

\$~6 to 10, 31 and 32 (Common)

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

Date of Decision: 16th May, 2016

+ MAC.APP. 933/2013
NATIONAL INSURANCE COMPANY Appellant
Through Mr.L.K.Tyagi, Adv.

versus

RAM SHRI AND ORS. Respondents
Through Mr.Manish Maini and Ms.Hreeshika
Bhargav, Adv.

+ MAC.APP. 954/2013
NATIONAL INSURANCE COMPANY Appellant
Through Mr.L.K.Tyagi, Adv.

versus

SHIVA SHARMA AND ORS Respondents
Through Mr.Manish Maini and Ms.Hreeshika
Bhargav, Adv.

+ MAC.APP. 365/2015
ANKUR Appellant
Through Mr.Manish Maini and Ms.Hreeshika
Bhargav, Adv.

versus

NATIONAL INSURANCE CO LTD & ORS Respondents
Through Mr.L.K.Tyagi, Adv.

+ MAC.APP. 978/2013
NATIONAL INSURANCE COMPANY Appellant
Through Mr.L.K.Tyagi, Adv.

versus

SWATI SONI & ORS Respondents
Through Mr.Manish Maini and Ms.Hreeshika
Bhargav, Adv.

+ MAC.APP. 979/2013
NATIONAL INSURANCE COMPANY Appellant
Through Mr.L.K.Tyagi, Adv.

versus

ANKUR & ORS Respondents
Through Mr.Manish Maini and Ms.Hreeshika
Bhargav, Adv.

+ MAC.APP. 361/2015
SHIVA SHARMA Appellant
Through Mr.Manish Maini and Ms.Hreeshika
Bhargav, Adv.

versus

NATIONAL INSURANCE CO LTD & ORS Respondents
Through Mr.L.K.Tyagi, Adv.

+ MAC.APP. 364/2015
SWATI SONI Appellant
Through Mr.Manish Maini and Ms.Hreeshika
Bhargav, Adv.

versus

NATIONAL INSURANCE CO LTD & ORS Respondents
Through Mr.L.K.Tyagi, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 03.10.2011 four persons were travelling in a motor car bearing registration no. DL-3C-AD-2967 (the car), admittedly driven by one of them (Shiva Sharma) with three others as passengers, they being Sumit, Swati Soni and Ankur Sharma. The car had left the Gujarati school within the area of Civil Lines Delhi and was moving towards flyover near Inter State Bus Terminus (ISBT), Kashmere Gate, Delhi. At about 2:30 AM, the car came to be involved in a collision against a truck bearing registration no. HR 63A 5512 (the truck), which was admittedly insured against third party risk for the period in question with National Insurance Company Limited (the insurer). As a result of the collision, Sumit died while three other persons suffered injuries. Four accident claim cases came to be preferred one (suit No. 563/2011) instituted by mother of Sumit (a bachelor) and the other three (suit Nos. 564,565 and 566/2011) instituted by Shiva Sharma, Swati Soni and Ankur Sharma for seeking compensation for their injuries.

2. Noticeably, the claim case preferred by the mother of deceased Sumit was presented under Section 163A of Motor Vehicle Act 1988 (M.V. Act). Similarly, Ankur Sharma had also initially presented his case invoking Section 163A M.V.Act, the other two claimant's cases having been preferred on the principle of fault-liability under Section 166 of M.V.Act. In each of the said four cases, the insurer, driver and owner of the truck were impleaded as respondents. It may further be noted that though in the claim cases presented by the mother of deceased Sumit and by injured Ankur Sharma, compensation was sought under structured formula basis, allegations were made that the accident had occurred due to negligence on

the part of the truck driver since he had parked his vehicle unauthorisely and illegally on the main road without applying the requisite safety measures including caution lights.

