
(2011) 07 KL CK 0057
In the High Court Of Kerala
Case No : M.A.C.A. No. 2514 of 2009

United India Insurance Co. Ltd.

APPELLANT

Vs

Mohanan and Others

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2011) 3 KLJ 712 : (2011) 3 KLT 669 : (2011) 8 RCR(Civil) 1381 : (2012) 2 RCR(Civil) 378

Hon'ble Judges : R. Basant, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : P.V. Jyothi Prasad, for the Appellant; T.K. Koshy, T.A. Rajan and B. Pramod, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—Where two vehicles are involved in an accident and the driver/ rider of one vehicle suffers injury on account of his own alleged negligence is he entitled to sustain a claim u/s 163A of the Motor Vehicles Act against the owner and authorised insurer of the other vehicle involved in the accident? This is the crucial question arising for consideration before us. On fundamental facts there is no dispute. The claimants are the legal heirs of a deceased person who was riding his motorcycle at the time of the accident. On that motorcycle, in addition to the rider there were two pillion riders. When the deceased was riding that motorcycle, that motorcycle was involved in an accident. There was a collision between that motor cycle and another motorcycle. In that, other motorcycle there was one rider and one pillion. All the five persons who were travelling in the two motor cycle suffered injuries. One of them, the rider of motorcycle No. 1 (we will hereafter refer to the said vehicle bearing No. KL 7F- 4196 as motor cycle No. 1)succumbed to the injuries. Claimants are the legal heirs of the said rider.

2. The claimants staked their claim for compensation u/s 163A of the Motor

Vehicles Act. It is crucial to note that the claim was staked not against the owner and insurer of his own vehicle, i.e., motor cycle No. 1, 4196, they staked their claim for compensation u/s 163A against the owner and insurer of the other motorcycle (we shall refer to the said motorcycle No. KL 7AM-8253 as motor cycle No. 2).

3. The Insurer of motorcycle No. 2 (KL 7AM-8253) is the appellant before us. The learned counsel for the appellant contends that a claim u/s 163A is not maintainable by the legal heirs of a deceased person who was himself responsible for the accident. Therefore, it is contended that the claim is not sustainable. The Tribunal had proceeded to hold that a total amount of Rs. 3,45,599/- is payable along with interest and costs.

4. We must note that the Tribunal had chosen to dispose of this claim u/s 163A along with the claims of other persons who were injured in the accident. All of them had preferred claims u/s 166 of the Motor Vehicles Act. The Tribunal cautiously and zealously considered the claim u/s 163A differently. However, it deserves to be mentioned that the Tribunal in the same award while considering the other claims has come to a definite finding that the accident had taken place on account of the negligence of the rider of motorcycle No. 1, that is the predecessor in interest of the claimants herein.

5. It is well settled by now that in a claim u/s 163A negligence or fault is irrelevant. It is unnecessary to search for precedents on this aspect. The decision of the Full Bench of this Court in *National Insurance Co. Ltd. Vs. Malathi C. Sallan*, , establishes that proposition beyond the pale of controversy. It is true that in a subsequent decision another Division Bench has doubted the correctness of the proposition laid down by the Full Bench and has referred the same for consideration by another Full Bench. That order of reference is seen reported in *Suresh Vs. Vasantha Shetty*, . Notwithstanding the fact that the said decision has been reported by the journals that decision can in no way affect the dictum laid down by the Full bench in *Malathi C. Sallan supra*. We are bound by the decision in *Malathi C. Sallan* and we have got to follow the same implicitly,

6. We must in this context assert that we find no reason to doubt the dictum in *Malathi*. The express language of Section 163A makes it crystal clear that negligence is irrelevant in a claim u/s 163A. If negligence is irrelevant, contributory negligence must also definitely be held to be irrelevant. A plain reading of Section 163A must make it clear that the liability u/s 163A does not at all depend on negligence or fault. The doubt expressed in *Suresh v. Vasantha Shetty*" notwithstanding, we are of opinion that we are bound by *Malathi* and will have to follow that decision.

