

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.904 of 2009

JUDGMENT:

1 Assailing the award and judgment dated 07.07.2008 passed in M.V.O.P.No.492 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District & Sessions Judge Ongole wherein and whereby an amount of Rs.5,63,000/- was awarded as compensation as against the claim of Rs.6.00 lakhs, the third respondent – insurer filed the present appeal.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present petition, briefly, are as follows:

4 On 09.05.2007 at about 3.00 p.m., while one B. Krishna was waiting by standing in front of his lorry, another lorry bearing No.AP 16 TV 4669, which was in front of lorry of said Krishna, being driven by its driver in reverse side, in a rash and negligent manner, dashed Krishna resulting he fell under the rear wheels of the said lorry. In connection with the said accident, the Station House Officer, Kunigal Police Station registered a case in Cr.No.115 of 2007 under Section 304-A of IPC against the driver of the lorry bearing No.AP 16 TV 4669. Due to the accident, Krishna (hereinafter referred to as 'the deceased') sustained multiple injuries and died on the spot. By the time of accident, the deceased was aged about 28 years and used to earn Rs.4,500/- p.m as lorry driver. First petitioner is wife, Petitioner Nos.2 and 3 are children and petitioner Nos.4 and 5 are parents of the deceased and they are all dependents on the income of the deceased. First respondent is the driver and second respondent is the owner of the lorry bearing No.AP 16 TV 4669, which was insured with the third respondent. Hence the petitioners filed the petition seeking compensation of Rs.6.00 lakhs from the respondent Nos.1 and 2.

5 Respondent Nos.1 and 2 remained ex parte. Third respondent filed written statement denying the material averments made in the petition, inter *alia* contending that Section 163-A of the M.V. Act has no application in regard to an accident wherein the deceased himself involved and hence on this ground alone

the petition is liable to be dismissed. This respondent is entitled to protection of Sections 147, 149 and 170 of the M.V. Act. There was no negligence on the part of the driver of the lorry. This respondent is not liable to pay compensation to the petitioners unless they establish that the driver of the lorry was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioners under various heads is excessive and exorbitant. Hence the petition may be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the deceased died due to rash and negligent driving of the driver of the crime vehicle of R.2?
- ii. What is the correct age & income of the deceased as on the date of the accident?
- iii. Whether the petitioners are entitled for compensation, if so, to what extent and from whom?
- iv. To what relief?

7 During the course of trial, on behalf of the petitioners, the first petitioner alone is examined as P.W.1 and Exs.A.1 to A.7 were marked. On behalf of the second third respondent no oral evidence was let in, but the copy of the insurance policy was marked as Ex.B.1.

8 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 16 TV 4669 as well as the deceased and fastened the liability in the ratio of 85% : 15% and awarded compensation of Rs.5,63,000/- with interest at 9% p.a from the date of filing of the petition till the date of deposit and directed the respondent Nos.1 to 3 to deposit the same jointly and severally. Feeling aggrieved by the judgment and award of the Tribunal, the third respondent—insurance company preferred the present appeal.

9 Heard Sri Naresh Byrapaneni, the learned standing counsel for the third respondent and Smt. Kavitha Gottipati, the learned counsel for the petitioners.

10 The contention of the learned counsel for the third respondent is three fold:

i. The Tribunal failed to consider that since the claimants filed the petition under

Section 163-A of M.V.Act, the Tribunal ought to have restricted the annual income of the deceased to Rs.40,000/- regardless of his actual income.

ii. As the petition is filed under Section 163-A of the M.V. Act, the Tribunal has no option except to determine the compensation basing on structural formula; and

iii. The Tribunal awarded the interest at 9% p.a. which is on higher side.

11 Per contra, the learned counsel for the petitioners submitted that the Tribunal can treat the claim petition filed under Section 163-A of the M.V. Act as if it is filed under Section 166 of the Act and award compensation. She further submitted that the Tribunal has rightly awarded the compensation keeping in mind the object of the M.V. Act. She further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

12 Basing on the rival contentions the points that fall for consideration in this appeal are:

1. "Whether the Tribunal is justified in taking the income of the deceased at Rs.54,000/- p.a. instead of Rs.40,000/- when the petitioners filed the claim petition under section 163-A of the M.V. Act?
2. Whether the rate of interest awarded by the Tribunal is on higher side."

