
(2014) 06 AP CK 0195
In the Andhra Pradesh High Court
Case No : CA Nos. 4 and 5 of 2014

Union of India

APPELLANT

Vs

Tech Mahindra Ltd.

RESPONDENT

Date of Decision : 23-06-2014

Acts Referred:

Companies Act, 1956 — Section 10F, 162, 220(1), 220(3), 274(1)(d)
Criminal Procedure Code, 1973 (CrPC) — Section 357

Citation : (2015) 124 CLA 65

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : C. Raghu, Advocates for the Appellant; S. Ravi, Senior Counsel and K. Vivek Reddy, Advocates for the Respondent

Judgement

B. Chandra Kumar, J.—Since both these appeals arise out of the same accident, they are being disposed of by this common judgment. The Award dated 17.03.2006 passed in O.P. No. 200 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Nampally, at Hyderabad, is under challenge in these appeals. The claimants are seeking enhancement of compensation in their appeal M.A.C.M.A. No. 1544 of 2006 and the insurance company is challenging its liability in its appeal M.A.C.M.A. No. 1614 of 2006.

2. Parties will be referred to as arrayed in the Tribunal for the sake of convenience.

3. The claimants are parents of the deceased Upender @ Uppalaiah. On 19.10.2003 at about 10.00 p.m. the deceased and his friend Mysaiah were proceeding on scooter bearing No. AP 28 F 1889. The deceased was driving the scooter. A lorry bearing No. ADF 9329 was parked in middle of the road without parking lights and signals and without keeping any stones. The deceased could not observe the said lorry and dashed back portion of the lorry and consequently

the deceased sustained head injuries and died on the spot. Police, on the complaint of the driver of the lorry, registered a case in Crime No. 115 of 2003 for the offences under Sections 337 and 304A IPC. The claimants contended that the deceased was working as a labourer and earning Rs. 3,000/- per month and claimed a total compensation of Rs. 3.00 lakhs.

4. Owner of the lorry, first respondent, remained ex parte and the 2nd respondent insurance company contested the matter on various grounds.

5. The main contention of the insurance company is that since the accident occurred due to own negligence of the deceased, the claimants are not entitled to any compensation.

6. On behalf of the claimants P.Ws. 1 and 2 were examined and Exs.A-1 to A-5 were marked. No witnesses were examined on behalf of the respondents, but copy of policy was marked as Ex. B-1.

7. On appreciation of evidence, on issue No. 1, the Tribunal came to the conclusion that since the claimants are claiming compensation under Section 163-A of the Motor Vehicles Act (for short "the Act"), they need not plead and prove the issue of negligence. On issue No. 2, the Tribunal has taken notional income of the deceased at Rs. 15,000/- per annum and after deducting 1/3rd towards personal expenses calculated the loss of dependency at Rs. 10,000/- per annum and by applying 16 multiplier awarded compensation of Rs. 1,60,000/- towards loss of earnings and a sum of Rs. 15,000/- towards loss of estate, Rs. 5,000/- for transportation and funeral expenses and Rs. 10,000/- towards loss of love and affection in all Rs. 1,90,000/-.

8. Smt. I. Maamu Vani, learned counsel for the insurance company in M.A.C.M.A. No. 1644 of 2006, submits that the Apex Court in National Insurance Company Ltd. Vs. Sinitha and Others, held that it is open to the owner or the insurer, as the case may be, to defeat a claim raised under Section 163-A of the Act by pleading and establishing through cogent evidence and fault grounds. It is also her submission that basing on the above referred judgment of the Apex Court, this Court in Bajaj Allianz General Insurance Co. Ltd., Hyderabad v. Gaddam Swami Reddy, 2013 (4) ALT 574 : 2013 (2) An.W.R. 158 (A.P.) : 2013 (3) ALD 66 held that petition under Section 163-A of the Act is not maintainable which is founded as fault liability principle. It is also her contention that the contents of F.I.R can be relied on when the said document is filed by the claimants themselves and the contents of F.I.R. go to show that the deceased died due to his own negligence.

9. In the appeal, M.A.C.M.A. No. 1544 of 2006, filed by the claimants, Sri C. Prakash Reddy, learned counsel, representing the same insurance company submitted that when a claim is made under Section 163-A of the Act, the claimants cannot seek more compensation than based on structured for mala. It is also his submission that though the judgment in National Insurance Company Limited v. Sinitha (supra) has been referred to a larger Bench by the judgment in

United India Insurance Company Ltd. Vs. Sunil Kumar and Another, , the amounts should be restricted on the basis of the Schedule.

10. Sri K. Rama Krishna Reddy, learned counsel for the claimants, submitted that, the claimants need not plead and prove the issue of negligence in view of the judgment of Apex Court in case between United India Insurance Co. Ltd. v. Sunil Kumar (supra). Therefore, the issue of negligence need not be considered. It is also his submission that the income of the deceased should be taken at least at Rs. 4,500/- per month having regard to the settled law that there should be any addition of 50% to the income. He has relied on certain decisions which will be referred at the time of discussion.

