
(2008) 09 KAR CK 0050
In the Karnataka High Court
Case No : MFA No. 6238 of 2006

The New India Assurance Co. Ltd.

APPELLANT

Vs

Sri Abdul Bhasheer @ Basheer and Others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163 A, 166

Citation : (2010) ACJ 405 : (2009) ILR (Kar) 501 : (2009) 1 KCCR 840

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : C.R. Ravishankar, for the Appellant; Lawyers Net, for R1-R4, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi, J.—This matter was heard earlier and both the counsel had relied on the decision of the Division Bench and submitted that, there is a conflicting view in the matter of application of provisions of Section 163-A as regard to the income of the deceased.

2. However, today learned Counsel for the appellant placed a reliance on the Full Bench decision of this Court reported in *Guruanna Vadi* and another Vs. The General Manager, Karnataka State Road Transport Corporation, Bangalore and another, wherein this Court has held that, in cause the person with the higher income, if he notionally brings down his income to Rs. 40,000/- in order to present his claim u/s 163-A of the Act, such claim is maintainable.

3. In the above decision it is also held that the claimant during pendency of the proceedings at the original or appeal stage can amend his claim petition from one made u/s 166 to a petition u/s 163-A provided he satisfies other conditions such as income factor etc. In view of the decision of the full bench of this Court, this matter was again considered and is heard again.

4. This is an appeal filed by the Insurance Company questioning the judgment

and award passed in MVC No. 4581 of 2005 dated 23.01.2006.

5. The principal contention of the insurer is that, u/s 163-A of the Motor Vehicle Act (hereinafter referred to as the "Act" for short) the claimant can present a petition under the said provision only if the income is less than Rs. 40,000/- and if the income is more than 118.40,000/* the claim petition u/s 163-A of the Act is not maintainable. In this regard, he submitted that it is a beneficiary legislation and applied to a class of people, whose income is less than Rs. 40,000/- p.a. In support of his contention, he relied on a decision reported in ILR 2007 Kar 28 in the case of Bangalore Metro Transport Corporation Vs. Lakshamma and Others, in the case of Bangalore Metro Transport Corporation v. (sic) and Ors. and submitted that the Division Bench of this Court has held that, if income is more than Rs. 40,000/- the claim petition filed u/s 166 of the Act cannot be converted into one u/s 163-A by scaling down the income or reducing the income to less than Rs. 40,000/- p.a.

6. Learned Counsel for the claimants relied on the decision reported in 2006 ACJ 229 in the case of Sharabai and Anr. v. P. (sic) and Ors. submitted that in the said case, the income of the deceased is Rs. 1,00,000/-, however, the Tribunal found that it is less than Rs. 40,000/-. Based on the said finding, the claim petition was treated as one u/s 163-A. He also relied on the another decision of the Division Bench reported in Sulochana and Others Vs. Karnataka State Road Transport Corporation, and submitted that, this Court in similar circumstances, if the claimant has restricted the income of the deceased to Rs. 40,000/- or less, the claim petition u/s 163-A is maintainable.

7. Section 163-A of the Motor Vehicles Act reads as under:

163-A. Special provisions as to payment of compensation of structured formula basis.:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.- For the purpose of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by

notification in the Official Gazette, from time to time amend the Second Schedule.

8. The Legislation by amendment Act No. 54/94, w.e.f. 14.11.1994, has inserted this special provision for payment of compensation on structured formula basis which fixes the liability on the owner or the insurer in case of death or permanent disability due to accident arising out of use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim as the case may be. Second Schedule provides guidelines as regard to the assessment of the compensation. It also provides for fixed compensation towards funeral expenses, loss of consortium, if the beneficiary is spouse loss of estate, medical expenses actually incurred and in case of damages, grievous injury Rs. 5,000/- and non-grievous injury Rs. 1,000/-, towards future medical expenses incurred Rs. 15,000/-. Section 163-A though a special provision, which enables the claimants of the deceased whose income was less than Rs. 40,000/- or the victim Who met with an accident whose income is less than Rs. 40,000/- for speedy redressal of his grievances for grant of compensation. No doubt this is a special provision, hut the object behind the said provision is to grant compensation to the dependants and the victim. In this regard, the matter was considered by the Full Bench of this Court as to whether the claimant can make a claim u/s 163-A, though his income is more than Rs. 40,000/-. The Full Bench of this Court reported in *Guruanna Vadi and another Vs. The General Manager, Karnataka State Road Transport Corporation, Bangalore and another*, has held that even if the income is shown more than Rs. 40,000/-, if the same is reduced to Rs. 40,000/- offer below the claim petition u/s 163-A is maintainable. In this regard it is useful to refer to the Paragraphs - 33 and 34, which read as under:

