

* HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

+ M.A.C.M.A. No.390 OF 2010

% 14.11.2016

#Smt.M.Laxmamma, W/ o.M.Narayana,
age 50 years, Occ: House wife,
R/ o.Marlu Locality, Mahabubnagar Town.

...APPELLANT

VERSUS

\$ Hanmappa, S/ o.Salappa,
age major, owner of the auto bearing No.AP 22 U 7736,
R/ o.H.No.15-26, Marlu, Panchamukhi Hanuman Temple,
Mahabubnagar & another

...RESPONDENTS

< **GIST:**

> **HEAD NOTE:**

!Counsel for Appellant: Sri K.Venkatesh Gupta

^Counsel for Respondent No.2: Sri P.Harinatha Gupta

? **Cases referred**

1. See APMV Rules



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.390 OF 2010

JUDGMENT:

One of the questions involved in the appeal is whether the Tribunal can award any compensation under Section 165 and 168 of the Motor Vehicles Act, 1988 (for short 'M.V. Act') read with Section 161 of M.V Act for a hit and run claim as interim measure for no such bar to maintain, later for final claim under the Special Scheme as per Section 163 of M.V.Act so to deduct out of final payment on determination; like in Sections 140 and 166 of M.V Act, though there is a specific bar for final claim under Section 163-A of M.V Act, once the claim as interim measure made and ordered under Section 140 of the Act.

2) The unsuccessful claimant maintained O.P. No.394 of 2006 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, Mahabubnagar (for short 'the Tribunal') against two respondents i.e., owner and insurer of auto bearing No.AP 22U 7736 for a compensation of Rs.2,00,000/- under Section 166 of M.V Act for the accidental death of her husband M.Narayana. The Tribunal, after contest by the 2nd respondent—insurer, from 1st respondent—owner remained *ex parte*, dismissed the claim on 25.03.2008. Impugning the same, the claimant maintained the present appeal.

3) Heard both sides at length. Perused the material on record.

4) It is the contention of the learned counsel for appellant that the Tribunal gravely erred in dismissing the claim instead of allowing the claim either on fault liability under Section 166 of M.V Act or atleast for no fault liability under Section 163-A of M.V Act for the accident occurred while the auto was in use and the mere non mentioning of the

number of the auto no way fatal to the payment of compensation, hence seeking to allow the appeal by setting aside the dismissal award.

4) Whereas it is the submission of the learned standing counsel for insurer that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere and there is no evidence to show the vehicle of 1st respondent insured with 2nd respondent of the claim petition was involved in the accident and it a later implication as rightly concluded by the Tribunal and sought for dismissal of the appeal.

5) The brief facts of the case are that on 25.07.2005 while the deceased Narayana was proceeding towards Padmini Show room at about 4.30 pm when he reached Marrichenna Reddy Statue, Mettuguda, the auto allegedly came in rash and negligent manner at high speed and dashed against him, as a result, he sustained fractured injuries and on the same day night he was succumbed to injuries at NIMS hospital while undergoing treatment.

6) The fact that the deceased as a pedestrian sustained injuries having been dashed by unknown auto is therefrom on record. Once such is the case, the only thing to consider is whether the vehicle of 1st respondent insured with 2nd respondent covered by Ex.A4—charge sheet is involved in the accident or not. There is evidence of PW.1—wife of the deceased, who is not an eye witness to the accident. RW.1 was examined on behalf of respondents besides Ex.B1—policy, Ex.B2—acquittal judgment passed in C.C. No.155 of 2006 of Special Judicial Magistrate of First Class, Prohibition & Excise, Mahabubnagar, for not proving the involvement of the auto. It is therefrom the Tribunal dismissed the claim against the owner and insurer of the auto, for the very involvement of the auto itself creates a doubt and with an

observation of later implication. A close perusal of the material on record by reappreciation of evidence is very clear to the conclusion of the auto of 1st respondent is not involved and later implicated as rightly concluded by the Tribunal.

