(2015) 08 KAR CK 0027

In the Karnataka High Court

Case No : M.F.A. No. 9485/2012 (MV)

United India Insurance Co. Ltd. — APPELLANT

Vs

Vishalakshi and Others — RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 163(A), 163A, 163-A

Citation : (2015) 08 KAR CK 0027

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : B.C. Seetharama Rao, Advocate, for the Appellant; K.T. Gurudeva Prasad, Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J.—The second respondent-Insurance Company in MVC No. 4530/2011 on the file of MACT, Bangalore, has come up in this appeal challenging the judgment and award dated 04.08.2012. In the said proceedings a sum of Rs. 2,20,700/- is awarded for the death of C. Narayan, driver of Omni Car bearing registration No. KA 02-P-8232. C. Narayan died in a road traffic accident dated 05.02.2011 at about 6.00 p.m. involving BMTC bus bearing registration No. KA-50-F-059.

2. The facts leading to filing of the claim petition are that the claimants 1 to 7 are the wife, children and parents of deceased C. Narayan, driver of Omni, who died in the aforesaid accident. Admittedly, the complaint regarding accident was filed by the driver of KSRTC bus against the deceased. Based on the complaint, FIR was registered and after investigation, charge sheet was also filed against deceased C. Narayan.

3. In this background, the claimants preferred the claim petition seeking compensation under Section 163A of The Motor Vehicles Act, 1988 (hereinafter referred to as ''the M.V. Act'' for brevity). It was the contention of the claimants

before the Tribunal that though the charge sheet was filed against the deceased, since the vehicle which was driven by the deceased and the vehicle belonging to the BMTC-respondent No. 8 herein were involved in the accident, under Section 163-A , the claimants are entitled to seek compensation. The said contention was accepted by the Tribunal and the claim petition filed by them was allowed awarding compensation in a sum of Rs. 2,20,700/- payable with interest at 6% p.a. and liability to pay compensation was saddled on the owner and insurer of the bus bearing reg. No. KA-50-F-059.

4. Being aggrieved by the same, the second respondent-Insurance Company has come up in this appeal contending that the provisions of Section 163A of M.V. Act would not entitle the tortfeasor or the person, who is responsible to cause the accident to claim compensation under Section 163A of M.V. Act, for the reason that the compensation should be awarded under no fault claim principle, invoking Clause (4) of Section 140 of the M.V. Act, which reads as under:

"Section 140 ....

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

5. The learned Counsel for the second respondent would argue that the claim for compensation under subsection (1), a similar provision is not available under Section 163A of the M.V. Act, as held by the Apex Court in the matter of National Insurance Company Ltd. Vs. Sinitha and Others, .

6. This argument was countered by Sri K.T. Gurudeva Prasad, learned Counsel for the claimants who contended that the said judgment would also indicate that the Insurance Company will have to establish that the deceased is a tortfeasor to deny the right of compensation under Section 163A of the M.V. Act and he would further submit that in the absence of the same, ratio laid down in the aforesaid judgment will not enure to the benefit of the Insurance Company in declining its liability to pay compensation.

7. Heard Learned Counsel for appellant as well as contesting respondents. Perused the judgment impugned. On going through the said judgment, the relevant paragraphs at 13, 14 and 16 are looked into which read as under:

"13. In the second limb of the present consideration, it is necessary to carry out a comparison between Sections 140 and 163A of the Act. For this, Section 163A of the Act is being extracted hereunder:

"Section 163A . Special provisions as to payment of compensation on structured formula basis - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be 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. Explanation -For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen''s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under subsection (1), the claimant shall not be required 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.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

A perusal of Section 163(A) reveals that sub-section (2) thereof is in pari materia with sub-section (3) of Section 140 . In other words, just as in Section 140 of the Act, so also under Section 163A of the Act, it is not essential for a claimant seeking compensation, to "plead or establish", that the accident out of which the claim arises suffers from "wrongful act" or "neglect" or "default" of the offending vehicle. But then, there is no equivalent of sub-section (4) of Section 140 in Section 163A of the Act. Whereas, under sub-section (4) of Section 140 , there is a specific bar, whereby the concerned party (owner or insurance company) is precluded from defeating a claim raised under Section 140 of the Act, by "pleading and establishing", "wrongful act", "neglect" or "default", there is no such or similar prohibiting clause in Section 163A of the Act. The additional negative bar, precluding the defence from defeating a claim for reasons of a "fault" ("wrongful act", "neglect" or "default"), as has been expressly incorporated in Section 140 of the Act (through sub-section (4) thereof), having not been embodied in Section 163A of the Act, has to have a bearing on the interpretation of Section 163A of the Act In our considered view the legislature designedly included the negative clause through sub- section (4) in Section 140 , yet consciously did not include the same in the scheme of Section 163A of the Act The legislature must have refrained from providing such a negative clause in Section 163A intentionally and purposefully. In fact, the presence of sub-section (4) in Section 140 , and the absence of a similar provision in Section 163A , in our view, leaves no room for any doubt, that the only object of the Legislature in doing so was, that the legislature desired to afford liberty to the defence to defeat a claim for compensation raised under Section 163A of the Act, by pleading and establishing "wrongful act", "neglect" or "default". Thus, in our view, it is open to a concerned party (owner or insurer) to defeat a claim raised under Section 163A of the Act, by pleading and establishing anyone of the three "faults", namely, "wrongful act", "neglect" or "default". But for the above reason, we find no plausible logic in the wisdom of the legislature, for providing an additional negative bar precluding the defence from defeating a claim for compensation in Section 140 of the Act, and in avoiding to include a similar negative bar in Section 163A of the Act. The object for incorporating sub-section (2) in Section 163A of the Act is, that the burden of pleading and establishing proof of "wrongful act", "neglect" or "default" would not rest on the shoulders of the claimant. The absence of a provision similar to sub-section (4) of Section 140 of the Act from Section 163A of the Act, is for shifting the onus of proof on the grounds of "wrongful act", "neglect" or "default" onto the shoulders of the defence (owner or the insurance company). A claim which can be defeated on the basis of any of the aforesaid considerations, regulated under the "fault" liability principle. We have no hesitation therefore to conclude, that Section 163A of the Act is founded on the "fault" liability principle.