Point No.1:

13 As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry as well as the contributory negligence on the part of the deceased in the ratio of 85% : 15%. The Tribunal has assigned cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. The finding recorded by the Tribunal on issue No.1 has become final, so far as the claimants are concerned in view of non-filing of appeal or cross-objections by the claimants. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 16 TV 4669 as well as the contributory negligence on the part of the deceased in the ratio of 85% : 15%.

14 The number of road accidents is increasing day by day due to multifarious reasons. The Motor Vehicles Act is a beneficial legislation aimed at providing

immediate financial assistance to the family members of the deceased as it is not possible to get back the life of the deceased. Likewise, it may not be possible for an injured person, who suffered deformity due to the accident, to lead normal life as he led prior to the accident. It is a settled principle of law that the provisions of the beneficial legislation have to be interpreted in such a way to achieve the object with which the Act was enacted.

15 Keeping in mind the plight of the victims of road accidents, the Parliament, in its wisdom, incorporated Section 163-A of the Act in the year 1994 to provide speedy and inexpensive justice. The claimants need not plead and prove the negligence on the part of the driver of the crime vehicle if the petition is filed under Section 163-A of the M.V. Act unlike Section 166 of the Act. It should be remembered that Section 163-A of the Act does not debar or prevent the insurer or insured to plead and prove the negligence or contributory negligence on the part of the deceased / injured so as to absolve their liability to certain extent. The unique feature of Section 163-A of the Act is that the compensation has to be determined basing on the second schedule to the said Section. Section 163-B of the Act provides two options to the claimants to file a petition either under Section 163-A, or under Section 166 of the Act depending upon the gross annual income of the deceased. Section 167 of the Act provides the option to the workman or family members of the deceased workman to file the claim petition either under the Motor Vehicles Act or under the Workmen's Compensation Act. In the case on hand, the claimants have filed the petition under Section 163-A of the M.V. Act.

16 To substantiate the stand of the second respondent, learned counsel for the appellant - second respondent has drawn my attention to the following decisions.

Oriental Insurance Co. Ltd Vs. Hansrajhai V. Kodala wherein the Hon'ble apex Court at para No.15 of the judgment held as under:

“.....However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs.40,000/- which is the highest slab in the Second Schedule which indicates that the legislature wanted to give benefit of no fault liability to a certain limit. This would clearly indicate that the scheme is in alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay compensation without there being any long drawn litigation on an predetermined formula, which is known as structured formula basis which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security

measure because of ever increasing motor vehicles accidents in a fast moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no fault liability and determination of compensation amount on fault liability was taking long time. That mischief is sought to be remedied by introducing Section 163A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles.

Deepal Girishbhai Soni Vs. United India Insurance Co. Ltd wherein the Hon'ble apex Court held as under:

42. Section 163-A was, thus, enacted for grant of immediate relief to a section of 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. The note appended to column 1 which deals with fatal accidents, makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in column Nos. 2 to 6 thereof leaves no manner of doubt that the 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.

We, therefore, are of the opinion that Kodala {(2001) 5 SCC 175} 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 annum 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.

Ningamma Vs. United India Insurance Company Limited wherein the Hon'ble apex Court held as under:

14. Section 163-A of the MVA was inserted by Act 54 of 1994 by way of a social security scheme. It is needless to say that the said provision is a code by itself. The said provision has been inserted to provide for a new predetermined structured formula for payment of compensation to road accident victims on the basis of age/income of the deceased or the person suffering permanent disablement. In view of the language used in said section there could be no manner of doubt that the said provision has an overriding effect as it contains a non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay compensation in the case of death or permanent disablement due to accident arising out of the use of motor vehicle,

as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

16. The aforesaid decisions make it quite clear that the Parliament by introducing Section 163-A in the MVA provided for payment of compensation on structured formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under sub- section (1) of Section 163-A of the MVA. In order to prove a claim of this nature the claimant would 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 concerned.

National Insurance Company Limited Vs. Sinitha wherein the Hon'ble apex Court held as under:

29. 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.

30. 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.

31. 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 vs. Hansrajhai V. Kodala](#) (supra), 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.

Oriental Insurance Co. Ltd Vs. Saroj wherein the High Court of Punjab And Haryana held as under:

6. The judgment does not lay down a law that merely by setting up a claim on the basis of higher income, the claimants would be disqualified to lay a claim under Section 163-A of the Act. Moreover, it appears from the ratio of that judgment that the provisions of Section 163-A of the Act being beneficial piece of

legislation in nature would not act as a bar in a case where the Tribunal comes to the finding that the income is below Rs.40,000/- per year.