33. Question No. 4: The legislature intended to extend the benefit of the provision to a chosen class of person. The intention to limit it to a certain class is exemplified in the schedule appended to the statute. The schedule forms part of the statute and it often gives the details and forms for working out the policy underlying the statute. The division of a statute into section and schedules is a mere matter of convenience and the Schedule, therefore, has to be treated as a substantive enactment which, sometimes, may even go beyond the scope of a section to which the schedule is appended. The Second Schedule limits the operation of the Section to a limited class of persons whose income is Rs. 40,000/- or less per annum. The prescription of the outer limit of Rs. 40,000/- under the Schedule does not take away the right of the person to claim compensation under any other provision of the Act. The Legislature in its wisdom has thought it fit to provide the luxury of choice to persons whose income does not exceed Rs. 40,000/- in order to obviate the need fox such persons to involve themselves in a long drawn litigation, the cost and consequences of which may work to their disadvantage and ultimate failure of justice. Such a beneficial provision which is more in the nature of advancement of social justice, keeping in view a select class of citizen. But, in case the person with the higher income notionally brings down his income to Rs. 40,000/- in order to present his claim u/ s 163-A, the same can be permitted.

34. It is one of the principles of statutory interpretation that what has not been provided for in a statute cannot be supplied by Court. To do so will amount to legislating which is not the function of the Court. That it would be more logical to enlarge the application of a provision to an class of citizens by itself would be no ground for the Courts to read something into a provision not intended by the Legislature as it would amount to usurpation of the legislative function under the disguise of interpretation.

9. This Court has told that, there is no prohibition in any other provision of the Act from switching over claim made u/s 162 and 163-A provided the accident took place on or after 14.10.1994.

10. In view of the decision of the Full Bench of this Court and under the facts and circumstances of this case, where the claimants have restricted the income of the deceased to Rs. 40,000/- p.a. or less, though initially they stated more than Rs. 40,000/- p.a., they can maintain the claim petition u/s 163-A of the Act. The claimants are entitled to restrict the income of the deceased. In my opinion, though there are two later decisions of the Division Bench, however when we have a full bench decision of this Court, which is binding on the Court, therefore, I follow the decision of full bench. In this case also claimants have restricted the income of the deceased at Rs. 40,000/- p.a. the claim petition u/s 163-A of the Act is maintainable.

11. Learned Counsel for the insurer further submitted that the age of the deceased is mentioned as 22 years and same is incorrect as his mother's age is shown as 35 years in the claim petition the age of the deceased could not have been 22 years. However, the Insurance Company neither produced any material to prove that the deceased's age was not 22 years nor it has challenged the age factor before the Tribunal. Therefore, I cannot appreciate this contention, as this contention should have been taken before the Tribunal. Some time the claimant may commit clerical error in mentioning the age.

12. In this case the Tribunal based on the evidence has given finding. I find no reason to interfere with the judgement of the Tribunal. Accordingly, the appeal fails and it stands dismissed.

13. In so far as the compensation under the conventional head is concerned, the claimants are entitled only for Rs. 7,500/- in view of Second Schedule of the Act. To this extent, the compensation is reduced. The claimants are entitled to Rs. 4,15,500/- instead of Rs. 4,48,000/- awarded by the Tribunal.

14. The amount in deposit shall be transferred to the Tribunal.