
(2012) 08 AP CK 0113
In the Andhra Pradesh High Court
Case No : C.M.A. No. 229 of 2003

United India Insurance Company Ltd.	APPELLANT
Vs	
C. Ramulu and M. Pochaiah	RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141, 162, 163A, 166

Citation : (2013) 3 ALD 757 : (2013) 2 ALT 799

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : T. Mahender Rao, for the Appellant; Surender Reddy, for the Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—This appeal is filed by the United India Insurance Company Limited challenging the order dated 07.08.2001 passed by the Motor Accident Claims Tribunal-cum-District Judge, Adilabad in O.P. No. 121 of 1999. I have heard Sri. T. Mahender Rao, learned counsel appearing for the appellant and Sri S.Surender Reddy, learned counsel appearing for the respondent No. 1/claimant.

2. On 04.07.1998 at about 06.00 AM while the first respondent/petitioner was driving the lorry bearing No. AHK 9495 from Hyderabad to Siddipet, he lost control over the vehicle, as a result, the said vehicle turned turtle. The first respondent, who received fractures to both legs was shifted to Gandhi Hospital, Secunderabad, treated as inpatient there till 17.07.1998 for a period of six months. On account of the injuries sustained by him, his urinary system was also affected and he sustained permanent disability due to the fractures received to his both legs. He filed a claim petition u/s 166 of the Motor Vehicles Act seeking compensation of Rs. 1,50,000/- on account of the injuries sustained by him in the aforesaid motor vehicle accident.

3. The learned Tribunal after making an enquiry into the claim granted

compensation of Rs. 1,00,000/- with interest at the rate of 12% per annum holding that the second respondent/owner of the vehicle and the appellant/insurance company are jointly and severally liable to pay compensation.

4. The principal contention of the insurance company in the instant appeal is that the Tribunal having held that the accident was on account of rash and negligent driving of the first respondent/claimant, who is neither third party nor the person covered under the terms and conditions of the policy of insurance is not entitled to claim compensation from the appellant/insurance company. The argument of the insurance company is that the claims Tribunal has no jurisdiction to entertain the claim preferred by the claimant in exercise of jurisdiction u/s 166 of the Motor Vehicles Act.

5. On the other hand, it is the contention of the claimant that even if it is considered that the accident was due to rash and negligent driving of the claimant himself, the claimant can maintain a claim u/s 163A of the Motor Vehicles Act before the Tribunal below and this Court even in the appeal can treat the claim as the one filed u/s 163A of the Motor Vehicles Act and can grant compensation basing on structured formula basis as per the said provision.

6. The claimant pleaded in the claim petition that while he was driving the vehicle on the highway he lost control over the vehicle, due to which it turned turtle. Basing on the said pleading and evidence on record the Tribunal recorded a specific finding that the accident was due to rash and negligent driving of the claimant himself. The learned Tribunal without dealing with the question of liability of the insurance company to pay compensation basing on the relevant provisions of the Act held that as the policy does not show that the driver is not covered, insurance company is liable to pay compensation.

7. The question requires to be addressed in the instant appeal is as to whether in a case where the accident occurred due to the rash and negligent act of the claimant himself, can he maintain a claim u/s 166 or 163A of the Motor Vehicles Act before the Motor Accidents Claims Tribunal and further whether a claim petition u/s 166 of the Act at a later stage be treated as a petition filed u/s 163A of the Motor Vehicles Act.

8. In *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc.*, the Apex Court held that the object underlying the introduction of granting compensation under structured formula basis as per Section 163A of the Act is for payment of compensation without insisting upon proof of fault, the compensation payable u/s 163A of the Act was based on a criteria underlying determination of compensation even on fault basis by taking into consideration of the annual income, and other factors by applying the proper multiplier. In the said case, the court rejected the compensation u/s 163A of the Act under fault liability and felt that Section 163A of the Act simply excluded the determination of compensation on the principle under fault liability.

9. When the correctness of the ratio laid down in Kodala case (first cited) was

questioned before the Supreme Court, it was referred to a three Judge Bench and the Three Judge Bench of the Supreme Court in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, approved the principle laid down in Kodala case (first cited) and held as follows:

Section 163A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature.

The Apex Court repelled the contention that Section 140 and 163A provided for similar claim. The Supreme Court clarified that payment of amount in terms of Section 140 of the Act is ad hoc in nature, whereas under the claim envisaged u/s 163A of the Act, the rights and obligations of the parties are to be determined finally.