14. There is also another reason, which supports the aforesaid conclusion. Section 140 of the Act falls in Chapter X of the Motor Vehicles Act, 1988. Chapter X of the Motor Vehicles Act, 1988 is titled as "Liability Without Fault in Certain Cases". The title of the chapter in which Section 140 falls, leaves no room for any doubt, that the provisions under the chapter have a reference to liability "...without fault....", i.e., are founded under the "no-fault" liability principle. It would, however, be pertinent to mention, that Section 163A of the Act, does not find place in Chapter X of the Act. Section 163A falls in Chapter XI which has the title "Insurance of Motor Vehicles Against Third Party Risks". The Motor Vehicles Act, 1988 came into force with effect from 1.7.1989 (i.e., the date on which it was published in the Gazette of India Extraordinary Part II). Section 140 of the Act was included in the original enactment under chapter X. As against the aforesaid, Section 163A of the Act was inserted therein with effect from 14.11.1994 by way of an amendment. Had it been the intention of the legislature to provide for another provision (besides Section 140 of the Act), under the "no-fault" liability principle, it would have rationally added the same under Chapter X of the Act. Only because it was not meant to fall within the ambit of the title of Chapter X of the Act "Liability Without Fault in Certain Cases", it was purposefully and designedly not included thereunder.

16. At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that Section 163A of the Act has an overriding effect on all other provisions of the Motor Vehicles Act, 1988. Stated in other words, none of the provisions of the Motor Vehicles Act which is in conflict with Section 163A of the Act will negate the mandate contained therein (in Section 163A of the Act). Therefore, no matter what, Section 163A of the Act shall stand on its own, without being diluted by any provision. Furthermore, in the course of our determination including the inferences and conclusions drawn by us from the judgment of this Court in The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., , as also, the statutory provisions dealt with by this Court in its aforesaid determination, we are of the view, that there is no basis for inferring that Section 163A of the Act is founded under the "no-fault" liability principle. Additionally, we have concluded herein above, that on the

conjoint reading of Sections 140 and 163A , the legislative intent is clear, namely, that a claim for compensation raised under Section 163A of the Act, need not be based on pleadings or proof at the hands of the claimants showing absence of "wrongful act", being "neglect" or "default". But that, is not sufficient to determine that the provision falls under the "fault" liability principle. To decide whether a provision is governed by the "fault" liability principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or insurance company) by pleading and proving "wrongful act", "neglect" or "default". From the preceding paragraphs (commencing from paragraph 12), we have no hesitation in concluding, that it is open to the owner or insurance company, as the case may be, to defeat a claim under Section 163A of the Act by pleading and establishing through cogent evidence a "fault" ground ("wrongful act" or "neglect" or "default"). It is, therefore, doubtless, that Section 163A of the Act is founded under the "fault" liability principle. To this effect, we accept the contention advanced at the hands of the learned counsel for the petitioner."

8. It is clearly seen that there is no ambiguity in the ratio laid down by the Apex Court. In the instant case, the accident is not in dispute. It is also not in dispute that the deceased C. Narayan was driver of Omni, which is involved in the accident. The complaint which is filed after the accident is against the deceased C. Narayan, for causing the accident due to rash and negligent driving. The police after investigation have filed charge sheet against him. In the proceedings before the Tribunal, the Insurance Company has examined the driver of the KSRTC bus, which was also involved in the accident to demonstrate that the accident has taken place due to the rash and negligent driving of C. Narayan himself.

9. In that view of the matter, the finding of the Apex Court as observed from the aforesaid paragraphs would clearly apply in all fours to the facts of the case on hand. In that view of the matter, this Court has no hesitation to hold that when deceased C. Narayan was himself the tortfeasor, his legal heirs who are claimants in MVC No. 4530/2011 are not entitled to seek compensation from the owner and insurer of the bus involved in the accident, under the provisions of Section 163A of the M.V. Act.

10. Accordingly, the judgment and award dated 04.08.2012 passed in the aforesaid claim petition is hereby set aside and the liability to pay compensation is exonerated. In view of the appeal being allowed, the amount in deposit is ordered to be released in favour of the appellant.