7) However, the fact remains to consider further is, can it be considered as hit and run case from what is proved of the deceased sustained injuries and succumbed outcome of hit by unknown auto and there appears no bar for Tribunal to award fixed sum as interim measure under Section 161 of M.V Act without prejudice to approach Special Tribunal for further sum as for that there is no specific bar like in Section 163-A of M.V Act on claim decided under Section 140 of M.V Act. It is in this regard, laid down by this Court in M.A.C.M.A. No.2072 of 2011 dated 17.10.2014 at para Nos.14 to 18 that:

“14. Once a claim is made under section 140 (chapter X) for interim compensation, final claim under Section 163-A (chapter XI) won't lie, but for under Section 166 (of chapter XII). Further in a claim under Section 166, claim under Section 140 can also be made; but in a claim under Section 163A, claim under Section 140 cannot be made.

15. The claim for hit and run cases (of Chapter XI) covered by Section 161 also says provisions of section 166 shall apply to make such applications. It speaks from Section 165 that there is no bar to make application for hit and run cases before the Tribunal, but for to say from reading of Section 163 of formulation of the special scheme by the Central Government with the authority who has to adjudicate such claims for recommending and granting reasonable compensation, which need not confine to the sums fixed in Section 161. There are certain an expression on either side in saying (i) it gives

concurrent jurisdiction on one side also from reading of Section 168 with speaks subject to Section 162 and not of Section 163 or Section 161 & (ii) it gives no jurisdiction on other side from the Section 163 as a special provision to prevail (known as solatium scheme, 1989) even not provided with *non-obstante* clause of specific exclusion. However, a close perusal of the Sections 161 with 162 and also Section 163 by keeping together shows that Sections 161 and 163 each deals with different type; to say Section 161 deals with fixed sum of Rs.25,000/- for death and Rs.12,500/- for grievous hurt injuries, whereas Section 163 deals with the solatium scheme, 1989 under which there is no rider to recommend only of Rs.25,000/- for death and Rs.12,500/- for grievous hurt injuries; for the enquiry officer (Revenue Sub-divisional Officer or Tahsildar as the case may be) can recommend more than that in Form III read with Clause 21 of the scheme. When Section 161(3) is intended to immediate relief (like in Section 140 in a claim under Section 166(1)) before the Tribunal and such grant by claim petition is not a bar for recommending and awarding final compensation on application made as per the solatium scheme of 1989 by the authorities after given deduction of any amount awarded and paid under Section 161 of the Act-vide decision of another bench this Court in MACMA No.148 of 2009, dt.02-01-2014. As it also speaks like in Section 140, for claim under Section 161 or application under section 163 as per section 162, amount recovered to be adjusted/refunded in the event of final claim for compensation filed and allowed under Section 163-A or 166 of the Act.

16. Section 144 of Chapter X speaks that the chapter X got overriding effect over other provisions of the Act or any other law.

Further Sections 146-159 speak compulsory insurance coverage and statutory and contractual liability of insurer to indemnify the insured for third party risk, once policy covers the risk irrespective of breach of policy terms and conditions, save those are not fundamental a breach, insolvency of insured (section 154) and its consequences, death of insured is not a bar to survival of cause of action (section 155). Like wise sections 165-175 are also the general provisions with some of which applicable respectively to Chapter X and XI or to both.

17. **11(A) Chapter XII of the Act:**

11(A)(a) Section 168 of the **Act** reads as **under:**

" On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, **subject to the provisions of section 162** may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such applicant makes a claim for compensation under **section 140** in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation **in respect of such death or permanent disablement** shall be disposed of in accordance with the provisions of Chapter X.

The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case ***within a period of fifteen days from the date of the award.***

When an award is made under this section, the person who is required ***to pay any amount in terms of such award shall, within thirty days of the date of announcing the***

award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

11(A)(b) Sections 169 and 176 speak of the summary procedure and as per C.P.C. (subject to rules¹ made under Section 176 or 164 of the Act) and powers of the Claims Tribunals in inquiry under Section 168 (supra) and Section 170 speaks of the power of the Tribunal in directing for impleading of insurer with right to contest, where in the course of enquiry the claims tribunal has satisfied that there is a collision between the person making the claim and the person against whom the claim is made or the person against whom the claim is made has failed to contest the claim, in directing.