A. Vijaya Vs. Vegurla Rajaiah wherein this Hon'ble Court held as under:

27. Learned counsel appearing for the appellants/claimants by placing reliance on the judgment of the learned single Judge of our High Court in A. Lakshmi v. Arjun Associated Pvt. Ltd., contends that even in cases arising under Section 168 of M. V. Act, 1988 compensation can be fixed on the basis of structured formulae in the second schedule of the Act. We have gone through the judgment of the learned single Judge. The ultimate conclusion arrived at by the learned single Judge is structured formulae can be taken as a necessary assistance and guidance in arriving at the compensation even in cases that are to be decided under Section 168 of M.V. Act. It is nowhere held that the multiplier mentioned in column No. 2 of the structured formulae is made to be applicable strictly even in cases where the annual income of the victim is more than Rs. 40,000/-. Therefore, we do not see any substance in the contention of the learned counsel for the appellants/claimants. The Supreme Court has repeatedly held that the structured formulae in the second schedule appended to the Act is only for those whose annual income is upto Rs. 40,000/- and all other claims are required to be determined in terms of Chapter XII of the Act. In case of higher income the prescribed multiplier in column No. 2 of the structured formulae of the second schedule is only a guidance.

17 As per the principle enunciated in the cases cited supra, the Tribunal has to determine the loss of dependency basing on the Second Schedule annexed to Section 163-A of the Act, regardless of the actual gross income of the deceased. Suffice it to say, the Schedule to Section 163-A of the Act puts a nail at Rs.40,000/- on the gross annual income, as well as the other non-conventional heads.

18 On the other hand, the learned counsel for the petitioners has drawn my attention to the following decisions:

Puttamma Vs. K.L. Narayana Reddy wherein the Hon'ble apex Court held as under:

56. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for

fixed compensation of Rs.1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163A of the Act, 1988.

19 In the above case, the Hon'ble Apex Court recommended to the Parliament for making necessary amendments to the second schedule and till that time, the Tribunal or the Courts are entitled to grant compensation of Rs.1.00 lakh and Rs.1.5 lakhs in case of child death. The facts of the case on hand are distinguishable to the facts of the case cited supra.

Oriental Insurance Co. Ltd Vs. Gurdev Singh wherein the High Court of Punjab & Haryana held as under:

15. There can be no doubt about the fact that the decision of Hon'ble the Supreme Court in Sarla Verma's case {2009 ACJ 1298 (SC)} and Raj Kumar's case {2011 ACJ 1 (SC)} is covered in the broad sweep of Article 141 of the Constitution of India. It would therefore be appropriate to hold that the decisions of the Hon'ble Supreme Court in Sarla Verma's and Raj Kumar's cases can be suitably applied even in cases falling under section 163-A, and 2nd schedule of the Motor Vehicle Act is not a watertight compartment. Consequently, it would be appropriate to hold that in so far as the limits of conventional heads in the 2nd Schedule has no co-relation with the benefit granted u/s 163-A i.e. of the need to do away with proving negligence, a deviation may be made in assessing/ awarding compensation under the heads medical expenses, funeral expenses, loss of consortium/ loss of estate. In this regard courts can resort to the ratio of the decisions of the Hon'ble Supreme Court in Sarla Verma (supra) and Raj Kumar (supra) which, as already stated above, is the law of the land.

20 It seems that the judgments of the Hon'ble Apex Court 1 to 4 supra were not brought to the notice of the learned Single Judge which deals with awarding of compensation in death cases. Even as per the principle enunciated in the case cited supra, the Courts can deviate from the second schedule while awarding compensation under conventional heads in injuries cases. Hence, I am not inclined to place reliance on this decision in view of the judgments of the Hon'ble apex Court.

Gaytri Vs. Amir Singh, Patel Manjulaben Rameshkumar and Omana Chetan Vs. Oriental Insurance Co. Ltd.

21 As per the principle enunciated in the cases cited supra, the Tribunal can allow the amendment petition for conversion of the petition filed under Section 163-A to Section 166 of the Motor Vehicles Act. The various decisions cited by the learned counsel for the claimants have no application to the facts of their

case.

22 Let me consider the facts of the case on hand in the light of the legal principle enunciated in the cases cited supra.