3. The Motor Accident Claims Tribunal (the Tribunal) noted in the proceedings recorded on 18.04.2012 that all the four cases arose out of the same accident and thus consolidated them for purposes of inquiry treating the fatal accident case (Suit No. 563/2011) as the lead case. Common issues were framed on 18.04.2012, the prime one whereof was meant to address the question as to whether the accident had occurred resulting in death of Sumit and injuries to three other claimants due to negligent act on the part of the driver of the truck. Evidence was led in the lead case (claim for death of Sumit) where Ram Shree, mother of Sumit appeared as PW-1 on the strength of her affidavit (Ex.PW-1/A). In addition Swati Soni, Ankur Sharma and Shiva Sharma examined themselves in support of their respective cases as PW-2, PW-3 and PW-5 respectively on the strength of their affidavits (Ex.PW-2/A, PW-3/A and PW-5/A respectively). The insurer also examined one witness Shyam Singh Bisht (R3W1) on the basis of his affidavit (Ex.R3W1/A).

4. At the fag end of the proceedings, the claimant in the death case, through her counsel, moved an application under Order 6 Rule 17 of Code of Civil Procedure, 1908 (CPC) which was considered and allowed by order dated 17.07.2013. In the follow up of this amendment, the Tribunal proceeded to frame a fresh issue in the said case thereby restricting it to inquiry as to whether death of Sumit had occurred due to involvement of the truck in the accident.

5. On 05.07.2013, the Tribunal noted on the record of the claim case of Ankur Sharma (Suit No. 566/2011) that though the petition had been preferred under Section 163A of M.V.Act, evidence had been adduced primarily under Section 166 of M.V.Act. By subsequent order dated 17.07.2013, the Tribunal proceeded to modify the first issue for purposes of the said case as well thereby restricting it to an inquiry similar to the one in the case of death of Sumit i.e. as to whether the petitioner Ankur Sharma had suffered injuries in a road traffic accident due to the involvement of the truck.

6. The claim of injuries suffered by Shiva Sharma i.e. (Suit No.564/2011) had also been initially presented under Section 163 A M.V.Act. On account of consolidation with the other case inquiry had been initiated treating it as case under Section 166 of M.V.Act. On 10.07.2013, an application was moved in that case under Order 6 Rule 17 CPC, whereby the said claimant brought in correction to the pleadings seeking his case to be treated as one on the principle of fault-liability under Section 166 of M.V.Act. Though the case was already covered accordingly by the common issue framed, as noted earlier, by order dated 17.07.2013, the Tribunal nonetheless framed fresh issue for purposes of the said case, thus, seeking to address the issue of negligent driving being cause of accident resulting in cause of action for compensation.

7. The Tribunal decided all the four cases by a common judgment, passed on 30.07.2013, treating the cases of compensation for injuries suffered by Shiva Sharma and, Swati Soni as those under Section 166 of M.V.Act and the other two as those seeking compensation under Section 163A of M.V.Act.

8. By application (C.M.4482/2014), filed on the record of MACA 365/2013, Ankur Sharma has prayed that his claim be considered as one under Section 166 of M.V.Act rather than restricting it to one under Section 163A M.V.Act. It is his contention that reference under Section 163A was only a typographical error. It is also his contention that all the four cases had been initially clubbed for purposes of inquiry and that evidence has been led commonly for all claims, by which the factum of negligence has also been proved by the depositions of Shiva Sharma, Swati Soni and Ankur Sharma and, therefore, there is no reason why the said claimant should suffer in the matter of receiving just compensation in his favour. Sh. Manish Maini, Advocate (representing the claimants Shiva Sharma, Swati Soni and Ankur Sharma) has also been appointed as *Amicus Curiae* to represent the claim in the case of Sumit, inasmuch as no counsel has appeared on behalf of the claimants at the hearing. He adopts the same prayer and arguments for purpose of the said case as well.

