

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

Reserved on: 23rd February, 2012
Pronounced on: 16th March, 2012

+ **MAC. APP. No.81/2007**

TATA A.I.G. GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Ms. Anjali Bansal, Advocate

Versus

U.P. ROADWAYS & ORS.

..... Respondents

Through: Ms. Garima Prashad with Mr. Shadab Khan & Mr. Pradeep Kumar, Advocates for the Respondent No.1.
Mr. S.L. Gupta with Mr. Ram Ashray, Advocates for the Respondents No.2 to 7.

+ **MAC. APP. No.749/2011**

U.P. ROADWAYS & ORS.

..... Appellants

Through Ms. Garima Prashad with Mr. Shadab Khan & Mr. Pradeep Kumar, Advocates for the Appellant No.1.
Mr. S.L. Gupta with Mr. Ram Ashray, Advocates for Appellant Nos.2 to 8.

Versus

TATA A.I.G. GENERAL INSURANCE CO. LTD.

..... Respondent

Through: Ms. Anjali Bansal, Advocate
for the Respondent Insurance
Company

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

J U D G M E N T

G. P. MITTAL, J.

1. These are two Cross-Appeals arising out of a common judgment dated 08.09.2006 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) in Suit No.1/2003.
2. On 31.01.2003, the deceased Bhagat Singh was proceeding in a Maruti Van No.DL-2C-R-4847 from Delhi to Sikandrabad. In the Claim Petition, it was averred that bus bearing No.UP-14-D-8876 was parked on the road in a negligent manner so as to endanger human life or personal safety of others without placing any red flag, red light etc. The deceased swerved his vehicle towards left side in order to save himself from a vehicle coming from the opposite direction and dashed against the stationary bus resulting into injuries which proved fatal. The compensation of ₹9 lakhs was claimed by the legal representatives of the deceased Bhagat Singh.
3. On appreciation of evidence, the Claims Tribunal reached a conclusion that the accident was caused on a very wide road. The bus was parked on the *kuchcha* portion of the road. Thus,

the Claims Tribunal opined that the accident was caused only on account of the rash and negligent driving of the Maruti van by the deceased himself. It was held that there was no liability on the part of the driver or owner of the U.P. Roadways to pay any compensation. The compensation of ₹50,000/- on the basis of no fault liability was ordered to be paid by the owners of both the vehicles. The liability was thus fastened on the Appellant Tata A.I.G. General Insurance Co. Ltd., who was the insurer of the Maruti Van, to pay 50% of the compensation. Rest 50% was to be paid by the U.P. Roadways, the owner of bus No. UP-14-D-8876.

4. In MAC APP No.81/2007, the contention raised is that since the driver of the Maruti Van (the owner's son) was not a third party, the Appellant Insurance Company was liable to pay any compensation including the 50% of the compensation mentioned earlier on the basis of no fault liability under Section 140 of the Act.
5. In the Cross-Objections filed by the Claimants in MAC APP No. 81/2007, the finding on negligence is not disputed. It is, however, averred that the Claim Petition should be considered under Section 163-A of the Motor Vehicles Act to award compensation without proving any negligence on the part of the driver of the Maruti Van and U.P. Roadways should be made liable to pay the compensation on the part of its driver without any proof of negligence.

6. It is not disputed as also it is well settled that liability of the Insurance Company is either statutory or contractual. Where the owner or his representative drives a vehicle and himself suffered injury or death, there is no statutory liability of the Insurance Company to pay the compensation in the case of any accident, except where the vehicle is driven by a paid driver and liability to pay the compensation is covered under the Workmen Compensation Act. (*New India Assurance Company Ltd. v. Sadanand Mukhi & Ors.*, 2009(1) Scale 252, *Ningamma & Anr. v. United India Insurance Company Limited*, (2009) 13 SCC 710).
7. The question for consideration is whether the Claim Petition filed and decided under Section 166 of the Motor Vehicles Act can be converted into one under Section 163-A so as to claim compensation without proving any negligence on the part of the driver of the vehicle involved in the accident. There is no prohibition in law to convert the said Petition unless some prejudice is shown by the opposite party, in my view, a Claim Petition filed under Section 166 can be converted to one under Section 163-A of the Act. The question for consideration is whether the Claimants(Respondents No.2 to 8) can claim compensation from the owner/driver of the Bus No. UP-14-D-8876 under Section 163-A of the Act. The case is covered by the judgment of the Supreme Court in *National Insurance Company Limited v. Sinitha & Ors.*, 2011 (13) SCALE 84.

Relying thereon, this Court in MAC APP No. 506/2011 titled '*Usha Sharma & Anr. v. Adarsh Kumar & Anr.*' decided on 19th January, 2012, held as under:

“10. There is another aspect of the case. A Claim under Section 163-A of the Act can be maintained by a person without proving any “wrongful act”, “neglect” or “default” of the driver of the vehicle who caused the accident. But at the same time, if the person claiming the compensation himself is responsible for that accident or in other words, where the accident occurred because of the wrongful act, neglect or default of the Claimant or the deceased, the owner of the vehicle would be entitled to escape the liability under Section 163-A of the Act.

