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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./397/2016

SMTI KANTI DEVI
W/O LATE DINDAYAL RAM, R/O NOWA NAGAR, P.O. NOWA NAGAR, P.S.
SIKANDRA PUR, DIST. BALIA, UTTAR PRADESH. TEMPORARY ADDRESS
DEITHOR STATE DISPENSARY, P.O. DEITHOR, P.S. BORPATHAR, DIST.
KARBIANGLONG, ASSAM.

VERSUS

THE NATIONAL INSURANCE CO. LTD and ANR
HAVING ITS OFFICE AT DIVISION-10, FLAT NO. 101-106 N01, BMC HOUSE,
CONNAUGHT PLACE, NEW DELHI AND ITS REGIONAL OFFICE KNOWN AS
GUWAHATI REGIONAL OFFICE, BHANGAGARH, OPPOSITE HUB
SHOPPING MALL, GUWAHATI 781005, KAMRUP M, ASSAM INSURER OF
THE VEHICLE NO. AS-05-D-1021 MOTOR CYCLE

2:SMTI SUNITA DEVI

W/O LATE DIN DAYAL RAM
VILL. BOGORANI
P.O. KHUMTAI
P.S. KAMARGAON
DIST. GOLAGHAT
OWNER OF THE VEHICLE NO. AS-05-D-1021 MOTOR CYCLE

Advocate for the Petitioner : MS.P BARUAH, MS.S KHANIKAR,MR.A BISWAS,MR.P
CHOUDHURY

Advocate for the Respondent : MR.A DUTTAR-1, MR. P J BARMAN,MR.K ROY(R-2),MRS.P M
DUTTA(R-1),MR.P P BORTHAKUR(R-2),MS.B GOGOI(R-2)

Date of hearing : 11.06.2024

Date of Judgment : 08.08.2024

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

JUDGMENT AND ORDER (CAV)

Heard Mr. A. Biswas, learned counsel for the appellant. I have also heard Mr. P.J. Barman, learned counsel for the respondent No.1 and Mr. P.P. Borthakur, learned counsel for the respondent No.2

2. This is an appeal under section 173 of the Motor Vehicles Act, 1988 preferred against the judgment and order dated 15.2.2016 passed by the learned Member, Motor Accident Claims Tribunal, Golaghat in MAC Case No.5/2013, whereby the claim petition of the appellant has been dismissed.

3. The case of the claimant in brief is that on 03.01.2012 at about 10.20 AM, while her deceased husband Din Dayal Ram was coming towards Golaghat side by riding a motor cycle bearing registration No.AS-05-D-1021 in a moderate speed along with one pillion rider along the National Highway-37, Rangajan, one truck came from opposite direction driving in rash and negligent manner without leaving any space for crossing, as a result the deceased somehow managed to escape from collision with the truck, but in the process he lost control over the motor cycle and

dashed against a tree as a result he and pillion rider sustained injuries. After the accident the offending truck managed to flee away. However, the deceased was immediately taken to hospital whereafter he died.

4. The further case of the appellant is that the deceased had possessed valid and effective driving license at the time of the accident. He was working as Sweeper in a Deithor PHC, Karbi Anglong and drawing a salary of Rs.14,841/- per month. The deceased was aged about 38 years. He died leaving behind him his old parents, the claimant wife and minor children as dependants.

5. Later on, the claimant filed a MACT case under section 163A of the motor Vehicles Act seeking compensation of Rs.29,74,720/- along with interest at the rate of 9% per annum from the opposite party on account of death of her deceased husband Din Dayal Ram in the said motor vehicle accident.

6. The opposite party herein contested the claim by filing written objection denying all relevant averments with a legal plea that no cause of action has arisen to file the claim petition against them. Basing on the pleadings and documents submitted by the parties, the learned Tribunal framed the following issues: -

(i) Whether there is any rash and negligent driving on the part of the driver of the vehicle No.AS-05-D-1021 that caused the accident on 03-01-2012 at 10.20 AM at Rangajan NH-39 at Golaghat under Golaghat Police Station?

(ii) Whether Late Din Dayal Ram sustained grievous injuries as

a result of such accident and died?

(iii) Whether the claimant is entitled for any compensation? If so, what is the quantum of compensation and from whom?

(iv) Any other relief?

7. The learned Tribunal observed that in view of the claim petition being filed under section 163A of the Motor Vehicles Act claiming compensation on account of the death of the husband of the claimant and as under section 163 A(2) of the Motor Vehicles Act, the claimant does not required to establish that the death or permanent disablement in respect which claim has been made was due to any wrongful act or default of the owner of the vehicle concerned or any other person, the Issue No.1 is a redundant one.