9. In *Prem Devi & Ors. vs. Jagdish Kumar & Ors.* (FAO 398/2000) decided on 02.07.2012 by this Court similar request had been made for a petition under Section 163A of M.V.Act to be treated as one under Section 166 of M.V.Act. A learned Single Judge of this Court, allowing the said prayer had held as under :-

10. The question of conversion of a Petition under Section 163-A of the Act into one under Section 166 of the Act came up before the Bombay High Court (Aurangabad Bench) in New India Assurance Company Limited v. Ashabai Kalyan Kothi & Ors. 2009 ACJ 163, where it was held as under:-

“15. The Tribunal as well as this Court always has a power to allow the conversion of a claim petition under Section 163-A into a claim petition under Section 166 of

the said Act. The procedure is always a handmaid of justice. We are dealing with a beneficial legislation which provides for payment of compensation to the legal representatives of the victims of an accident involving a motor vehicle. The power of the Tribunal or this Court to allow conversion of the claim petition is discretionary. While exercising the discretion of allowing conversion, no doubt, the conduct of the claimants will be relevant. In a given cases, such as the case before the Division Bench in the case of New India Assurance Company Limited v. Rukhminibai Ashok Gore, FA No.1349 of 2004; decided on 2.3.2007, the Court can refuse to exercise the discretion. In the present case, the conduct of the claimants is not such that the discretion should not be exercised in their favour. The claim petition was filed through an Advocate after setting out a specific case that income of the deceased was Rs.4000/- p.m. The said stand was reiterated by the first respondent No.1 in the Affidavit in lieu of examination-in-chief. It cannot be said that the action of invoking Section 163-A was deliberate. The claimants have obviously acted as per legal advice. In my view this is a case where the claim petition under Section 163-A should be allowed to be converted into a petition under Section 166 of the said Act.”

11. The learned Single Judge of this Court in Rukmani Devi v. New India Assurance Company Limited & Anr., 2009 ACJ 2202 held that the provision for award of compensation under the Motor Vehicles Act is a beneficial piece of legislation and, therefore, an endeavour has to be made to see as to how best the intention of legislation can be achieved so as to safeguard the interest of victims of the accident. In para 14 it was held as under:-

“14. Another question which is of the vital importance is whether the petition filed under Section 166 of the Motor Vehicles Act or visa-versa can be allowed to be converted into a petition under Section 163-A of the Motor Vehicles Act and if the answer is yes, then what should be the stage for allowing such a petition. There cannot be any dispute that 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 in to causing the accident but under Section 163-A, the requirement of proving the negligence has been dispensed with.”

12. *In State of Orissa v. Sudhansu Sekhar Misra, AIR 1968 SC 4647, the Constitution Bench of the Supreme Court held that a decision is only an authority for what it actually decides and not every observation found therein. Para 16 of the report is extracted hereunder:-*

16. *A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury L.C. said in Quinn v. Leathem [1901] A.C. 495:-*

"Now before discussing the case of Allen v. Flood [1898] A.C. 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to

be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

13. Therefore, what was decided by the Supreme Court in *Deepal Girishbhai Soni (supra)* was that remedy under Section 163-A and 166 of the Act are not available simultaneously and that a Petition under Section 163-A is not in the nature of an interim relief. It was also laid down that once the compensation is awarded under Section 163-A of the Act, a petition under Section 166 of the Act would be barred.

14. In my view, on the basis of Supreme Court report in *Girishabhai Soni(supra)* it can be said that the Claims Tribunal cannot suo moto convert a petition under Section 166 to the one under Section 163-A of the Act if negligence is not proved. *Girishabhai Soni(supra)* does not foreclose the right of a party to convert a Petition under Section 166 to under Section 163-A in an Appeal if a Claimant otherwise satisfies the Court that the amendment should be allowed.

15. In a later decision of the Supreme Court in *Oriental Insurance Company Ltd. v. Dhanbai Kanji Gadhvi & Ors.*, (2011) 11 SCC 513, the Supreme Court relied on *Deepal Girishbhai Soni (supra)* and held that where the Claimants have obtained compensation finally determined under Section 163-A of the Act they are precluded from proceeding further with a Petition under Section 166 of the Act. Para 14 of the report is extracted hereunder:-

"14. Applying the principle laid down in Deepal Soni (supra) to the facts of the case, it will have to be held that the Respondents having obtained compensation, finally determined under Section 163A of the Act are precluded from proceeding further with the

petition filed under Section 166 of the Act. The exception mentioned by the learned Single Judge in the impugned judgment that a petition under Section 166 of the Act can be proceeded further if it is filed before passing of an award passed under Section 163A of the Act is not supported by the scheme envisaged under Sections 163A and 166 of the Act and is contrary to the principle of law laid down by this Court in Deepal Soni's case. Therefore, this Court is of the opinion that the impugned judgment of the High Court upholding the order passed by the Tribunal to permit the Respondents to proceed further with the petition filed under Section 166 of the Act cannot be sustained and will have to be set aside.”

