compensation for the injuries sustained by him in a road accident for the reason that he as driver of the vehicle caused the accident on account of his negligence. It is the view of the MACT that tortfeasor is not entitled to compensation and the insurer is not liable to indemnify the insured against such claims. We have heard counsel appearing for the Appellant and standing counsel appearing for the insurance company. We have also gone through the insurance policy which is a comprehensive (B) policy covering the driver of the insured specifically for liability under the Workmen's Compensation Act, 1923.

2. Counsel for the Appellant relied on the Full Bench decision of this Court in National Insurance Co. Ltd. Vs. Malathi C. Salian, and contended that even if Appellant was negligent and caused the accident, he is still entitled to compensation for the injuries sustained by him in the accident. Standing counsel appearing for the insurance company on the other hand contended that Appellant's claim u/s 163A should be considered under Workmen's Compensation Act, as if claim petition was filed u/s 167 of the M.V. Act.

According to him, insurance company has a defence under the Workmen's Compensation Act which entitles immunity to it if the accident was on account of negligence of the workman. Even though there is general statement in the Full Bench decision above referred that injured person can get compensation u/s 163A of the M.V. Act, even if accident was on account of his negligence, we do not find any such proposition laid down by the Supreme Court in the decision referred to by the Full Bench. In fact there is an observation in the judgment of the Full Bench itself that insurance company had not adduced any evidence to prove that there was negligence on the part of the deceased. We further notice that Full Bench has not considered what would have been the consequence, had the insurance company proved negligence on the part of the claimant which resulted in the accident. The question that has to be decided is a very important one which has far-reaching consequences because if the claim is allowed in favour of tortfeasor then the same will act as an incentive for wrong-doers. In fact protection claimed by the claimant is u/s 163A of the Act introduced which dispenses with proof of negligence for granting compensation to victims of accident cases. The provision is certainly supplementary in nature and to protect cases where accident is caused not on account of any negligence or proof of negligence of any person involved. Even though most of motor accidents happen probably on account of rash and negligent driving or negligence of drivers or in other words on account of human error. Large number of accidents take place without any contributory negligence on the part of any driver and those are accidents pure and simple. We are of the view that purpose of Section 163A is to protect victims of accidents which are not caused on account of negligence of any person. However, we are afraid the purpose of Section 163A is not to protect tortfeasors which will virtually be an encouragement for rash and negligent driving. In this particular case, admittedly the Appellant was an employee of the first Respondent who was the registered owner of the jeep and the claim is against the insurer which insured the very same jeep. In other words, the claim is not as third party, but as an employee of the insured who is specifically covered by the insurance policy. Therefore in our view the claim though filed before the MACT u/s 163A read with Section 167 of the M.V. Act, ought to have been considered with reference to the statutory provisions under which employer is liable to the claimant and the liability of the insurer is only u/s 147 of the Act, which under the proviso provides for coverage of employees of the insured. Section 3(1) of the Workmen's Compensation Act providing for liability of the employer to the workman is as follows:

3. Employer's liability for compensation.- (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable-

(a) respect of any injury which does not result in the total or partial disablement

of the workman for a period exceeding three days;

(b) in respect of any injury not resulting in death or permanent total disablement caused by an accident which is directly attributable to-

(i) the workman having been at the time of thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

It is clear from Clause (b)(ii) to the proviso that among other things workman is not entitled to compensation for the injuries sustained by him, if the same happened on account of wilful disobedience of the workman to an order expressly given or to a rule expressly framed, for the purpose of securing the safety of worker. We feel traffic rule violations amounting to criminal offence punishable u/s 279 read with Sections 337 and 338 of the IPC are clearly covered by this exception clause. In other words it is a defence open to the employer and the insurance company to get out of the liability, if they prove that the accident leading to death or injury happened on account of negligence of the claimant, irrespective of whether the compensation claimed is for injury or after the death of the victim by his legal heirs. Unfortunately relevant provisions dealing with the subject, namely, Section 147 of the M.V. Act and Section 3(1) of the Workmen's Compensation Act, 1923 are not considered by the Full Bench without which in our view discussion on the law on the subject is thoroughly incomplete. It is our view that Section 163A is not intended to cover wrong-doers to get benefit for their own wrong. If the exception Clause (b)(ii) to the proviso to Section 3(1) of the W.C. Act is applicable, then Appellant will not be entitled to compensation. However, in this case, we notice that MACT has proceeded to assume that crime registered against the Appellant and the records of prosecution case are sufficient evidence based on which Appellant's negligence was presumed and claim rejected. It is our view that even though records of police case may be relevant, negligence of claimant is a matter calling for independent adjudication by the MACT or by Workmen's Compensation Commissioner, as the case may be, in a claim for compensation filed by workman or after his death by his legal heirs. On this issue probably the matter requires to be remanded for fresh adjudication. However, since we agree with the view of the MACT that tortfeasor is not entitled to claim compensation and since the matter is not considered in detail by the Full Bench, we refer this case for decision by a Full Bench on the specific issues stated above. Since question raised is recurring in nature, we direct the Registry to place the matter before the Chief Justice for constitution of Full Bench and for posting the case at an early date.