(2016) 05 GAU CK 0022

In the Gauhati High Court

Case No : MAC App. 94 of 2010

The Oriental Insurance Co. Ltd. APPELLANT

Vs

Smt. Ashma Begum and Anr. RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A

Citation : (2016) AAC 2054 : (2016) 4 ACC 76 : (2017) ACJ 1070 : (2016) 164 AIC 621 : (2017) 1 ALLMR 43 : (2016) 4 CivilLJ 38 : (2016) 5 GauLJ 142 : (2016) 4 GauLR 204 : (2016) 3 GauLT 275 : (2016) 3 NEJ 453 : (2016) 3 TAC 391

Hon'ble Judges : Mrs. Rumi Kumari Phukan, J.

Bench : Single Bench

Advocate : Mr. S.K. Goswami, Advocate, for the Appellant; Mr. M.U. Mondal, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mrs. Rumi Kumari Phukan, J.—The present appeal has been preferred against and award dated 16.1.07 passed by the learned Motor Accident Claims Tribunal, Dhemaji in MAC Case No. 30/05 awarding compensation to the respondent No.1 who was the claimant in the aforesaid case.

2. The brief case necessary for disposal of the appeal may be summarised as below :

The respondent No. 1 as claimant filed a claim petition before the learned Member, Motor Accident Claims Tribunal, Dhemaji under Section 166/140 of the M.V. Act claiming compensation for death of her husband Ashlam Ali who was a businessman by profession having income of Rs. 8,800/- per month, who met with an accident on 22.4.05 while he was driving the vehicle No. AR -08/7860 and as result of which, her husband died on the spot.

3. The owner of the vehicle as well as the Insurance Company contested the case

by filing written statement. The opposite party No. 1 (respondent No. 2) in the present case in his written statement admitted the ownership of the vehicle and also about the involvement of the vehicle in the said accident and it is stated that the deceased drove the vehicle himself to attend a party. Denying all other allegations it is stated that at the time of accident the vehicle was duly insured with the Oriental Insurance Co. and the deceased also had valid driving licence and he is not liable to pay the compensation.

4. On the other hand, the opposite party No. 2 (present appellant) insurer of the offending vehicle also in the written statement has denied the averments made in the claim petition. It has been contended that the claim petition is not maintainable and the Insurance Company is not liable to pay compensation as there is gross violation of terms and conditions of the insurance policy.

5. After recording the evidence adduced by the complainant and as no evidence was not adduced by the respondent, learned court below passed the award in terms of provision 163 (A) of the Motor Vehicle Act. In para 6 of the judgment the learned Tribunal held as below :

....

....

In the instant case the claimant could not prove the negligence on the other part of the owner or driver of the vehicle involved in the accident. But it is established that death of the deceased occurred in the motor vehicle accident which took place on 22.4.05 due to the use of vehicle No. AR-08/7860. The claimant is therefore, entitled to get compensation for death of her husband deceased Ashlam Khan under the provision of Section 163-A of the M.V. Act.

....

....

6. The Suo Motu conversion of the proceeding from Section 166 of the M.V. Act to 163-A of the M.V. Act by the learned Tribunal has been challenged by the appellant. It has been assailed that the learned Tribunal is not permitted for such conversion whereas the claim petition was filed under Section 166 of the M.V. Act and admittedly the income of the deceased was more than 40,000/- per annum, being the income of Rs. 8,800/- per month, as the criteria under both the provisions is quite different. In support of his contention, the learned counsel for the appellant has relied upon the following decisions -

1. (2001) 5 SCC 175 (Oriental Insurance Co. Ltd and Ors v. Rana Govind Ayar and Ors.),

2. (2006) 1 GLT 282 (DB) (New India Assurance Co. Ltd. v. Phelishsa Bakai),

3. (2006) ACJ 1180 (Bina Prasad Sonari v. United India Assurance Co. Ltd and Ors.),

4. (2007) 4 GLT 730 (Oriental Insurance Co. Ltd. v. Thammawii)

5. (2009) 13 SCC 710 (Ningamma and Ors. v. United India Insurance Co. Ltd.) and

6. 2014 ACJ 2434 (National Insurance Co. Ltd, v. Lamhpuii & Ors.).

7. Per contra, the learned counsel for the respondent has submitted that there is no illegality in the conversion so made by the learned Tribunal and in support of which though he could not rebut the legal submission so made by the learned counsel for the appellant but has relied upon the following decisions :-

1. (2012) 2 SCC 256 (National Insurance Co. Ltd. v. Sinitha & Ors.)

2. (2013) 15 SCC 45 (Puttamma & Ors. v. K.L. Narayana Reddy & Anr.)

3. (2014) 1 SCC 680 (United Insurance Co. Pvt. Ltd. v. Sunil Kumar & Anr.)

8. I have considered the rival submissions of both the parties and also considered the decision referred. The only issue raised before this Court as to whether the Motor Accident Claims Tribunal can Suo Motu convert the same to 163 A M.V. Act without making any prayer made by the claimant ?

9. Before going to the merits of submission of counsel for both sides, it is necessary to discuss the relevant provisions of the Act.