16. In view of above, I accede to the request of the Appellants to convert the Petition under Section 166 of the Act to the one under Section 163-A of the Act.

10. All the four claim cases at hand arose out of the same accident. The negligence on the part of the truck driver has been duly proved through evidence which has remained unchallenged. He had parked the vehicle in the middle of the road with no caution sign applied. The evidence with regard to the negligence was not rebutted by any evidence adduced by the owner, driver or even the insurer of the truck. Clearly, at least two of these cases were proceeded to seek compensation on the principle of fault liability. Since they were put on inquiry through common issue, there is no reason why the benefit of the said finding should be restricted to only to these cases, particularly when the other two claimants have now realized the error in legal advice on which they had initially prosecuted their claims under the restrictive provisions of Section 163A of M.V.Act. Thus, the

prayer is granted. All the four cases are to be considered on the principle of fault liability, as is now pressed.

11. In the case of Sumit (the deceased) the Tribunal found his age on the date of death to be 23 years. No formal proof of his actual income could be mustered by his widowed mother. Given the age and the background, his income has to be notionally assessed at least at the minimum wages of ₹6656/- as payable to a unskilled worker during the relevant period. Since, he was a bachelor, 50% will have to be deducted towards personal and living expenses. His mother (PW-1) admitted her age to be 46 years old as on 15.05.2012. In these circumstances, she would be in the region of 45 years of age on the relevant date. Thus, the multiplier of 14 would apply and the loss of dependency would work out as (₹6656/2x12x14) ₹5,59,104 rounded off to ₹5,60,000/-. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh on account of loss of love & affection and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case of death of Sumit is computed as (5,60,000/-+1,50,000/-) ₹7,10,000/-.

12. In the case of claim for injuries suffered by Shiva Sharma, it was proved by cogent evidence that he had suffered lacerated wound on maxilla, loosening of all teeth, besides other wounds on the face. The medical opinion furnished shows that he has suffered linear vertical well settled scar on chin, healed scar on lower lip and mal-union of mandible bone. Thus, these injuries have resulted in a permanent effect. The Tribunal awarded compensation in the sum of ₹3,36,658/- under the various heads of medical

expenses, special diet and conveyance, pain and suffering, disfigurement and loss of teeth besides loss of income for the period of three months when he remained under treatment. The grievance of Shiva Sharma in his appeal is that the compensation for loss of marriage prospects and expenditure on account of attendant charges have not been taken care of. Given the permanent scars suffered on his face, an amount of ₹25,000/- towards loss of marriage prospects is added. Further attendant charges in the sum of ₹20,000/- for the period of three months of treatment are also added. Therefore, the compensation in his case is enhanced by ₹45,000/- so as to be raised to (₹3,36,658/- + ₹45,000/-) ₹ 3,81,658/- rounded off to ₹3,82,000/-.

13. Swati Soni has also suffered permanent disfigurement. The medical record shows that she had sustained, amongst others, fracture of the nasal bone and of the maxillofacial. In the consequence, she suffers from nasal deformity and depressed nasal bridge, for which the advice for plastic surgery is also given. Counsel for the said claimant in appeal pressed for enhancement of compensation by addition of suitable amounts towards loss of marriage prospects. It is noted that Tribunal granted compensation in the sum of ₹ 187,456/- to her under various heads of medical expenses, special diet and conveyance, loss of income and pain and sufferings. Having regard to the nature of injuries suffered, an amount of ₹50,000/- towards loss of marriage prospects is added in the compensation payable to her raising it to (₹1,87,456/-+50,000/-) ₹2,37,456/- rounded off to ₹2,40,000/-