10. The Supreme Court made it clear that the contention of the claimant in Kodala case (first cited) that the right to get compensation in addition to the no fault liability was rightly rejected and agreed with the ratio laid down Kodala's case (first cited). The Supreme Court expressed the view that like Section 140 and 141 of the Act, the Parliament did not like to grant additional compensation in terms of Section 163-A of the Act. The Supreme Court went on to state that Section 163-A was introduced in the Act by way of social security scheme as the parliament intended to provide for making of an award consisting of a pre-determined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident and that Section 163-A of the Act covers cases where even negligence is on the part of the victim, it is by way of an exception to Section 166 of the Act.

11. Drawing attention of this Court, to the observation of the Supreme Court in Deepal Girish Bhai (second cited) case that Section 163-A covers cases where even negligence is the part of the victim, the learned counsel appearing for the claimant would contend that in the instant case even if it is held that the accident was due to the fault of the claimant himself, he is entitled to maintain a claim case u/s 163-A of the Act before the Tribunal and this Court in the appeal can treat the claim made by the claimant u/s 166 of the Act as a claim u/s 163-A of the Act.

12. To address the said question, it is required to go through some later judgments on the subject. In Deepal Girish Bhai (second supra) case, the Apex Court was answering the reference as to whether the ratio laid down in Kodala (first cited) was correct or not and the Apex Court approving the principle laid down in Kodala, the three Judge Bench in Deepal Girish Bhai (second cited)

incidentally observed that Section 163-A covers cases even negligence is on the part of the victim. The said issue has not been examined by the Apex Court in detail in the said judgments. In Deepal Girish Bhai (second supra) case, I think that it is only an observation made by the Apex Court.

13. In *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, the Supreme Court held that the victim of an accident or his dependants have an option either to proceed u/s 166 of the Act or u/s 163-A of the Act. Once they approached the Tribunal u/s 166 of the Act they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned, but if they proceed u/s 163-A of the Act the compensation will be awarded in terms of the schedule without calling upon the victim or his dependant to establish any negligence or it is only on the part of the owner of the vehicle, or the driver of the vehicle,

14. In *Oriental Insurance Co. Ltd. Vs. Dhanbai Kanji Gadhvi and Others*, the question arose before the Supreme Court was whether after allowing of the application made by the claimants u/s 163-A of the Motor Vehicles Act and on receiving compensation the claimants can file an application praying permission to proceed with the claim application u/s 166 of the Motor Vehicles Act. The Supreme Court held that the claimants having obtained the compensation u/s 163-A of the Act are precluded from proceeding further with a claim application u/s 166 of the Act. According to the Supreme Court, the claimants must opt to go either u/s 163-A or u/s 166 of the Act, but not under both.

15. Recently the Supreme Court in *National Insurance Company Ltd. Vs. Sinitha and Others*, has elaborately dealt with the question and, the Supreme Court clarified the position in the following terms:

the Supreme Court after reviewing the law on the subject held that there is no basis for interfering that Section 163-A. of the Act is founded under the "not fault" liability principle. The Supreme Court explained that on a conjoint reading of Sections 140, 163-A, legislative intent is clear, that a claim for compensation raised u/s 163-A of Act need not be based on pleadings or proof at the hands of claimants showing absence of wrongful act being neglect or default In a claim u/s 163-A of the Act it is open to owner or insurance company to defeat a claim u/s 163-A of the Act by pleading and establishing through cogent evidence a "fault ground". The Supreme Court, thus, ultimately took the view that undoubtedly Section 163-A of the Act is founded under "fault" liability" principle.

16. In *Appaji (since deceased) and Another Vs. M. Krishna and Another*, a Division Bench of Karnataka High Court held that

Parliament did not intend to provide compensation to the person responsible for the accident on structured formula basis, neither the provisions nor the background in which the same were introduced disclose any such intention, the contention advanced on behalf of the claimants that non obstante clause in Section 163-A would neutralize and render ineffective any provision in Motor

Vehicles Act or any other law disentitling the claimants from payment of compensation where death was caused on account of rash and negligent act of the deceased himself was negated and held that a claim on account of the death of a person who himself is responsible for the accident is not maintainable u/s 163-A of the Act.