11. In this case, admittedly, the driver of the lorry lodged a complaint to the police basing upon which the police, Bhongir P.S., registered a case in Crime No. 115 of 2003 under Sections 337 and 304-A IPC. As seen from the contents of Ex. A-1, the driver of the lorry alleged that the deceased died due to his own fault and the case was registered against the deceased in this case. The police filed a final report contending that since the accused died, no further action is needed and accordingly the case is referred as "action abated". The claimants have also filed inquest report marked as Ex. A-3. However, a reading of these documents, Exs.A-1 to A-5, makes it clear that there is no reference as to whether the driver of the lorry had put on parking lights at the time of accident or whether he had taken any precautionary measures such as putting of stones etc., around the lorry at the time of accident. Admittedly, the lorry was parked along the left side of the road for attending certain repairs. The insurance company has not taken any steps to examine the driver of the lorry. The driver of the lorry would have been the best person to speak about parking lights and stones, if any, kept around the lorry indicating about parking of the lorry. Admittedly, the accident occurred at about 10.00 p.m.

12. Coming to the evidence adduced by the claimants. P.W.1 is the father of the deceased. Admittedly, he has not witnessed the occurrence. Therefore, his evidence is not very much helpful to either of the parties. P.W.2 is the eye-witness. According to him, on the fateful day the deceased was driving the scooter and that he was pillion rider on the same scooter. They were proceeding towards Hyderabad from Bhongir side. According to P.W.2 the deceased was driving the scooter along the left side of the road. When they reached Balaji Weighing Bridge, they found a lorry stopped on the middle of the road without parking lights and signals in a zigzag manner. According to P.W.2 no stones signalling parking of the lorry were kept. P.W.2 has categorically deposed that the deceased could not observe the lorry standing in the middle of the road and consequently the scooter dashed against the lorry on its rear portion and the deceased sustained head injuries and died on the spot. According to him, the police recorded his statement. He was shown as L.W.2 in the charge sheet, Ex. A-2. It was suggested to P.W.2 that himself and the deceased were in drunken state which he denied. It is also elicited from his evidence that he did not lodge

any complaint to the police about the accident. As far as lodging of the complaint is concerned, the contents of F.I.R. themselves go to show that P.W.2 was also injured in the accident and he was shifted to hospital. Therefore, the driver of the lorry lodged a complaint. P.W.2 cannot be blamed for not lodging a complaint, since admittedly he was shifted to hospital. As far as evidence of P.W.2 is concerned, there were no parking lights and stones indicating parking of the lorry. Admittedly, there is no contra evidence in this case.

13. As discussed above, the insurance company ought to have examined the driver of the crime lorry. In the absence of the evidence of the driver of the lorry, there is no reason to disbelieve the evidence of P.W.2. With regard to suggestion given to P.W.2 that the deceased himself was in a drunken state, I have verified the contents of postmortem examination report and there is nothing in the said report to say that the deceased was in drunken state. Mere making a plea or mere giving a suggestion to a witness is not sufficient. The parties have to lead evidence in support of their plea. In the absence of supporting evidence, pleadings need not be considered. Thus, it is clear that the accident occurred due to rash and negligent driving of the driver of the crime lorry who parked the lorry negligently without any parking lights and without putting stones.

14. It is an admitted fact that a claim petition was filed under Section 163-A of the Act. When a petition is filed under Section 163-A of the Act, the claimants need not plead and prove that the accident is occurred due to negligence of the driver of the vehicle involved in the accident. This Court in *The United India Insurance Co. Ltd. v. Myadada Latha*, 2013 (2) An.W.R. 453 (A.P.) : 2013 AAC 2316 (AP) has categorically held that in a case under Section 163-A of Motor Vehicles Act, 1988 the claimants need not plead and prove the issue of negligence and the said issue would be irrelevant. In fact, the compensation amount is paid in a claim under Section 163-A of the Act without pleading and proof of fault on the principle of social justice as a social security measure because of ever increased motor vehicle accidents. As far as the decisions relied on by Smt. I. Maamu Vani, learned counsel for the insurance company, in *National Insurance Company Limited v. Sinitha and others* (supra) and *Bajaj Allianz General Insurance Co. Ltd., Hyderabad v. Gaddam Swami Reddy* (supra) are concerned, admittedly the Apex Court has referred the issue to a larger Bench in *United India Insurance Co. Ltd. v. Sunil Kumar* (supra). The Apex Court has made certain observations in the said decision. Their Lordships referred the issue to a three-Judge Bench in *Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda*, and observed as follows:

"The question may be considered from different angles. As for example, if in the proceedings under section 166 of the Act, after obtaining compensation under Section 163-A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefore as a consequence where to the Tribunal refuses to grant any compensation; would it be within its jurisdiction to

direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, would it be at liberty to award compensation in terms of Section 163-A thereof."