"Section 163 A of the Motor Vehicle Act runs as follows :-

163 A. Special provisions as to payment of compensation on structural formula basis ?(i) 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 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 subsection, "permanent disability" shall have same meaning and extent as in the Workmen''s Compensation Act, 1923 (8 of 1923)

(2) In any claim for compensation under subsection (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) That 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.

So, from the plain reading of the Section 163 A of the MV Act it is found that ?

(1) This provision applicable in case of death or permanent disability due to

accident arising out of the use of a motor vehicle;

(2) The claimant is not required to prove the negligence on the part of the driver of the offending vehicle ;

(3) The claim petition under section 163 A MV Act can be filed only in case of the deceased of the injured as the case may be whose income is limited to the extent of Rs. 40,000/- PA.

Again, Section 166 MV Act reads as follows ?

"166. Application for compensation.- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made- (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be: Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(2) xxxx

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act."

10. As provided by the Section 166 of the MV Act the Tribunal is required to assess the compensation for death or any injury of a person as the case may be who met with an accident as a result of the negligent driving driver of the offending vehicle. This section includes damage of property also.

11. Again, the proceeding under section 166 A MV Act can be initiated either on the basis of the application by the person who sustained the injury, or by the owner of the property ; or in case of death by all or any of the legal representative of the deceased or by any agent duly authorised by the person injured or all or any of the legal representative of the deceased.

12. The proceeding can be initiated on the basis of the accident information report forwarded to the Tribunal under sub-section 6 of Section 158 of the MV Act.

13. From the above it is found that the situation as described in section 163A and 166 of the MV Act are different. Section 163 A MV Act basically applicable where the income of the deceased or the injured as the case may be upto Rs. 40,000/- per annum and the claimant is not required to prove the negligence on the part of the driver of the offending vehicle whereas application under section 166 lies where the accident occurred due to the negligence of the driver of the offending vehicle.

14. In the instant case as alleged in the claim petition the monthly income of the deceased was Rs. 8,800/- i.e. Rs. 1,05,600/- PA which is beyond the provision of section 163 A of the MV Act. The claim petition also filed under Section 166 of the MV Act. No application was filed by the claimant for conversion of the proceeding to under section 163 A of the MV Act.

15. In the case of Deepal Girishbhai Soni v. United India Insurance Co. Ltd. reported in 2004 (5) SCC 385, the Hon''ble Supreme Court has observed that the remedy for payment of compensation both under sections 163 A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies there-under simultaneously. One, thus, must opt/elect to go either for a proceeding under section 163-A or 166 of the Act, but not under both.

16. The matter in issue in the present case is squarely covered by the decision so rendered in 2013 ACJ 121 (United India Insurance Co. Ltd v. Akbar Shihab & Ors.) and the relevant portion of the aforesaid judgment is reproduced below :

"Para 10. As Section 163 A and 166 which are mutually exclusive and independent of each other, envisages two different situations, we are of considered view that conversion of claim petition vide under Section 166 of the Act to one under 163 A suo motu by the Tribunal is incompetent. Nor it is possible for the Tribunal to award compensation in terms of 163 A of the Act when after evidence it is satisfied that claimants have to be divested to the compensation under section 166 of the Act. The legislature has not intended any such procedure. Adoption of such course by such a Tribunal could not be permissible. For this conclusion we draw support from an observation by the Apex Court in Deepal Girishbhai Soni v. United India Insurance Co. reported in 2004 (5) SCC 385 and 2004 ICO 550 which can be profitably extracted here."

17. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claim under section 163 A or section 166 does not arise. Remedy for payment of compensation both under section 163 A and 166 being final and independent of each other, as statutorily provided, a claimant cannot pursue his remedies simultaneously. Thus one must opt/elect to go either for a proceeding either for 163 A or 166 of the Act but not under both as

discussed in the aforesaid decision.

"Para 14. That in the present case, the learned Tribunal proceeded to pass an award under Section 163 A of the Act which was originally filed under section 166 of the Act without an application by the claimant, that too after it was found that the accident has occurred due to negligence of the claimant. The suo motu conversion is unjustifiable."

18. Turning to the matter in hand, the claimant opted to proceed under section 166 of the MV Act. So, the question of negligent driving on the part of the driver of the offending vehicle was involved. But the learned Tribunal in para 6 of the judgment came to the findings that the claimant has failed to prove the negligence on the part of the owner or the driver of the vehicle involved in the accident and has awarded the compensation converting the petition under section 163 A of the MV Act though no such application was filed by the claimant for conversion of the proceeding under section 163 A MV Act.

19. Obviously in view of the income of the deceased person which was more than 40,000/- per annum, the condition precedent for initiation of the proceeding under section 163 A of the Act is found absent. In view of such legal proposition as laid down in the aforesaid Act, suo motu conversion by the learned Tribunal is not permissible and the order of the learned Tribunal is liable to be interfered into.

20. In the result, the appeal is allowed. The impugned award is hereby set aside. In view of the fact that it is a social piece of legislation and the claimant has already been paid an amount of Rs. 25,000/- by the Insurance Company after the aforesaid award the same need not be returned by the claimant who has already lost her husband and also now deprived of getting compensation in view of the technicalities as discussed above. We hope that the Insurance company will dealt with the matter accordingly.

21. Return the LCR.

