
(2002) 07 BOM CK 0085
In the Bombay High Court
Case No : F.A. No. 464 of 2002

United India Insurance Co. Ltd.	Vs	APPELLANT
Janabai Kurhat and Others		RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 163B

Citation : (2003) ACJ 350 : (2002) 4 MhLj 544

Hon'ble Judges : B.B. Vagyani, J

Bench : Single Bench

Advocate : V.N. Upadhye, for the Appellant; Respondents served, for the Respondent

Final Decision : Allowed

Judgement

B.B. Vagyani, J.—Heard.

2. Admit. Taken up for final hearing forthwith.

3. This first appeal is directed against the award passed by the Member, Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claims Petition No. 129 of 1998. The accident took place on 28-2-1998 at 2.03 p.m. on Chalisgaon-Kannad road near Ambadi Canal. Deceased Raju was driving the scooter bearing No. HVG-4556. The scooter belonged to respondent No. 3 i.e. original respondent in the claim petition, who happens to be father of deceased Raju. A truck was ahead of Raju. While negotiating the V turn, the truck applied brakes. Deceased Raju, while negotiating the same V turn also applied brakes of scooter. He could not control his scooter and ultimately felled from scooter and died. Therefore, the mother of deceased Raju filed claim petition against owner of the scooter i.e. father of deceased Raju and the Insurance Company with whom the scooter was insured under the insurance policy.

4. The Tribunal treated the claim petition u/s 163A of the Motor Vehicles Act and allowed the claim petition and directed the owner of the vehicle and the

Insurance Company to pay jointly and severally Rs. 1 Lakh together with interest at the rate of 9% p.a. Feeling aggrieved by the award passed by the Tribunal, the Insurance Company has filed this First Appeal.

5. Shri Upadhye, learned counsel submits that the claim petition u/s 163A of the Motor Vehicles Act is not at all maintainable in law and the Tribunal should have dismissed the claim petition on the ground that the claimant has received compensation under no fault liability u/s 140 of the Motor Vehicles Act. He mainly relied upon Section 163B of the Motor Vehicles Act.

6. Shri Upadhye, learned counsel brings to my notice from the proceeding of First Appeal No. 170 of 2001 that the original claimant applied u/s 140 of the Motor Vehicles Act for grant of compensation under no fault liability and the very Tribunal granted Rs. 50,000/- to the original claimant under the principle of no fault liability. Feeling aggrieved by the said interim award, the Insurance Company had preferred First Appeal No. 170 of 2001. However, the said appeal is withdrawn by the Insurance Company on the ground that the very Tribunal has passed final award, with liberty to challenge the same in fresh proceeding.

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

"Where a person is entitled to claim compensation u/s 140 and Section 163A, he shall file the claim under either of the said sections and not under both."

8. The wording of Section 163B is very clear. A person cannot claim compensation u/s 140 and 163A of the Motor Vehicles Act, 1988. The choice is given to the person to claim compensation under either of sections and not both. In the case in hand, the Tribunal has awarded compensation u/s 140 as well as 163A of the Motor Vehicles Act, 1988. The award passed by the Tribunal u/s 163A of the Act is, therefore, contrary to the statutory provisions. Under the circumstances, the award cannot be sustained in law. The award passed by the Tribunal suffers from illegality and, therefore, the award passed by the Tribunal is liable to be quashed and set aside.

9. For the sake of arguments, if it is held that the claimant has filed claim petition u/s 166 of the Motor Vehicles Act, 1988, the original claimant cannot succeed because it is an admitted fact that the deceased died on account of his own rash and negligent driving. The truck driver was not at fault. There is nothing on record to show that he was rash and negligent. While negotiating the turn, application of brakes for lowering down the speed is inevitable. The deceased applied brakes all of a sudden, lost control over his vehicle and met with accident.

10. In the result, First Appeal is allowed. The impugned award passed by the Motor Accident Claims Tribunal against the appellant Insurance Company is quashed and set aside. No order as to costs.