

(2015) 08 KAR CK 0383

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 23740/2010 (MV)

The Divisional Manager, National Insurance Company Ltd.

APPELLANT

Vs

Appaji Ramachandra Patil and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, 166, 3
Penal Code, 1860 (IPC) — Section 279, 304(a), 337, 338

Citation : (2015) 08 KAR CK 0383

Hon'ble Judges : S. Sujatha, J

Bench : Single Bench

Advocate : Laxman B. Mannoddar, for the Appellant; M.J. Shahapurkar, Advocate for Srijagadish Patil, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Sujatha, J—This appeal is filed by the insurance company challenging the judgment and award passed by the MACT, Belgaum in MVC No. 1586/2009 dated 24.05.2010.

2. The appeal filed by the claimants seeking enhancement of compensation in MFA No. 25568/2010 was dismissed by this Court on 14.02.2012 confirming the award passed by the Tribunal. The insurance company is in appeal only on the ground that the claimants having filed the petition under Section 163-A of the Motor Vehicles Act, 1988 (for short "the Act"), two motorcycles being involved in the alleged accident and the police having filed charge sheet against the riders of both the vehicles, both the vehicles are equally liable to pay the compensation, the same was negated by the Tribunal without appreciating the evidence on record.

3. Having heard the learned counsel appearing for the parties and perusing the material on record, it is noticed that the claimants are the parents of the deceased Raju Patil, who died in the accident that occurred on 11.05.2009 at about 9.15 hours on Nandgad-Khanapur road. It transpires that the deceased

was riding the motorcycle with normal speed following the traffic rules. When they reached near Lalwadi cross, one TVS Centra motorcycle bearing No. GA-07/A-8885 came from opposite direction with high speed in a rash and negligent manner in a wrong side, hit the vehicle of the deceased and caused accident, as a result of which the deceased and pillion rider fell down and sustained grievous injuries. Immediately, he was taken to Khanapur Hospital and then District Civil Hospital, later he was shifted to KLE Hospital, Belgaum and thereby he died during the treatment. The postmortem was conducted and the body was handed over to the claimants. The claim petition was resisted by the appellant mainly on the ground that the rider of the motorcycle was not holding a valid driving license at the time of accident and as such, the insurer was not liable to pay the compensation to the claimants. Further, it was contended that the petition is bad for non-joinder of necessary parties, since owner and insurer of the motorcycle bearing No. KA-22/Y-7561 are not made as parties in the case and as such, the petition is not maintainable.

4. After considering the evidence on record, the Tribunal appreciating the same, framed relevant issues and answered in favour of the claimants awarding total compensation of Rs. 4,60,300/- fastening the liability on respondent Nos. 1 and 2 jointly and severally. Being dissatisfied with the said judgment and award of the Tribunal, the insurer of the vehicle is in appeal contending that the deceased himself was at fault in driving the motorcycle in a rash and negligent manner and as such fastening liability on the insurer of the vehicle bearing No. GA-07/A-8885 construing the same as offending vehicle, would be contrary to the provisions of Section 163-A of the Act.

5. Per contra, learned counsel appearing for the claimants justifies the judgment and award passed by the Tribunal.

6. It is noticed that the insurance company has not entered into the witness box to prove their defence. Ex. R2 copy of the charge sheet produced by respondent No. 2 himself goes to show that the police have filed the charge sheet against the rider of the offending motorcycle for the offences punishable under Sections 279, 337, 338, 304(a) of IPC. The police have not filed charge sheet against the rider of the motorcycle for the offence punishable under Section 3 of the Act. In such circumstances, the contention raised by the appellant-insurance company that both the vehicles are equally liable to pay the compensation and police have filed charge sheet against the rider of both the vehicles is contrary to the facts of the case, which is evidenced from the finding given by the Tribunal after elaborately considering the evidence adduced by the parties. Ex. R3, the spot sketch establishes that the alleged accident had occurred on the side of the tar road. Ex. P2-copy of the complaint goes to show that the accident had occurred when the rider of the motorcycle bearing No. GA-07/A-8885 suddenly turned his motorcycle to right side, as a result, both the motorcycles lost control over their vehicles and dashed to each other from opposite direction. It clearly goes to show that the alleged accident has occurred due to rash and negligent driving of

the driver of the motorcycle bearing No. GA-07/A-8885.