23 The petitioners herein have opted to file the petition under Section 163-A of the Act. As per the principle enunciated in the cases cited supra, if the application is filed under Section 163-A of the M.V. Act, the Tribunal has no option except to determine the compensation taking the aid of second schedule to Section 163-A of the Act. Even if the Tribunal comes to a conclusion that the deceased may earn more than Rs.40,000/- p.a., the Tribunal has to restrict the annual gross income of the deceased to Rs.40,000/- only in view of the judgments 1 to 4 of Hon'ble apex Court referred supra. The Tribunal proceeded on a premise that it can award compensation basing on the actual gross annual income of the deceased dehors the second schedule annexed to Section 163-A of the Act.

24 By the time of death, the deceased was aged about 28 years and the Tribunal has taken multiplier as $17 \frac{1}{2}$. As per the second schedule appended to Section 163-A of the Act, the appropriate multiplier applicable for the age group of 25 to 30 is '18'. The present petition is filed under Section 163-A of the Act. Therefore, the Tribunal has to apply the appropriate multiplier as mentioned in the Second Schedule only. Thus, the loss of dependency has to be calculated in the following manner.

25 After considering the material available on record, the Tribunal rightly arrived at a conclusion that the annual income of the deceased comes to Rs.54,000/-. The annual gross income has to be restricted to Rs.40,000/- only in view of second schedule appended to Section 163-A of the Act. Out of the said Rs.40,000/-, $\frac{1}{3}^{\text{rd}}$ has to be deducted towards personal expenses of the deceased. So the contribution of the deceased to the family would come to $40,000/- - 13,333 = \text{Rs.}26,667/-$ p.a. Thus the loss of dependency would be $\text{Rs.}26,667/- \times 18 = 4,80,006/-$.

26 The Tribunal awarded a lump sum of Rs.32,000/- towards non-conventional damages. But, as per the second schedule, the claimants are entitled to Rs.2,000/- towards funeral expenses, Rs.5,000/- towards consortium,

Rs.2,500/- towards loss of estate. In total the petitioners are entitled to Rs.9,500/- towards non-conventional heads.

27 Thus, the total compensation which the claimants are entitled to is Rs.4,89,506/-. However, in view of the apportionment of liability on the respondents and the deceased in the ratio of 85% : 15%, the actual compensation to which the petitioners are entitled is Rs.4,89,506 – Rs.72,000 = Rs.4,17,506/-.

28 Having regard to the facts and circumstances of the case and also the principle enunciated in cases 1 to 6 cited supra, I am of the considered view that the Tribunal is not justified in taking the income of the deceased at Rs.54,000/- per annum instead of Rs.40,000/- per annum as the petitioners filed the application under section 163-A of the M.V. Act. The point is answered accordingly in favour of the appellant – insurance company.

Point No.2:

29 A perusal of the record reveals that the Tribunal awarded interest @ 9% p.a. Section 171 of the Motor Vehicles Act enjoins the Tribunal to award interest. However, the said section is silent with regard to the rate of interest to be awarded. From a perusal of the said section, it is manifestly clear that the Act confers discretionary power on the Tribunal to award reasonable rate of interest. In order to award certain rate of interest, the Tribunal or the Court has to take into consideration the prevailing rate of interest as well as the guidelines issued by the Reserve Bank of India from time to time. Suffice it to say, the High Courts are awarding interest ranging from 6% to 12% p.a depending upon the facts and circumstances of each case. The Tribunal has to exercise its discretionary power judiciously basing on the sound principles of law. It is needless to say that the appellate Court shall not lightly interfere with the discretionary power exercised by the Tribunal unless allowing of such order to stand would amount to miscarriage of justice. At this juncture, this Court is placing reliance on the ratio laid down in **Puttamma's** case wherein the Hon'ble Apex Court held at para No.62 as follows:

In view of the aforesaid provisions of the Act, 1988 (Section 171) and the observation of this Court, as noticed above, we keep this question open for Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by this Court in similar case and

other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending.

30 Absolutely there is no material on record to establish that the Tribunal has not exercised the discretionary power judiciously basing on sound principles of law, while awarding the rate of interest at 9% p.a. Therefore, I am unable to accede to the contention of the learned counsel for the second respondent that the rate of interest awarded by the Tribunal is on higher side.

31 For the foregoing discussion, I find substantial grounds to allow the appeal and accordingly the appeal is allowed to the extent of reducing the compensation awarded by the Tribunal from Rs.5,63,000/- to Rs.4,17,506/-. Parties are directed to bear their own costs in this appeal. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 16th April, 2015.

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