HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1068 of 2005

JUDGMENT:

The New India Assurance Company Limited-2nd respondent in O.P.No.307 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, East Godavari at Rajahmundry (for short, 'the Tribunal') preferred the instant appeal challenging the order dated 10.02.2005, whereby and whereunder an amount of Rs.6,27,000/- was granted as compensation with interest at 6% per annum as against the claim for Rs.20,00,000/- laid under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder.

2. The appellant herein, who is insurer of the motorcycle bearing registration No.AP 31K 9088, is respondent No.2 in the original petition before the Tribunal, while respondent Nos.1 and 2 herein are the petitioners (claimants) and respondent No.3, who is the owner of the above vehicle, is respondent No.1.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 29.11.2002, one Chava Srinivas (deceased) aged 26 years studying final year MCA, started along with his friend Venkata Ramana on motorcycle bearing registration No.AP 5P 5759 from Samalkot to Krishnayyapalem to attend wedding of their friend, at about 9-15 p.m., one M.Ravi was coming in opposite direction driving his motorcycle bearing registration No.AP 37K 9088 in a rash and negligent manner and dashed their motorcycle, due to which, the deceased died instantly. The claim is laid by his parents as mentioned above making the owner and insurer of the motorcycle

bearing registration No.AP 37K 9088 as responsible.

5. Both the respondents filed written statements and opposed the claim attributing rash and negligent driving to the deceased and sought to dismiss the claim.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the 1st petitioner examined himself as P.W.1 besides examining one Kakarla Satya Vara Prasad as P.W.2 and marked Exs.A.1 to A.5 in order to substantiate their claim made before the Tribunal; whereas on behalf of the respondents, Exs.B.1 to B.9 were marked, but no witnesses were examined.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioners; and on issue No.2, making elaborate discussion, as regards the future income of the deceased had he survived, in paragraph-22, fixed the monthly income at Rs.5,000/- and annual income at Rs.60,000/- by deducting 1/3rd therefrom, applied multiplier '15' taking the age of the younger parent of the deceased and arrived at Rs.6,00,000/-. Besides the same, Rs.15,000/- towards loss of estate, Rs.10,000/- towards mental agony and Rs.2,000/- towards funeral expenses, and, thus, the total amount of Rs.6,27,000/- was granted by the Tribunal as compensation with interest at 6%per annum.

8. Aggrieved of the said order, the 3rd respondent-Insurance Company preferred the instant appeal mainly contending in the grounds of appeal that the Tribunal ought not to have taken the annual income beyond Rs.40,000/- as per Section 163-A of the Act.

9. Heard Sri Kota Subba Rao, learned counsel for the appellant-Insurance Company, Sri Ch.Dhanamjaya, learned counsel for the respondent Nos.1 & 2 herein, and Sri C.B.Rammohan Reddy, learned counsel for the respondent No.3 herein.

10. The main contention of the learned counsel for the appellant-Insurance Company is that the Full Bench of the Hon'ble Supreme Court in ***Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd.***[1], affirming the judgment of the Hon'ble Supreme Court ***Oriental Insurance Co. Ltd. v. Hansrajbhai V.Kodala***[2], laid down that the proceedings under Section 163-A of the Act, being a social security provision, provides a distinct scheme for those victims of accidents whose income is up to Rs.40,000/- per annum and the other claims are required to be determined in terms of Chapter XII of the Act. The learned counsel relied on the relevant paragraphs of the judgment, which are paragraphs 51, 53, 57, 58, 67. However, it would be profitable to extract the observations of the Hon'ble Supreme Court in the said paragraphs, thus:

> "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.
>
> 53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and

> extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. (See *Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*, [AIR 1985 SC 278 : (1985) 1 SCC 218].
>
> 57. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section
> 163-A or under Section 166 of the Act, but not under both.
>
> 58. In *Kodala*, 2001 ACJ 827 (SC), the contention of the claimant that right to get compensation is in addition to the no-fault liability was, thus, rightly rejected. In agreement with *Kodala* (supra) we are also of the opinion that unlike Sections 140 and 141 of the Act the Parliament did not want to provide additional compensation in terms of Section 163-A of the Act.
>
> 67. We, therefore, are of the opinion that *Kodala* (supra) has correctly been decided. However, we do not agree with the findings in *Kodala* (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs.40,000/- per annual shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act."

11. It is, therefore, submission of the learned counsel for the appellant-Insurance Company that the Tribunal was not right in invoking the provisions of Section 163-A of the Act, where the annual income was arrived at Rs.60,000/-, and, therefore, to set aside the award and decree passed by the Tribunal.

12. Learned counsel for the respondents 1 and 2 herein, who are the petitioners before the Tribunal, did not dispute the law laid down by the Hon'ble Supreme Court in the above decisions. In such an event, the only option left to this Court is to remit the matter to the Tribunal to

afford an opportunity to the petitioners to enable them to alter the provision of law by seeking the compensation under the relevant provisions of the Act. In that view of the matter, the appeal has to be allowed.

13. In view of the foregoing account, the appeal is allowed setting aside the order and decree dated 10.02.2005 passed by the Tribunal in O.P.No.307 of 2003 and the matter is remitted to the Tribunal with a direction to dispose of the original petition in accordance with law, within a period of six months from the date of receipt of a copy of the order. The Tribunal is further directed to afford an opportunity to the petitioners to enable them to alter the provision of law, in case the petitioners would choose. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

13th February, 2015

siva

---

[1] 2004 ACJ 934

[2] 2001 ACJ 827 (SC)