11(A)(c) Sections 165 and 175 speak for constitution of claims tribunals by State Government and bar of civil Court jurisdiction therefrom, for adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles including under Sections 140 and 163-A or damages to any property of a third party so arising, or both.

11(A)(d) Section 166(1) speaks application for compensation arising out of the accident in the nature specified in Section 165(1) that - an application for compensation may be made ***-(a) by a person who sustained injuries or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the them on behalf of all or for the benefit of all legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.*** Sub-section (2) of Section 166 speaks of

¹ See APMV Rules

jurisdiction of the tribunal where accident occurred or where the claimant/s reside/s or carries on business or where the defendant resides and in such form with such particulars prescribed. It speaks in the application under Section 166, the interim compensation claim can even included as a separate para before verification of contents and signature of claimant/s. Section 166(4) speaks that the claims tribunal shall treat any report of accidents forwarded to it under Section 158(6) as an application for compensation under this Act.

11(A)(c) Sections 171 and 172 speak powers of Tribunal to award interest on compensation and compensation costs. Section 173 speaks right of appeal (to read with Section 170 for Insurer and with Order 41 CPC as per the settled expressions). Section 174 speaks for recovery of the compensation awarded (needless to say it can be executed as a civil court decree and drawing of a decree from the award is a must). The provisions supra are incorporated in chapter XII of the Act.

11(B) Chapter XI of the Act under the title insurance of motor vehicles against third parties:

11(B)(a) Section 163-A incorporated by the Amended Act, 54 of 1994 speaks as a special provision as to payment of compensation on structured formula basis and it reads:

(1) Notwithstanding anything contained in this Act or 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 legal heirs or the victim, as the case may be.

The explanation speaks ***permanent disability shall have the same meaning and extend as in Workmen's Compensation Act, 8/1923;***

(2) In a claim for compensation under Section (1), the ***Claimants shall not be required to plead or establish that the death or permanent disablement in respect of which 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.***

11(B)(b) 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(kishan Gopal Vs Lala-2014(1)SCC-244).

11(B)(c) Section 163 (b) speaks that where a person is entitled to claim compensation under Section 140 and under Section 163-A, he shall file the claim under either of sub-sections and not under both.

18. Section 161 (1) speaks the special provisions relating to hit and run motor accident cases, where ***grievous hurt as defined in I.P.C.*** caused or death caused there from, under a scheme framed under Section 163 of the Act. Section 161(2) speaks of the GIC of India formed under section 9 of GIBN Act, 1972 and the insurance companies carrying on business of insurance in India shall provide for paying said compensation in accordance with the provisions of this Act and the scheme,..... and Section 161(3) speaks subject to the provisions of this Act and the schemes, they shall be paid compensation in respect of death Rs.25,000/- (w.e.f., 14.11.1994) and in respect of grievous hurt Rs.12,500/-.”

7) Coming to the case on hand from the above legal position, it is since a proved death case of hit and run by unknown vehicle and as such, the Tribunal can award Rs.25,000/- under Section 161 of M.V Act without prejudice to the rights of the claimant to approach the authorities concerned under the Special Scheme supra under Section 163 of M.V Act for any higher compensation to enquire and determine. No doubt, under this scheme to implement, there are four regions in the country and of which for South Indian Region, the scheme for payment of compensation is entrusted to the United India Insurance Company and the 2nd respondent herein is New India Assurance Company Limited, instead of taking the ordeal to implead and to pass a direction, this Court feels just to direct the 2nd respondent to pay the compensation of Rs.25,000/- and recover the same from the United India Insurance Company.

8) Accordingly, the appeal is allowed to that extent. No order as to costs.

9) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.14.11.2016

Note: LR copy to be marked—yes
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