7. It is also considered extensively by the Tribunal and has held that, in the case where the accident involves two vehicles one accusing the other of negligence, it may be open to both the parties to maintain a claim on no fault basis under Section 163-A of the Act. The defence taken by the respondent if it is to be accepted, the claimants necessarily have to lead evidence to rebut the plea of the insurance company to prove that the accident had indeed occurred not on account of the fault of the vehicle, wherein the deceased was driving. In the absence of cogent evidence led by the insurance company to prove their case that the accident occurred due to rash and negligent riding of the deceased, it would be difficult for this Court to accept the contention of the insurance company when both the vehicles being involved in the accident and apportionment has to be made as regards compensation awarded with respect to both the vehicles.

8. It is appropriate to refer the judgment pronounced by this Court in MFA No. 25664/2012 dated 29.07.2015, wherein this Court dealing with the provisions of Section 163-A of the Act has held that, it is the burden on the owner of the vehicle who has parked in an appropriate manner and failed to discharge the burden, are liable to satisfy the award, as the same being insured with the insurance company. This Court in MFA No. 20426/2011 and connected matter disposed of on 01.08.2014, placing reliance on the judgment of the Apex Court in the case of United India Insurance Co. Ltd., v. Sunil Kumar and Another reported in SC 2013 ACJ 2856, has held that, negligence need not be proved in a claim under Section 163-A of the Act. If that is the case, both respondent Nos. 1 and 2 owner and insurer of the vehicle are jointly and severally liable to pay the compensation awarded.

9. The Apex Court in the case of United India Insurance Company Ltd. Vs. Sunil Kumar and Another, (2013) 4 ACC 482 : (2013) ACJ 2856 : (2013) 12 AD 295 : (2013) 6 CTC 891 : (2013) 14 JT 190 : (2014) 173 PLR 631 : (2013) 4 RCR(Civil) 994 : (2013) 13 SCALE 311 : (2014) 1 SCC 680 : (2014) 2 SCJ 286 , has held thus:

"We are, therefore, of the view that liability to make compensation under section 163-A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an inquiry under section 163-A. Section 163-A does not make any provision for apportionment of the liability. If the owner of the vehicle or the insurance company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or claimant, naturally it would defeat the very object and purpose of section 163-A of the Act. Legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or permanent disablement occurred during the course of the user of the vehicle and the vehicle is insured, the insurance company or the owner, as the case may be, shall be liable to pay the compensation, which is a statutory obligation."

10. This Court in the case of Oriental Insurance Co. Limited Vs. Smt. Salma and Others, (2008) 2 KCCR 675 , considering the scope of Section 163-A of the Act has categorically held that, petition under Section 163-A of the Act is maintainable even where the negligence is on the part of the victim and accordingly, petition under Section 163-A of the Act is maintainable before the Tribunal. This Court in the case of National Insurance Co. Ltd. Vs. Honnappa Naik, Naveen, Devappa and K. Anand Shetty, (2008) ACJ 1459 : AIR 2008 Kar 85 : (2008) ILR (Kar) 959 : (2008) 5 KarLJ 697 , has held that, when two motor vehicles were involved in the accident, due to which, claimants sustained injuries, the claim petition under Section 163-A of the Act is maintainable.

11. In view of the law enunciated by the Apex Court and this Court referred to supra, it is clear that the petition under Section 163-A of the Act is maintainable even in an accident involving two vehicles. It is also noticed that Section 163-A of the Act is a special provision based on the structured formula simplifying the regular provision of awarding compensation under Section 166 of the Act. In the judgments referred to above, it is held that, even if rash and negligent driving is proved on the victim, the Court cannot exonerate the liability of the insurance company from indemnifying third party risks on the ground that, no fault is proved by the deceased victim. However, it is pertinent to note in the present case after considering the evidence on record, the Tribunal has given a categorical finding that the accident occurred only due to the rash and negligent driving of the driver of one TVS Centra motorcycle bearing No. GA-07/A-8885. Even though a defence is taken by the insurance company that there was negligence on the part of the deceased/victim, the same is not proved by adducing any evidence. In the circumstances, the finding given by the Tribunal fastening the liability on the insurer and the owner of the offending vehicle TVS Centra motorcycle bearing No. GA-07/A-8885 cannot be found fault with.

12. Accordingly, the appeal filed by the insurance company is devoid of merits and is dismissed. The amount in deposit may be transmitted to the Tribunal and the claimant is at liberty to withdraw the same.