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

+ **MAC.APP. 256/2007**

Date of decision:05.12.2014

UNITED INDIA INSURANCE CO.LTD. Appellant

Through **Mr.Rajesh Dwivedi, Advocate for
Mr.A.K.De, Advocate.**

versus

RITA DEVI & ORS. Respondents

Through **None.**

**CORAM:
HON'BLE MR. JUSTICE JAYANT NATH**

JAYANT NATH, J. (ORAL)

1. The present appeal is filed by the appellant Insurance Company seeking to impugn the award dated 17.02.2007.
2. The brief facts which led to filing of the claim petition are that Sh. Ram Bilas on 21.08.2004 was walking opposite fruit mandi, Azadpur. He was hit by a truck. He died on the spot.
3. The Tribunal awarded a total compensation of Rs.4,93,706/- to the claimants.
4. The limited issue that arises in the present appeal is as to whether a claim petition filed under Section 166 of the M.V.Act, 1988 can be converted into one under Section 163A of the Act. In the present case the claim petition was

filed under Sections 166 and 140 of the M.V.Act. The Tribunal concluded that rash and negligent driving of the driver of the truck is not established. However, it held that the court can take recourse to Section 163 A of the Act and grant relief even if rash and negligent driving is not proved.

5. Learned counsel appearing for the appellant stresses that the step taken by the Tribunal of converting the petition under Section 166 M.V. Act to one under Section 163A is incorrect and contrary to the statutory provisions. He relies upon the judgment of the Supreme Court in the case of ***Deepal Girishbhai Soni & Ors. vs. United Insurance Co. Ltd., AIR 2004 SC 2107*** to contend that in terms of the said judgment, the Tribunal acted with material irregularities in converting the petition from Section 166 to Section 163 A of the M.V. Act.

6. We may first look at the judgment of the Supreme Court in the case of ***Deepal Girishbhai Soni & Ors. vs. United Insurance Co. Ltd.***(supra). In that case the brief facts were that the claimant had filed two simultaneous claim petitions one under Section 163A of the Act and the other under Section 166 of the M.V. Act claiming compensation. The issue was as to whether a claimant can make two separate petitions as done in that case on the presumption that the proceedings under Section 163 A would be akin to some kind of interim orders. The Supreme Court in that case held that the remedy for payment under Section 163A and 166 of the M.V.Act being final and independent of each other, a claimant cannot pursue both remedies simultaneously. One has to opt/elect either to go for proceeding under Section 163A or under Section 166 of the Act but not under both.

7. In the present case the Tribunal has permitted the claimants to convert

the petition under Section 166 into a petition under Section 163A. It was not a case where two petitions have been pursued simultaneously by the claimants.

8. This court in the case of ***Rukmani Devi vs. New India Assurance Co. Ltd. and Anr., 2009 ACJ 2202*** has held that there cannot be a bar that the claimant cannot choose at any stage of the case to convert his petition under Section 166 to 163A of the M.V. Act. In that case this court held as follows:-

“7. Based on the above discussion and after considering the ratio of the aforesaid judgment of the Apex Court, it becomes manifest that the bar is on taking simultaneous remedies under Section 163-A and Section 166 of the Motor Vehicles Act, but there cannot be any bar that the claimant cannot choose at any stage of the case to convert their petition from Section 166 to Section 163-A of the Motor Vehicles Act. Denying such right of conversion during the pendency of case would defeat the very social objective of granting speedy and expeditious compensation to the victims of the accident cases. Once the claimants have taken recourse to Section 163-A of the Motor Vehicles Act the only hindrance which will come in the way of the claimants would be that the compensation in their favour would be payable under the said structured formula of the Motor Vehicles Act and once the claimants seek an amendment to convert their petition from Section 166 to Section 163-A of the Motor Vehicles Act, then, at the same time the claimant cannot be allowed to take the advantage of the income which the deceased/ victim might have been earning over and above the amount of Rs. 40,000 per annum as restricted in the Second Schedule to the Motor Vehicles Act.

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9. Another question which is of vital importance is whether the petition filed under Section 166 of the Motor Vehicles Act can be allowed to be converted into a petition under Section 163-A of the Motor Vehicles Act or vice versa and if the answer is yes, then what should be the stage for allowing such a petition.

There cannot be any dispute that the Motor Vehicles Act is a

beneficial piece of legislation and, therefore, endeavour has to be as to how best the intention of the legislation can be achieved so as to safeguard the interest of the victims of the accident rather than defeating the same. The statute has to be construed according to the intent of the makers and it is the duty of the courts to interpret the statute to see that true intention of legislature is achieved. Taking a purposive interpretation of Section 163-A of the Motor Vehicles Act the clear intendment of the legislation was to come to the rescue of all those who in the absence of any evidence are not in a position to file a claim petition under Section 166 of the Motor Vehicles Act where death of the victim or permanent disablement of the victim is required to be proved by establishing the factum of negligence involving the offending vehicle resulting into causing the accident but under section 163-A, the requirement of proving the negligence has been dispensed with.”

9. Reference may also be had to the judgment of this Court in the case of *Tata A.I.G. General Insurance Co. Ltd. vs. U.P. Roadways & Ors.* MANU/DE/1575/2012 where in para 6 this court held as follows:

“6. 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.”

10. I may also mention that under Order 6 Rule 17 CPC the court may at any stage of the case allow either party to alter or amend his pleadings in such

manner or such terms subject to of course certain limitations as provided under the amendment of 2002. When a petition under Section 166 is converted into 163A of the M.V. Act it is like an amendment to the claim petition. For purposes of doing complete justice between the parties and completely adjudicating upon all the disputes such an amendment cannot be said to be barred.

11. Reference may be had to the judgment of the Supreme Court in the case of *Nagappa vs. Gurdayal Singh and Ors. (2003) 2 SCC 274* relevant portion of which reads as follows:-

“11. Secondly, under Section 169, the Claims Tribunal in holding any inquiry under Section 168 is required to follow the rules that are made in this behalf and follow such summary procedure as it thinks fit. In the present case, it has been pointed out that Rule 253 of Karnataka Motor Vehicles Rules, 1989 empowers the Claims Tribunal to exercise all or any of the powers vested in a Civil Court under the provisions of Code of Civil Procedure, 1908. Rules 254 *inter alia* makes specific provision that Order 6 Rule 17 CPC is applicable to such proceedings. In this view of the matter, in an appropriate case, depending upon the facts and the evidence which has been brought on record and in the interest of justice, Court may permit amendment of claim petition so as to award enhanced compensation. Further, for amendment of the pleadings, it is settled law that unless it causes injustice to other side or it is not necessary for the purpose of determining real issue between the parties, Court would grant amendment. It is also to be stated that under the M.V. Act there is no time limit prescribed for claiming compensation. Therefore, there is no question of enhanced claim being barred by limitation.”

12. In the light of the above, there is no merit in the appeal. There is no illegality in permitting the claimants to pursue the remedy under Section 163

A of the Act. The appeal is dismissed.

13. Statutory amount, if any, be refunded to the appellant. All interim orders are vacated.

JAYANT NATH, J.

DECEMBER 05, 2014/rb