The contention of the learned counsel appearing for the claimant that the compensation payable u/s 163-A is in addition to the determination of compensation on the basis of fault liability and thereafter, it should be adjusted on same lines provided u/s 140 read with Section 141 or 162 cannot be accepted. The legislature has specifically provided the scheme of adjustment of compensation u/s 140 read with Section 141 or 162 if the claimants got compensation under the Act while there are no such provisions u/s 163-A, Addition or induction of such claim any provision would be impermissible.

As the legislature has not provided for refund or adjustment of compensation received under the Act and compensation payable u/s 163-A, it would mean that the scheme of payment of compensation u/s 163-A is in alternative for determination of compensation u/s 166 of the Act. If a person gets the compensation on principle of fault liability, then also provision is made for adjustment of compensation u/s HO, there is no such provision for adjustment of compensation received u/s 163-A from the compensation receivable under the Act on the principle of fault.

(emphasis supplied)

17. The Supreme Court further explained that Section 163-A nowhere provides that payment of compensation under the fault liability principle would be in addition to the right to claim compensation u/s 163-A of the Act. According to the Supreme Court the scheme of payment of compensation u/s 163-A provides an alternative right from the one provided u/s 166 of the Act.

18. Examining in detail, the principles laid down in Kodala (first cited) case, the Supreme Court clarified that the compensation determined u/s 163-A could not be in addition to a claim for further compensation under separate provision governed by the fault liability principle. The Supreme Court specifically stated in the Judgment as follows:

It would be relevant to notice here that we have intentionally and deliberately drawn inference as have been extracted hereinabove the observation made by the Supreme Court in Kodala (first cited) case. This exercise has been ventured so as to obviate the possibility of missing something which do not find something in paragraph 22 of the aforesaid judgment having reasons for eventual conclusion in the matter were recorded. This exercise was essential because the learned counsel for the respondent has primarily placed reliance only on paragraph 15 of the above said judgment.

19. Ultimately, the Supreme Court expressed the view thus:

Having collectively all that has been noticed in the instant paragraphs, all the reasons extracted from para 22 hereinabove we must collect that no categorical determination emerges therefrom, that Section 163-A of the Act has been founded under the no fault liability principle.

20. According to the Supreme Court on a conjoint reading of Sections 140, 163-A legislative intend is clear that in a claim preferred u/s 163-A of the Motor Vehicles Act, the claimant is not required to plead or establish that the death or permanent disablement is the result of any wrongful act, negligence, or defect of the owner of the vehicle concerned. The principal contention of the insurance company in the instant case is that since the accident was on account of the fault of the claimant himself, he cannot maintain a claim u/s 163-A of the Act.

21. From a careful and thorough analysis of the ratio laid down in the aforementioned judgments, ultimately what emerges is that a claim u/s 166 of the Act as well as Section 163-A of the Act are founded on fault liability principle. Section 163-A enables the claimant or claimants to get compensation basing an structured formula basis in the alternative to the one available u/s 166 of the Act. They can choose either of them. When once they have chosen to claim compensation u/s 166 of the Act and proceeded with the enquiry of the claim, they cannot turn round and say that their claim can be considered as was made u/s 163-A of the Act.

22. In the present case, the claim petition was filed u/s 166 of the Act by the claimant/first respondent, he himself specifically pleaded in the claim petition that while he was driving the vehicle on the highway he lost control over the vehicle, due to which it turned turtle. The learned Tribunal basing on his pleadings as well as evidence forthcoming recorded a specific finding that the accident was due to his own fault. There is no material placed on record by the claimant to take a contrary view to that of the Tribunal on this factual aspect. At the appellate stage it is not open for the claimant to urge before this Court that the learned Tribunal ought to have considered his claim as the one made u/s 163-A of the Act. He had deliberately chosen to make a claim u/s 166 of the Act and it was considered by the Tribunal and the Tribunal recorded an erroneous finding that the appellant is liable to pay compensation to the claimant. The finding recorded is contrary to the provisions of the Act and also to the terms and conditions of the policy. However, despite the fact that the claim made by him u/s 166 of the Act cannot be converted into a claim u/s 163-A of the Act, he is entitled for compensation u/s 140 of the Act under no fault liability clause. Therefore, in this appeal, the finding of the Tribunal awarding compensation u/s 166 of the Act is set aside. The Insurance Company is entitled to recover the amount, if any, deposited from the owner of the offending vehicle without instituting any separate suit. For the aforementioned reasons, the appeal filed by the insurance company is allowed. There shall be no order as to costs.