15. In *Deepal Girishbhai Soni v. United India Insurance Co. Ltd.* (supra) a detailed analysis was made on the scope of Sections 166 and 163-A of the Act and held 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 thereunder simultaneously. The Court also extensively held that Section 163-A was introduced in the Act by way of a social security scheme and is a Code by itself. The Court noticed that Section 163-A was inserted making a deviation from the common law liability under the Law of Torts and also in derogation of provisions of the Fatal Accidents Act. The three-Judge Bench also held that Section 163-A has an overriding effect and provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A contains a non-obstante clause in terms whereof the owner of the motor vehicle or the authorized insurer is 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. It is further observed that Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is also observed that the above mentioned three-Judge Bench judgment was not placed before the learned Judges who decided *Sinitha's* case (supra). It is further observed that He 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. Their Lordships found it difficult to accept that view. It is observed 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 claimant would prefer to make a claim under Section 140 rather than under Section 163-A of the Act. The Apex Court also observed that as far as Section 163-A is concerned, claim is restricted on the basis of predetermined formula, unlike in the case of application under Section 166 of the Act. Finally it was held 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 enquiry under Section 163-A. If the owner of the vehicle or 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. The legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Thus, disagreeing with the reasoning of the two-Judge Bench in *Sinitha's* case (supra), the matter is referred to a larger Bench. In view of the judgment referred above in *Sinitha's* case (supra), it is clear that

now this Court need not follow the judgment in Sinitha's case (supra) as on today and this Court is bound to follow the judgment in Deepal Girishbhai Soni's case (supra).

16. As far the issue of awarding compensation is concerned, the learned counsel for the claimants relied on the judgment in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, wherein the Apex Court observed as follows:

"Therefore, where the application is under Section 163A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs. 40,000/-, by applying the formula: $(\frac{2}{3} \times \text{AI} \times \text{M})$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under Section 163-A of MV Act."

In view of the same, this Court has to follow the above guidelines laid down by the Apex Court.

17. Now, coming to the compensation to be awarded to the claimants in this case. Admittedly, the deceased was aged about 22 years. Since the deceased was aged about 22 years, the appropriate multiplier is 17. The claimants contended that the deceased was working as a labourer and earning Rs. 3,000/- per month. The main contention of the learned counsel for the insurance company is that no documentary evidence has been produced to prove the income of the deceased. Admittedly, the deceased was working as a labourer and in case of a labourer normally there would not be any documentary evidence unless they are working in a factory or any other Government establishment. P.W.I is the father of the deceased. According to him, the deceased was working as a labourer and earning Rs. 3,000/- per month and he would have bright future and would have earned Rs. 10,000/- per month in due course. Though P.W.I was cross-examined at length, nothing has been elicited to disbelieve his testimony. P.W.2 also deposed about the income of the deceased. According to him, the deceased was earning Rs. 3,000/- per month.

18. Having regard to the fact that the deceased was about 22 years and the accident occurred in 2003 and there is no rebuttal evidence in this case, and there is every prospect of increase of income in future, the income of the deceased is taken as Rs. 3,600/- per month. $\frac{1}{3}$ rd has to be deducted towards personal expenses of the deceased. In the light of the above referred judgment of the Apex Court, if the loss of earnings is taken as Rs. 2,400/-, the loss of earnings would be Rs. 28,800/- (Rs. 2400 x 12) and if 17 multiplier applies (Rs. 28,800/- x 17) it would be Rs. 4,89,600/- and in addition the claimants are entitled to Rs. 2,000/- towards funeral expenses, Rs. 2,500/- towards loss of estate as per the II Schedule.

19. In view of the latest judgment of the Apex Court in Rajesh and Others Vs.

Rajbir Singh and Others, irrespective of claim made by the claimants, it is the duty of the Court to award the amount of compensation which appears to be just and reasonable and accordingly the appeal M.A.C.M.A. No. 1544 of 2006 filed by the claimants is allowed and the appeal M.A.C.M.A. No. 1614 of 2006 filed by the insurance company is dismissed. In the result, the claimants are awarded Rs. 4,94,100/- (4,89,600 + Rs. 2,000/- + Rs. 2,500/-) towards compensation. However, the rate of interest will be 7.5% from the date of petition till the date of realization in the circumstances of the case. The appellants have to pay court fee on the enhanced amount of compensation before drafting the decree. The compensation awarded shall be apportioned by claimants 1 and 2 equally and the first claimant shall be entitled to the costs. Pending miscellaneous petitions, if any, in these two appeals shall stand closed in the light of this final order.