8. The Issue No.2 was decided in affirmative and held that the deceased sustained grievous injuries as a result of the said Motor vehicle accident and died.

9. With regard to the issue No.3, related to the entitlement of compensation, the learned Tribunal while discussing the said issue has suddenly shifted from section 163A of MV Act, 1988 to 166 MV Act,1988 and held that the claimant is entitled to get compensation under section 166 of the Motor Vehicles Act. And as the claim petition has not been filed as per the guidelines laid down in section 166 of the Motor Vehicle Act, on the basis of the claim petition, no compensation can be awarded for death of her husband on account of motor accident. Thus, the application filed under section 163A of the Motor Vehicles Act has been decided basing on the requirement of section 166 of the Motor Vehicles Act and dismissed on the

question of maintainability.

10. The learned counsel for the appellant submits that the learned Tribunal has Suo-moto converted the claim petition under section 163A of MV Act into the application under section 166 of the Motor Vehicles Act and dismissed the claim petition by adopting a hyper technical view while all other factors were satisfied.

11. It is further submitted that the question of maintainability was not an issue in the instant claim petition filed by the appellant and the defect which has been pointed out by the learned Tribunal regarding non rejoinder of party and non representation of the minor of the deceased and son of the second wife are curable defect which can be cured by giving opportunity to the appellant/claimant.

12. The learned counsel for the appellant contended that the view taken by the learned Tribunal that the deceased was a borrower of the motor cycle and thus he steps in the shoes of the owner and therefore, the deceased is not entitled to compensation is incorrect inasmuch as the deceased was the husband of the owner of the motor cycle which met the accident. The learned counsel for the appellant further submits that the claim petition filed by the appellant/claimant under section 163A has been converted into and decided based on the requirement under section 166 of the Motor Vehicles Act. The learned Tribunal after conversion of the application under section 163 A into section 166 has proceeded and decided the case under section 166 of the Motor Vehicles Act without giving any opportunity to the claimant; and submits that while converting

the application under section 163A to section 166 of the MV Act, the claimant should have been given an opportunity to place its case under the said provision of the Motor Vehicles Act.

13. The learned counsel for the appellant submits that the opposite party No.2/respondent herein had never raised any question nor made prayer for conversion of the petition under section 163A into petition under section 166 of the Motor Vehicles Act. The respondent has not produced any evidence nor did raise in their cross-examination. However, the conversion of claim petition under section 163A to under section 166 of M.V. Act was done by the learned Tribunal Suo-moto without giving any opportunity to the parties.

14. It is further submitted that the material particulars furnished in clause 18 of the claim petition where name and addresses of the applicants are given has never been disputed by the respondent/Insurance company before the learned Tribunal. No averments have also been made in their written statement. Thus, it is seen that the petitioner/appellant has never suppressed the name of the claimants as reflected in para 11 of the judgment in as much as the member of the applicants have been clearly reflected in the claim application under para 18 which has not been disputed. The fact that who will represent the minor claimants has not been stated is a minor defect as the petitioner is the wife of the deceased and a mother of the said minor children which has not been disputed. Moreover, in her evidence in affidavit, the claimant mother has clearly stated that she preferred a claim for Rs.29,74,720/ only as

compensation for herself and on behalf of other legal representatives of the deceased person. Further, such minor defects are curable for which the entire claim of the petitioner cannot be rejected.

15. It is further submitted that the owner of the vehicle is the second wife of the deceased. The deceased used the vehicle which was in the name of his wife unlike the citation relied by the learned counsel for the respondent where the vehicle was used by the brother. The status of a wife and husband is altogether on different footing with that of the brothers. In the instant case, the owner of the vehicle is the second wife of the deceased which is not disputed by the respondents. That apart, from the objection and the written statement filed by the respondent/Insurance company, the company has not produced any evidence or documents against the appellant. The learned counsel for the appellant further submits that the present case is not a civil dispute where the strict proof of evidence is required. It is under the Motor Vehicles Act therefore, hyper technicality of the civil procedure as in the civil case is not applicable. The Motor Vehicle Act is a welfare legislation and therefore a benefit should be given to the deceased husband. Further, admittedly, the owner of the Motor cycle is the wife of the deceased and the husband is not a borrower. In support of his submission, the learned counsel for the appellant relied on the following judgments: -

(i). **Vimla Devi And Others vs National Insurance Company Limited and Anr** reported in **(2019) 2 SCC 186** Para 15 which

quoted herein below:-

"15. At the outset, we may reiterate as has been consistently said by this Court in a series of cases that the Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffer bodily injury or die untimely. The Act is designed in a manner, which relieves the victims from ensuring strict compliance provided in law which are otherwise applicable to the suits and other proceedings while prosecuting the claim petition filed under the Act for claiming compensation for the loss sustained by them in the accident."

