

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 7th May, 2012
Pronounced on: 2nd July, 2012

+ **FAO 458/2003**

HEMLATA & ORS Appellants
Through Mr. Diwan Singh Chauhan,
Advocate

versus

VIPIN KUMAR & ORS. Respondent
Through Mr. Pankaj Seth, Advocate for
the Respondent No.3

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

CM APPL.16903/2008 in FAO 458/2003

1. A Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) was preferred by the Appellants claiming compensation for the death of Arjun Singh (the Appellants' son) in a motor accident involving Maruti Van No.DNB-6745 and a truck No.DHG-8486, allegedly owned by the Fourth Respondent.
2. During inquiry before the Motor Accident Claims Tribunal (the Claims Tribunal), it was found that there was no truck with the number DHG-8486. Since the negligence was also not proved

against the driver of Maruti Van No.DNB-6745, the Claim Petition was dismissed on the ground that negligence was not proved.

3. By virtue of this Application, the Appellants seek permission to amend the Petition so as to convert it to one under Section 163-A of the Act and claim compensation from the owner and Insurer of the Maruti Van No.DNB-6745.
4. The Third Respondent, United India Insurance Company Limited opposes the Application (although no written reply has been filed).
5. It is urged by the learned counsel for the Appellants that the remedy under Section 166 of the Act and 163-A of the Act cannot be availed simultaneously. Since the Appellants were unable to prove the involvement of the other vehicle, which was responsible for causing the accident, the Appellants must be permitted to amend the Petition.
6. On the other hand, it is urged by Mr. Pankaj Seth, learned counsel for the Insurance Company that the Claim Petition under Section 166 of the Act having been dismissed on merit; it is too late for the Appellants to make a request for conversion of the Petition.
7. It is well settled that the Appeal is in continuation of the Suit. (*Bay Berry Apartments (P) Ltd. & Anr. v. Shobha & Ors.*,

(2006) 13 SCC 737 and *Rachakonda Narayana v. Ponthala Parvathamma & Anr.* (2001) 8 SCC 173).

8. The law on amendment of pleadings is very liberal. The amendment of pleadings can very well be allowed even during the pendency of an Appeal, in the interest of justice and in order to effectively and finally determine the rights of the parties. It is well settled that the proceeding under Section 163-A of the Act and 166 of the Act cannot be pursued simultaneously. (As per: *Deepal Girishbhai Soni & Ors. v. United India Insurance Co. Limited, Baroda*, AIR 2004 SC 2107).
9. The question for consideration is, if a Petition under Section 166 of the Act is dismissed for want of proof of negligence on the part of the alleged tortfeasor, would a subsequent petition under Section 163-A on the same cause of action be barred? Admittedly, in the subsequent petition under Section 163-A of the Act, the Claimant would not be required to prove and plead the negligence. The subsequent petition would not be barred under Order II Rule 2 CPC as the claim under Section 163-A of the Act was not permissible in the earlier petition. The finding in the earlier petition would also not be *res judicata* against the Claimant, unless a finding is given by the Court that the vehicle alleged to be involved in the accident was not so involved.
10. In the circumstances, I do not find any ground to decline the request for amendment of the Petition to one under Section 163-A of the Act. Rather, allowing the application for amendment

would sub serve the cause of justice in social welfare legislation like the Motor Vehicles Act, 1988.

11. The Application is accordingly allowed. The Amended Petition is taken on record.

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12. The Appeal is directed against the judgment dated 24.04.2003 passed by the Claims Tribunal whereby a Claim Petition was dismissed on the ground that the negligence on the part of the driver of Maruti Van No.DNB-6745 was not established.
13. While dealing with the CM APPL.16903/2008, I have allowed the conversion of the Petition under Section 166 of the Act to one under Section 163-A of the Act.
14. During inquiry of the Claim Petition, the Claims Tribunal framed the following issued:-

“1. Whether deceased Arjun Singh died in the accident in question?

2. Whether the accident in question took place due to rash and negligent driving on the part of R-1 of Maruti Car No.DNB-6745 or due to rash and negligent driving on the part of driver of truck No.DHG-8486?

3. Whether the petitioners are entitled to any compensation? If so to what amount and from whom?

4. Relief.”

15. In the Claim Petition, it is averred that the deceased Arjun Singh was travelling in the Maruti Van No.DNB-6745. He was

sitting on the front left side whereas the Maruti Van was being driven by Vipin Kumar (the First Respondent). In the joint written statement filed by the First and the Second Respondents (the alleged driver and owner of the Maruti Van), it was pleaded that the Maruti Van was being driven by the deceased himself. PW-5 Rati Bhan is an eye witness of the accident. In cross-examination, he deposed that the deceased was stuck on the conductor's seat, meaning thereby that the deceased was sitting on the left seat of the Maruti Van.

16. Respondent Vipin Kumar entered the witness box as R1W1 and deposed that the deceased Arjun Singh was driving the Maruti Van at a slow speed when it met with an accident with a truck. During cross-examination, a specific question was put to the First Respondent about the position of the deceased. It is extracted hereunder:-

“Q. I put it to you that since Arjun Singh was sitting on front left seat of Van which side because of impact of truck was pushed inside Arjun suffered fatal injuries and died at the spot?”

Ans: I had become un-conscious.”

17. Thus, it is apparent that the First Respondent did not contradict the Appellants' case that Arjun Singh was sitting on the left seat of the Maruti Van and on account of the impact caused due to the accident, the seat was pushed inside. In view of the non-rebuttal of this question in cross-examination, it is clear that it was not the deceased but the First Respondent who was driving

the Maruti Van at the time of the accident. The Claims Tribunal while dealing with issues No.1 and 2 also reached the conclusion that the Maruti Van No.DNB-6745 was involved in the accident. It was held that rash or negligent driving on the part of the First Respondent was, however, not proved.