7. The learned counsel for the appellant then contends that another Division Bench of this Court in *United India Insurance Co. Ltd. Vs. Vijayarajan and Others*, that is *United India Insurance company v. Vijayarajan* has already chosen to take the view that the dictum in *Malathi* is no more valid law in the light of the

subsequent pronouncement of the Supreme Court in Ningamma and Another Vs. United India Insurance Co. Ltd., . We have been taken through the decision in Ningamma and decision in Vijayarajan Supra. Ningamma as well as Vijayarajan were cases in which claim was made by a rider/passenger in a vehicle/his legal heirs against the owner/authorised insurer of that very vehicle. It was in that situation that Ningamma took the view that the deceased was not a third party and he steps Into the shoes of the owner. The owner himself cannot claim against any relief u/s 163A and, therefore, the one who has stepped into the shoes of the owner cannot also claim against the owner of Insurance Company. This alone is the dictum in Ningamma. The Division Bench in Vijayarajan has not specifically adverted to the question as to what dictum in Malathi is opposed to the dictum in Ningamma. In Vijayarajan also it was a case of a Person who was riding his motorcycle which hit accidentally on a concrete electric post resulting in injuries to the rider to which injury he succumbed. The legal heirs of such rider had claimed compensation against the owner/authorised Insurer of the vehicle which the deceased was riding. It was in that context that the dictum in Vijayarajan was rendered that such a claimant cannot claim u/s 163A against the authorised insurer of the vehicle which he was riding. According to us neither Ningamma nor Vijayarajan can have any application to the facts of the case. This is a case where the deceased was riding one motorcycle; it was involved in an accident with another motor cycle and the legal heirs of the deceased have staked claims against the owner/authorised insurer of the other vehicle involved in the accident. The claim was not against the owner and/or the authorised insurer of the vehicle which the deceased was riding. That makes the crucial distinction and because of that crucial distinction the dictum in Ningamma or Vijayarajan can have no application to the facts of the case.

8. It is important to ascertain the rationale and the logic underlying Section 163A of the Motor Vehicles Act. Groomed in the tradition of Law of Torts it may be difficult to understand the foundation of liability. The foundation of liability is certainly not fault. The liability u/s 163A is not the liability recognised under the law of Tort. It is a different, distinct, absolute, statutory liability and the language of Section 163A makes the position crystal clear. Search for negligence is not necessary and is not permitted u/s 163A. The shift in emphasis u/s 163A is from fault to suffering. It is the suffering endured in an accident Involving a motor vehicle that gives rise to the liability u/s 163A. Modern jurisprudence recognizes such no fault liability. In these circumstances, we are unable to accept the contention that in view of the finding in the impugned award, though unnecessary for the purpose of deciding the claim u/s 163A, that the deceased was negligent and such negligence had resulted in the accident, the claim of the legal heirs of the deceased u/s 163A has to be repelled. Neither Ningamma nor Vijayarajan would justify the rejection of the claim of the claimants as legal heirs of the deceased rider.

9. The Tribunal has taken the view that, an amount of Rs. 3,45,599/- is due and there is no cross objections or appeal on the part of the claimant. The quantum

of compensation has not been challenged by the appellant. In these circumstances, we find it unnecessary to go into the question whether compensation awarded has been ascertained strictly in accordance with the schedule. In any view of the matter, we find that the amount awarded is only less than the amount that is payable under the Second Schedule to the Motor Vehicle Act. Therefore, it is unnecessary to delve deeper into that question. We need only observe that as per the findings of the Tribunal deceased was aged 24 years. For the purpose of Section 163A it is only necessary to observe that he belongs to the age group of 20-25 years referred to in the 3 horizontal column of the table given in Clause 1 of the second schedule. He claimed to have a monthly income of Rs. 3,250/-. The Tribunal found his monthly income to be Rs. 2,500/-. He therefore falls within the group of persons of the income group covered by the 12th vertical column i.e. persons earning annual income above Rs. 24,000/- upto Rs. 36,000/-. Multiplier-multiplicand is irrelevant. The relevant entry against the relevant horizontal and vertical column gives the amount in thousands that is payable. Rs. 6,48,000/- is the amount. Reduced to two third as mandated by the note to the schedule, the amount to be paid as compensation under Column 1 is Rs. 4,32,000/- which is higher than the amount awarded. We have in the judgment in M.A.C.A. No. 223 & 243 of 2007 dated 22.7.2011, National Insurance Company v. P.C. Chako adverted in detail to the method of ascertaining the quantum of compensation u/s 163A of the Motor Vehicles Act. It follows from the above discussions that the challenge against the Impugned award is without any merit. The same deserves to be dismissed. This appeal is in these circumstances dismissed.