(ii). **Sunita And Others vs Rajasthan State Road Transport Corporation and Others** reported in **(2020) 13 SCC 486**. Para 22

"22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

(iii). **Reshma Kumari and Ors versus Madan Mohan and Anr** reported in **Civil Appeal No.4646 of 2009** para 19, 23

"19. In Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd., Baroda[15], the question that arose for consideration before a three-Judge Bench was, whether a proceeding under Section 163A of the 1988 Act was a final proceeding and the claimant, who has been granted compensation under Section 163A, was debarred from proceeding with any further claims on the basis of the fault liability in terms of Section 166. This Court considered the statutory provisions contained in the 1988 Act, including Sections 163A and 166. With regard to Section 163A, the Court stated as follows:

"42. Section 163-A 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 163-A 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. . . . This together with the other heads of compensation as contained in

columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

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46. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured-formula basis. Sub-section (1) of Section 163-A contains non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is 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.

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51. The scheme envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set- off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs 40,000 or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society.

52. It may be true that Section 163-B provides for an option to a claimant to either go for a claim under Section 140 or Section 163-A of the Act, as the case may be, but the same was inserted ex abundanti cautela so as to remove any misconception in the minds of the parties to the lis having regard to the fact that both relate to the claim on the basis of no-fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims both under Section 163-A and Section 166 does not arise. If the submission of the learned counsel is accepted the same would lead to an incongruity.

23. In Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr.[17] , this Court had an occasion to consider the peculiarities of

Section 163A of the 1988 Act vis-à-vis Section 166. The Court reiterated what was stated in earlier decisions that the principles relating to determination of liability and quantum of compensation were different for claims made under Section 163A and claims made under Section 166. It was stated that Section 163A and the Second Schedule in terms did not apply to determination of compensation in applications under Section 166. While stating that Section 163A contains a special provision, this Court said:

"34. Section 163-A of the MV Act contains a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. The Second Schedule contains a table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs 3000 to Rs 40,000. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs 40,000. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes up to 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is under Section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where the compensation is not specified with reference to the annual income of the deceased, or is more than Rs 40,000, by applying the formula: $(2/3 \times AI \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under Section 163-A of the MV Act."

(iv). **State of Punjab and Another versus Shamlal Murari and Another** reported in **(1976) 1 SCC 719** para 8

"8. It is obvious that even taking a stern view, every minor detail in r. 3 cannot carry a compulsory or imperative import. After all what is required for the Judges to dispose of the appeal is the memorandum of appeal plus the judgment and the paper book. Three copies would certainly be a great advantage, but what is the core of the matter is not the number but the presence, and the over-emphasis laid by the Court on three copies is, we think, mistaken. Perhaps, the rule requires three copies and failure to comply therewith may be an irregularity. Had no copy been furnished of any one of the three items, the result might have been different. In the present case, copies of all the three documents prescribed, have been furnished but not three copies of each. This omission or default is only a breach which can be characterised as an irregularity to be corrected by condonation on application by the party fulfilling the condition within a time allowed by

the Court. We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After, all Courts are to do justice, not to wreck this end product on technicalities. Viewed in this perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time. Be that as it may, and ignoring for a moment the exploration of the true office of procedural conditions, we have no doubt that what is of the essence of r. 3 is not that three copies should be furnished, but that copies of all the three important documents referred to in that rule, shall be produced. We further feel that the Court should, if it thinks it necessitous, exercise its discretion and grant further time for formal compliance with the rule if the copies fall short of the requisite Number. In this view and to the extent indicated, we over-rule the decision in Bikram Dass's(supra) case."

16. In view of the decision in the above referred cases and for the reasons stated above, the limited prayer of the learned counsel for the appellant at this stage is that the matter may be sent back to the learned Tribunal for re-consideration and disposal after giving an opportunity to the appellant/claimant to file an appropriate application, before conversion of the application under section 163A to under section 166 of MV Act.

17. On the other hand, the learned counsel for the respondent/Insurance company submits that the appellant was owner of the vehicle and she is a necessary party. However, the appellant has not made her a necessary party.

