
(2006) 12 BOM CK 0026
In the Bombay High Court
Case No : First Appeal No. 138 of 2006

United India Insurance Co. Ltd.

APPELLANT

Vs

Sunanda Dhumone and Others

RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 163A, 163A(1)

Citation : (2007) 2 ACC 565 : (2007) ACJ 1715 : (2007) 3 ALLMR 141 : (2007) 3 MhLj 256

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : D.N. Kukday, for the Appellant; A.R. Wagh, for the Respondent

Final Decision : Allowed

Judgement

A.P. Lavande, J.—Heard Mr. D.N. Kukday, Advocate for the Appellant and Mr. A.R. Wagh, Advocate for respondent Nos. 1 to 5. Admit. By consent heard forthwith.

2. By this appeal, the appellant assails the judgment and order dated 10-8-2005 passed by Motor Accident Claims Tribunal, Wardha in Motor Accident Claims Petition No. 114/2004 partly allowing the application filed by the respondents u/s 163-A of Motor Vehicles Act, 1988 (hereinafter referred to as "the Act". The Tribunal awarded compensation of Rs. 3,29,500/-inclusive of no fault liability with interest thereon " 9% per annum from the date of the petition.

3. In nutshell, the facts which are relevant for disposal of this appeal are as follows:

The respondents are the legal representatives of Ramesh Dhumone who died in the vehicular accident which occurred on 1-12-2003. On that day at about 19.15 hours the deceased was returning on his motorcycle with his brother Ganesh. The deceased could not see the road properly on account of dazzling of headlight of oncoming vehicles. Therefore, the motorcycle driven by the deceased slipped and deceased sustained serious injuries. He was taken to General Hospital,

Wardha and from there he was shifted to Kasturba Hospital, Sewagram where he succumbed to injuries on 5-12-2003.

4. The claimants filed the above referred claim petition u/s 163-A of the Act against the appellant only as the motorcycle which was belonging to deceased was insured with the appellant. The Tribunal after appreciating the evidence led by the claimants, granted compensation as stated above.

5. Mr. Kukday, learned Counsel appearing for the appellant submitted that the petition claiming compensation u/s 163-A of the Act was not maintainable inasmuch as the deceased himself was responsible for the said accident and as such the claim petition was not maintainable. He further submitted that the Insurance Company was not liable to pay any compensation even in respect of the claim u/s 163-A of the Act inasmuch as deceased was not a third party and as such was not covered by the insurance policy issued in respect of the offending vehicle. He then urged that the claim of legal representatives of the owner of the vehicle who dies in the accident is not maintainable u/s 163-A of the Act in case the owner dies in the accident in which no other vehicle is involved as has happened in the present case. In support of his submissions, learned Counsel relied upon the judgment of Karnataka High Court in Appaji Vs. M. Krishna, and the judgment of Punjab and Haryana High Court in United India Insurance Co. Ltd. Vs. Darshan Kaur etc., .

6. Per contra, Mr. Wagh appearing for the respondents supported the judgment passed by the Tribunal and submitted that the Tribunal is perfectly justified in passing the impugned judgment having regard to the evidence led by the claimants. He then urged that the Insurance Company is liable to pay compensation even in respect of application u/s 163-A of the Act considering the facts and circumstances of the present case.

7. I have considered the submissions made by learned Counsel. I have perused the records as well as judgments relied upon by Mr. Kukday.

8. Having regard to the submissions made by learned Counsel appearing for the parties and the findings given by the Tribunal, the following point arises for consideration in the present appeal:

Whether the Tribunal was legally justified in holding the appellant liable to pay compensation in the facts and circumstances of the case?

9. Indisputably, in the present case the application has been filed u/s 163-A of the Act which provides grant of compensation on the basis of a structured formula. u/s 163-A of the Act, it is not necessary for the claimant 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. Under Sub-section (1) of Section 163-A of the Act, the owner of the motor vehicle or the authorised insurer is liable to pay in the case of death or permanent disablement due to

accident arising out of the use of motor vehicle and the compensation has to be awarded in terms of Second Schedule, to the legal heirs or the victim, as the case may be.

10. u/s 147 of the Act, it is mandatory to take out a policy of insurance and statutory liability of the insurer has been mentioned in the said section.

11. According to Mr. Kukday, since deceased who was the owner of the vehicle had died in the accident in which no other vehicle was involved, no claim would lie against the insurance policy of the offending vehicle in case of death of the driver who himself happened to be the owner of the vehicle. Karnataka High Court in Appaji case (supra) upon which reliance has been placed by Mr. Kukday has considered the scope of Section 163-A of the Act and has held that Section 163-A of the Act does not permit a person to place a premium upon his own fault and make the Insurance Company pay for the same. In the said case, the accident had taken place while deceased was himself riding a two wheeler and no other vehicle was involved in the accident. In this set of facts the Division Bench of Karnataka High Court held that having regard to Section 163-A of the Act a claim would not lie against Insurance Company of the vehicle which was driven by deceased himself u/s 163-A of the Act. I am in respectful agreement with the ratio laid down by the Division Bench of Karnataka High Court. The ratio laid down in Appaji case is squarely applicable in the present case.

After placing reliance upon the Division Bench of this Court in United India Insurance Co. Ltd. Vs. Kantabai and Others, the Punjab and Haryana High Court in the case of United India Insurance Co. Ltd (supra) held that the Insurance Company cannot be asked to pay compensation in case of death of insurer himself and the Insurance Company is liable to indemnify a third party on behalf of the insurer. It was further held that in case insurer himself meets with an accident and dies the risk is not covered by Insurance Policy and that the liability of the Insurance Company is to compensate the insured towards the risk of third party and to satisfy the judgment and award passed against insured. It was further held that the Insurance Company insures the liability of the insured and does not insure the insured.

12. The Tribunal while holding the appellant liable to pay entire compensation relied upon Insurance Policy (Ex.14) which was produced. The said policy discloses that the deceased had paid extra premium to cover the risk of the owner and driver. In terms of the said policy, the Insurance Company has taken up liability to the extent of Rs. One lac towards the owner and driver. The Tribunal has misconstrued the insurance policy and has held that liability of the Insurance Company is unlimited. Mr. Kukday, learned Counsel for the appellant, submitted that in terms of the insurance policy, the appellant is liable to pay Rs. One lac to the claimants-respondents who are the legal representatives of deceased who was the owner of the vehicle. He has fairly stated that he will have no objection, if an amount of Rs. One lac is ordered to be paid to the respondents since the appellant is liable to pay to the extent of Rs. One lac in

terms of the said insurance policy.

13. For the reasons aforesaid, I find merit in the submissions of Mr. Kukday. The Tribunal, in my opinion, has erred in granting the application u/s 163-A of the Act and directing the appellant-Insurance Company to pay compensation. The impugned judgment and order is, therefore, unsustainable and, therefore, deserve to be quashed and set aside.

14. In the result, therefore, the appeal is allowed. The impugned judgment and order holding the appellant liable to pay compensation u/s 163-A of the Act is quashed and set aside. However, the amount of Rs. One lac out of total amount of Rs. 3,48,242/- deposited by the appellant along with interest, if any, accrued thereon is ordered to be paid to the respondents in equal shares. The balance amount with accrued interest, if any, thereon be refunded to the appellant.