18. For the purpose of awarding compensation under Section 163-A of the Act, the Court is required to see only the involvement of the vehicle, which is duly proved. In a petition under Section 163-A of the Act, the Claimants can claim compensation from the owner or insurer of any or all the vehicles involved in the accident. I am fortified in this view by a Division Bench Judgment of Kerala High Court in *United India Insurance Company Ltd. v. Ratheesh*, MANU/KE/1687/2011, wherein while relying on *United India Insurance Company Ltd. v. Madhavan*, 2011 (3) KLT 452 and after analyzing the provisions of Section 140 and 163-A of the Motor Vehicles Act, the Division Bench held as under:

“13. The legislature in 1994 introduced S.163A into the Statute book. While under S.140 even without proving any fault only a specific amount alone could be claimed, under S. 163A comprehensive claim can be staked for compensation by the victims who have suffered permanent disablement or legal heirs of a deceased victim.

14. Provisions of S.40 of the M.V. Act make it clear that payment under S.140 is only ad hoc and interim. The claimants are entitled, even after claiming the amount under S.140 of the M.V. Act, to

claim the entire amount of compensation which would otherwise be payable by resort to S.166 of the M.V. Act. The only stipulation is that the amount paid under S.140 must be adjusted towards the amount that would be payable under S.166 of the M.V. Act.

15. The legislature, with long experience of working S.140, and its predecessor provisions had introduced 163A into the Motor Vehicles Act in 1994 and in S.163A of the M.V. Act significantly there is no reference at all to the nature of liability of owners/insurers if there is plurality of vehicles involved in the accident. The difference is significant. It would not be an inadvertent omission. S.140 speaks of the arrangement when plurality of vehicles are involved. The liability is declared to be joint and several. But when it came to S.163A of the M.V. Act the legislature did not incorporate such a stipulation.

16. Why? The query is pored. We have already noted that it could not be an inadvertent omission and this is eminently clear from S.163A(2) of the M.V. Act which eloquently conveys to the court that the legislature was cognizant and seized of the possibility of plurality of vehicles being involved in the accident wrongful act, neglect or default of the owner of the vehicle or vehicles concerned or of any other person need not be proved in a claim under S.163A of the M.V. Act, it is declared in S.163A(2). This definitely reveals to the court that it was a conscious deviation from the scheme that was stipulated under S.140 of the M.V. Act.

17. So far as S.140 of the M.V. Act is concerned, it is now trite that claim can be raised against either or both owners/insurers of the vehicles. The decision in Oriental Insurance Co. Ltd. v Lakshmikutty Amma & Ors., 1999 ACJ 597 (D.B.) makes the position clear that the Tribunal need not identify at the stage of

award of compensation under S.140 of the M.V. Act all the vehicles (persons) liable to pay compensation. It is therefore evident that a claim under S.140 can be staked against the owner of either vehicle. The insurer consequently will be liable to indemnify the owner of the vehicle liable.

18. *We requested the learned counsel to advance arguments at the Bar as to why totally different semantics and dynamics have been employed by the legislature while enacting S.163A of the M.V. Act. Significantly it is not even mentioned in S.163A that the liability is joint and several. Even under S.140 of the M.V. Act claim can be staked against either or both the owner/owners of the vehicle. It therefore appears to us to be evident that in a claim under S.163A also the choice/option must be for the claimant to stake claim against either or both owner/insurer of the vehicles involved in the accident.*

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22. *We are unable to find any other reason as to why a different language is used under Ss.140 and 163A of the M.V. Act by the legislature so far as the nature of the liability of the owner/insurer is concerned, when plurality of vehicles are involved. Consequently, therefore, it appears to us, that the option is entirely on the claimant to stake his claim against either or both owners/insurers of the vehicles involved in a claim under S.163A of the M.V. Act. That right/option of his got to be protected."*

19. The involvement of vehicle No. DNB-6745 is established. The Appellants can claim compensation from the owner and insurer of this vehicle.

20. Coming to the quantum of compensation. The deceased was a Matriculate. As per the Matriculation Certificate, he was born on 31.03.1974. Thus, he was aged 21 years and four months on the date of the accident. In the Claim Petition, it was stated that the deceased was doing mechanical work with his father and was earning ₹2,500/- per month. PW-1 stated the income of the deceased to be ₹3,000/- to ₹4,000/- per month during inquiry before the Claims Tribunal. In the absence of any cogent evidence with regard to the deceased's income, I would take the minimum wages of a Matriculate i.e. ₹1943/- rounded off to ₹2,000/- per month to be the deceased's income for awarding loss of dependency.
21. In a Claim Petition under Section 163-A of the Act, the compensation has to be awarded as per the structured formula given in the Second Schedule to the Motor Vehicles Act. The loss of dependency thus comes to ₹2,88,000/- ($2,000/- \times 12 \times \frac{2}{3} \times 18$).
22. In addition, the Appellants would be entitled to compensation of ₹4500/- i.e. (₹2,500/- towards loss to estate and ₹2,000/- towards funeral expenses).
23. The compensation of ₹2,92,500/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till the date of its deposit with the Claims Tribunal and shall be paid to the Appellants in equal shares.

24. The Insurance Company is directed to deposit the enhanced compensation along with upto date interest with the Claims Tribunal within eight weeks. The interim compensation of ₹50,000/- if paid, shall be liable to be deducted.
25. Since this accident took place 17 years back, 50% of the compensation awarded shall be released immediately on deposit. Rest 50% shall be held in fixed deposit for a period of two years.
26. The Appeal is allowed in above terms.
27. All pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 02, 2012
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