14. The claimant Ankur Sharma was a student of final year of the degree course of law from a college in Greater Noida. He suffered 64% of disability in relation to the right upper limb. The Tribunal awarded

compensation in the sum of ₹4,67,200/- in his favour which included ₹4,35,200/- calculated as loss of future income on account of disability, treating the aforementioned disability as the functional disability and assuming his income of ₹40,000/- per annum, on the basis of Second Schedule of M.V.Act. Since the case is to be considered as one under Section 166 of M.V.Act, it is not just and proper to restrict the income only to the prescription in the Second Schedule. As now pressed by the counsel for the claimant on his behalf, for purpose of calculations, the minimum wages of skilled worker during the relevant period are adopted. But, as pointed out by the counsel for the insurer, the disability to the extent of 64% in relation to right upper limb cannot be treated as functional disability. Having regard to the nature of injuries suffered by him (the fracture of first rib on right with edema from C1 to C4, wedging of C3 vertebra, disc-bulging of C4- C5), the functional disability affecting the earning capacity is treated as 32%. The claimant was 26 years old on the date of accident. In these circumstances, the loss of future income comes to ($₹8112 \times 32 / 100 \times 12 \times 17$) ₹5,29,551/- rounded off to ₹5,30,000/-.

15. It is noted that the Tribunal had calculated the loss of income during the period of three months when the claimant was under treatment on the assumed income of ₹4,000/- per month. The said amount also is recalculated as ($₹8112 \times 3$) ₹24,336/- rounded off to ₹25,000/-. It is further noted that though the claimant had furnished proof of medical expenses in the sum of ₹25,013/- and physiotherapy bills of ₹1,06,500/- vide Ex.PW-1/3 (collectively), the Tribunal did not consider it appropriate to grant the same referring to the fact of there being no prescription for physiotherapy. Given the nature of injuries suffered, the said expenditure also needs to be

compensated, the absence of proof as to the prescription for such need being not an unexceptional requirement. The compensation in the sum of ₹ 1,31,513/- on account of medical expenses is added.

16. There is merit in the grievance that award of ₹5,000/- only towards pain and suffering is inadequate. Given the nature of injuries suffered an amount of ₹50,000/- is granted towards pain and sufferings. As ordinarily awarded in such cases, amount of ₹ 25,000/- towards loss of marriage prospects and ₹25,000/- towards loss of amenities are also granted. The total compensation in the case comes to (₹5,30,000 + 25,000 + 1,31,513 + 50,000 + 25,000+25,000) ₹7,86,513 rounded off to ₹7,87,000/-.

17. The learned counsel for the insurance company has pointed out that Tribunal had awarded rate of interest @ 9% per annum from the date of filing of the petition till realization but also observed that the amounts were to be paid within the period specified and in case of default the rate of interest would stand enhanced to 12% from the date of petition. This Court agrees with the submission that the penal rate of interest in case of default should come into force only from the date of expiry of the period granted by the Tribunal for the award to be satisfied. Ordered accordingly.

18. The awards in the abovementioned cases are modified accordingly and as per the above directions. They shall carry interest with modification in the default clause as ordered above.

19. The insurance company in above appeals had been directed by the earlier orders to deposit the entire amounts with up-to-date interest with Registrar General from which a part was released to the claimants in each case, the balance having been kept in fixed deposit receipts with UCO Bank, Delhi High Court Branch for the specified period with periodical renewal.

Since the awards have been increased in each case, the balance lying in deposit shall also be released with up-to-date interest. The insurance company shall deposit the remainder of its liability in each case with the Tribunal within 30 days of this judgment making it available to be released to the respective claimants alongwith interest @ 9% per annum failing which the rate of interest shall enhance to 12% p.a. effective from the elapse of the said period. The amounts thus deposited shall be released by the Tribunal forthwith to the respective claimants.

20. Statutory deposits, if any, shall also be refunded.

21. All the appeals are disposed of accordingly.

R.K. GAUBA
(JUDGE)

MAY 16, 2016

mr