18. The learned counsel for the respondent further submits that the instant case is not maintainable under section 163A of the Motor Vehicles Act in as much as the owner of the vehicle is absent. Only

3rd party liability is covered in Insurance and in the present case, the deceased was a borrower and he steps in the shoes of the owner and therefore not entitled for any compensation under section 163A of the Motor vehicles Act. In support of his submission, the learned counsel for the respondent relied upon the following judgments: -

(i). **Moreshar Yadaorao versus Vyankatesh Sitaram Bhedi and Others** reported in **2022 Live Law SC 802 para.17,18,20**

17. This Court, in the case of Mumbai International Airport Private Limited (supra), has observed thus: "15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

18. It could thus be seen that a "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a "necessary party" is not impleaded, the suit itself is liable to be dismissed.

20. It can thus be seen that what has been held by this Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party.

19. Heard both the learned counsel for the parties. I have also duly considered the contention and the submission made by both the learned counsel for the parties. The cases relied upon by both the parties in support of their case have also been considered. The contention of the appellant is that the claim petition has been filed under the Motor Vehicles Act; therefore, hyper technicality of the civil

procedure as in the civil case is not applicable. And since, the Motor Vehicle Act is a welfare legislation and therefore, a benefit should be given to the deceased husband. Further, the owner of the Motor cycle is the wife of the deceased, thus, the husband is not a borrower, as such the contention of the respondent that the deceased husband was a borrower and he steps in the shoes of the owner is not applicable in the instant case in as much as, the deceased was her husband and the said fact has not been disputed by the respondent. Further, since, the material particulars were furnished in clause 18 of the claim petition where name and addresses of all the applicants are given and that has never been disputed by the respondent/Insurance company before the learned Tribunal. The family members of the applicants have also been clearly reflected in the claim application which has not been disputed. It is the further case of the appellant that while given the above fact and information, mere non-mentioning of the respondent that who will represent the minor claimants is a minor defect as the fact that the petitioner is the wife of the deceased and a mother of the said minor children has also not been disputed. Moreover, in her evidence in affidavit, the claimant mother has clearly stated that she preferred a claim for compensation for herself and on behalf of other legal representatives of the deceased person. It is thus, the case of the appellant that, such minor defects are curable for which the entire claim of the petitioner cannot be rejected. On the other hand, while defending the impugned judgment and order of the contention of the respondent is that the instant case is not maintainable under section 163A of the Motor Vehicles Act in as much as the owner of the vehicle

having not been impleaded as opposite party. As such, only 3rd party liability is covered in Insurance and in the present case, the deceased was a borrower and he steps in the shoes of the owner and therefore, not entitled for any compensation under section 163A of the Motor vehicles Act.

20. In order to consider the above rival contentions of the parties we may have to discuss the matter at some length. However, as the appellant has made a limited prayer for remanding back the case to the learned Tribunal for re-consideration contending that the claim petition was filed before the learned Tribunal under section 163A of the Motor Accident Act; the trial of the case proceeded under the said provision; however, while discussing the issue No.3, related to the entitlement of compensation, the learned Tribunal has suddenly shifted from section 163 A of MV Act, 1988 to under section 166 MV Act,1988. The said conversion from 163A of MV Act to 166 MV Act was done by the learned Tribunal at its own and no any information was given to the parties. Further, the learned Tribunal after conversion of the application under section 163A into section 166 of MV Act has proceeded and decided the case based on the requirement under section 166 of the Motor Vehicles Act without giving any opportunity to the claimant to place her case under the said provision. It is not disputed that the conversion of application under section 163A to 166 of MV Act was done by the learned Tribunal on its own accord. The conversion of the petition under section 166 of MV Act is based on the assertions made in the claim statement. However, as the requirement of the petition under 166 and 163A are different, the petitioner ought

to have been given an opportunity to amend her petition before conversion. That opportunity having not afforded, the appellant has been caused serious prejudice.

21. In view of the forgoing reason, the impugned judgment and order 15.02,2016 15.2.2016 passed by the learned Member, Motor Accident Claims Tribunal, Golaghat in MAC Case No.5/2013 is set aside. The matter is remanded back to the learned Tribunal with a direction to give an opportunity to the appellant/claimant to file an appropriate application under section 166 of MV Act within a period of 4 (four) weeks' time from the first appearance and since the evidence has already been adduced decide the same expeditiously preferably within a period of three months from the date of producing a copy of this judgment. However, it is made clear that this Court has not examined the merit of the case and the learned Tribunal will decide the petition, in accordance with law, without being swayed by the observation made in the earlier judgment dated 15.02.2016.

22. Both the parties are directed to appear before the learned Tribunal, Golaghat on 09.09.2024 for further direction.

23. Office is directed to send the Trial Court record along with copy of this judgment forthwith.

JUDGE

Comparing Assistant