11. The distinction between award of compensation on the basis of ‘liability without fault’ under Section 140 and payment of compensation under Section 163-A of the Act was drawn by the Supreme Court in National Insurance Company Limited v. Sinitha & Ors., 2011 (13) SCALE 84. I extract Paras 13, 14, 15 and 16 of the report hereunder for ready reference:-

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

Section 163-A. *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 sub-section (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 163-A 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 163-A 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 163-A of the Act. The additional negative bar, precluding the defense 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 163-A of the Act, has to have a bearing on the interpretation of Section 163-A 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 163-A of the Act. The legislature must have refrained from providing such a negative clause in Section 163-A intentionally and purposefully. In fact, the presence of Sub-section (4) in Section 140, and the absence of a similar provision in Section 163-A, 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 defense to defeat a claim for compensation raised under Section 163-A 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 defense 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 defense (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.

15. The heading of Section 163A also needs a special mention. It reads, "Special Provisions as to Payment of Compensation on Structured Formula Basis". It is abundantly clear that Section 163A, introduced a different scheme for expeditious determination of accident claims. Expeditious determination would have reference to a provision wherein litigation was hitherto before (before the insertion of Section 163A of the Act) being long drawn. The only such situation (before the insertion of Section 163A of the Act) wherein the litigation was long drawn was under Chapter XII of the Act. Since the provisions under Chapter XII are structured under the "fault" liability principle, its alternative would also inferentially be founded under the same principle. Section 163A of the Act, catered to shortening the length of litigation, by introducing a scheme regulated by a pre-structured formula to evaluate compensation. It provided for some short-cuts, as for instance, only proof of age and income, need to be established by the claimant to determine the compensation in case of death. There is also not much discretion in the determination of other damages, the limits whereof are also provided for. All in all, one cannot lose sight of the fact that claims made under Section 163A can result in substantial compensation. When taken together the liability may be huge. It is difficult to accept, that the legislature would fasten such a prodigious liability

under the "no-fault" liability principle, without reference to the "fault" grounds. When compensation is high, it is legitimate that the insurance company is not fastened with liability when the offending vehicle suffered a "fault" ("wrongful act", "neglect", or "defect") under a valid Act only policy. Even the instant process of reasoning, leads to the inference, that Section 163A of the Act is founded under the "fault" liability principle.

*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 *Oriental Insurance Company Limited v. Hansrajbhai v. Kodala*, (2001) 5 SCC 175, 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."

12. In this case, the accident took place on account of the neglect or default of deceased Sunny himself. His legal representatives, therefore, would not be entitled to the grant of compensation from the owner under Section 163-A of the Act also. Similar view was taken by the Punjab and Haryana High Court in FAO No.1413/2000 titled General Manager, Chandigarh Transport Undertaking-I, Chandigarh & Anr v. Kanwaljit Kaur & Ors., decided on 09.05.2011."

8. Thus, there is no manner of doubt that the accident having been caused on account of the deceased's own negligence, the compensation under Section 163-A of the Act is not permissible.
9. Now the question for consideration is whether the compensation awarded under Section 140 of the Act on the basis of no fault

liability is to be paid by the owner of bus No. UP-14-D-8876 i.e. the First Respondent or by the owner and insurer of Maruti Van No.DL-2C-R-4847. Section 140 of the Motor Vehicles Act is extracted hereunder:

“140. Liability to pay compensation in certain cases on the principle of no fault. – (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty – five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(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) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163 – A].”

10. Compensation under Section 140 of the Act is not to be claimed by the victim from himself. Thus, even if an accident takes place because of negligence or default of the victim himself, the owner of the other vehicle involved in the accident is liable to pay the compensation. Thus, the entire compensation of ₹50,000/- was liable to be paid by U.P. Roadways through its Manager/Incharge, Sikandrabad Depot, District Bulandshahar, U.P. along with interest @ 7.5% from the date of filing of the petition till the date of deposit.
11. The compensation deposited by the Appellant Tata A.I.G. General Insurance Co. Ltd. shall be refunded to it along with interest accrued during the pendency of the Appeal. The U.P. Roadways, the First Respondent is liable to pay the entire compensation of ₹50,000/- under Section 140 of the Act which shall also be liable to pay interest @ 7.5% till the date of

deposit in this Court. The deficiency in the amount paid shall be made up and deposited with the Registrar General of this Court within 30 days. On such deposit, the amount shall be released to the Claimants.

12. Both the Appeals are disposed of in above terms.

(G.P. MITTAL)
JUDGE

MARCH 16, 2012
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