

(2014) 06 KAR CK 0142

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5418/2008 (MV)

The Oriental Insurance Company Limited

APPELLANT

Vs

Shilpakala

RESPONDENT

Date of Decision : 10-06-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(2), 140(4), 142, 163-A

Citation : (2014) 3 AKR 565 : (2014) 4 KCCR 3503

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Sanjay M. Joshi, Advocate for the Appellant; Harshavardhan R. Malipatil, Caveat Advocate for Respondent 1 to 5, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the appellant.

2. The appellant is the Insurance Company. The appellant seeks to disown its liability which has been fastened on the appellant by the Motor Accident Claims Tribunal, on the Claim Petition filed by the legal representatives of the deceased who was said to be riding the motor cycle which was duly insured by the appellant. It is pointed out that the deceased rider was not the owner of the vehicle. However, he had stepped into the shoes of the owner and was riding the vehicle. Secondly, it was pointed out that the pillion rider had tendered evidence in the proceedings and he had categorically made a statement before the police in the form of a complaint that the deceased was riding the motor cycle in a rash and negligent manner. Therefore, on these two counts, the learned counsel for the appellant submits that the Insurance Company is absolved of its liability and seeks that the appeal be allowed.

3. On the face of it, these aspects are covered, in the sense that in order to accept the contention of the Insurance Company that the deceased rider of the motor cycle had stepped into the shoes of the owner of the vehicle, it was

necessary for the Insurance Company to bring on record through reliable evidence, the factual details, to establish that the rider of the vehicle had occupied the shoes of the owner and therefore, could not be treated as a third party in permitting a claim to be made in respect of his death. It is candidly admitted by the learned counsel appearing for the appellant that the record does not disclose any such evidence tendered by the Insurance Company in this regard. Secondly, it is to be noticed that insofar as the negligence attributed to the rider of the motor cycle is concerned, from the language of Section 163-A of the Motor Vehicle Act, 1988, under which provision the Claim Petition has been filed, it is clear that it is sufficient if the claimant should establish that the deceased had died as a result of the accident in which the vehicle was involved.

However, the Supreme Court in the case of National Insurance Company Ltd. Vs. Sinitha and Others, , has taken a view that even in a petition u/s 163-A, if the injured or the deceased was negligent in causing the accident, it would be open for the Insurance Company to establish this by tendering evidence. In this regard, though the learned counsel for the appellant would submit that there was a pillion rider in the instant case on hand and there was a statement made by him in the complaint to the effect that the deceased was riding the motor cycle in a rash and negligent manner, however, it is also to be taken into account that Section 163-A does not provide for any such leverage in favour of the Insurance Company to tender evidence on this aspect of the matter and it is in this regard, a later judgment of the Supreme Court in United India Insurance Company vs. Sunil Kumar and another in Civil Appeal No. 9694/2013 decided on 29.10.2013 and reported in 2013 STPL (Web) 867 SC, has doubted the view taken in National Insurance Company vs. Sinitha and has referred the aspect as to whether in a Claim Petition u/s 163-A, the Insurance Company would be in a position to establish its case of absolving its liability by establishing its case that the deceased or the injured was indeed the cause for the accident on account of rash and negligent riding or driving and the same has been referred to a larger bench, with the following observation:

6. We find, both Sections 140 and 163-A deal with the case of death and permanent disablement. The expression "permanent disablement" has been defined u/s 142, so far as Section 140 is concerned. So far as Section 163-A is concerned, the expression "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923. Both Sections 140 and 163-A deal with cases of no fault liability. In order to prefer a claim u/s 140(2), claimant need not plead or establish that death or permanent disablement, in respect of which claim has been made, was due to any wrongful act, neglect or default of the deceased or the disabled person. Similarly, u/s 163-A also, claimant shall not be required to plead or establish that death or permanent disablement, in respect of which claim has been made, was due to any wrongful act, neglect or default of the deceased or the injured, as the case may be. In other words, an enquiry as to who is at fault is foreign to the determination of a claim u/s 140 as well as Section 163-A. Claim u/s 140 as well as Section 163-A

shall not be defeated by the Insurance Company or the owner of the vehicle, as the case may be, by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement claim has been made. So also, the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of share of such person in the responsibility for his death or permanent disablement.

7. We find, in Sinitha's case (*supra*), one of the factors which weighed with the learned Judges was the absence of a similar provision like sub-section (4) of Section 140 in Section 163-A which, according to the learned Judges, has been intentionally and purposefully done by the legislature. We find it difficult to accept that view. We are of the view that if such an interpretation is given, the very purpose and object of Section 163-A would be defeated and render the provision otiose and a claimant would prefer to make a claim u/s 140, rather than u/s 163-A of the Act by exercising option u/s 163-B of the Act. Because, if a claim u/s 140, is raised because of Section 140(4), such a claim would not be defeated by the owner of the vehicle or the insurance company, as the case may be, and the claimant may get a fixed sum prescribed u/s 140(2). Sub-section (4) of Section 140 has been introduced by the legislature since claim u/s 140 would be followed by Section 166. So far as Section 163-A is concerned, claim is restricted on the basis of pre-determined formula, unlike in the case of application u/s 166.

8. We are, therefore, of the view that liability to make compensation u/s 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 enquiry u/s 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.

Therefore, the two primary grounds on which the present appeal is filed, namely that the deceased had stepped into the shoes of the owner and secondly, that he was responsible for the accident on account of his rash and negligent riding, are not grounds on which the present appeal can be admitted. Therefore, the appeal is rejected.