HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 288 of 2006

JUDGMENT:

This appeal is arising out of the Order and Decree dated 08.09.2005 passed in O.P.No.903 of 2001, by the Chairman, Motor Accidents Claims Tribunal, Nalgonda, granting compensation of Rs.3,44,500/- on account of the death of one Pola Govardhan in a road accident that took place on 25.03.2001.

2. Brief facts of the case are that on 25.03.2001, at about 11:15 PM, the deceased Pola Govardhan was proceeding in Maruti Car bearing registration No.DL-6CD-1573 from Huzurnagar to Nalgonda. When the car reached KM Stone 22 on Miryalaguda-Thipparthy road near Kothagudem village, the deceased dashed the car against one RTC bus bearing registration No.AP-10Z-7886, which was coming in opposite direction. The deceased who was traveling in the car received injuries in the accident and succumbed to the injuries on 05.04.2001 while undergoing treatment in Kamineni Hospital, Hyderabad. The Police Thipparthy, registered a case in Crime No.28 of 2001 for the offence punishable under Section 338 IPC against the driver of the car. The petitioners are the dependents of the deceased. The 1st petitioner is the wife, petitioners 2 and 3 are children, and petitioners 4 and 5 are the parents of the deceased Pola Govardhan. As the petitioners have no other source of income except the income of the deceased, they filed the original petition claiming compensation of Rs.7,00,000/- against respondent No.1-0wner of the RTC bus, respondent No.2-owner of the Maruti car, and respondent No.3-insurer of the Maruti car, on account of the death of the deceased in the motor vehicle accident.

3. The 1st respondent-owner of RTC bus filed counter stating that the accident occurred due to the negligence of deceased and therefore the

petitioners have to proceed against the owner and insurer of the Maruti car in which the deceased was traveling at the time of accident.

4. The 2nd respondent-owner of the Maruti car had remained ex parte.

5. The 3rd respondent-insurer of the Maruti car had filed its counter denying the allegations made in the petition, and stated that the accident occurred due to the contributory negligence of the driver of the RTC bus and the deceased and, therefore, the 1st respondent-owner of RTC bus is also liable to pay compensation to the petitioners. It is also contended that the claim is excessive and arbitrary. The 3rd respondent has also filed additional counter stating that they have issued policy No.3647/2001 in respect of car bearing registration No.DL-6CD-1573 belonging to the 2nd respondent to indemnify the liability against third party. It is further stated that no additional premium to cover the liability of the owner/driver was paid as such they are not liable to pay compensation for the death of the deceased as the deceased died while driving the vehicle at the time of accident.

6. The Tribunal originally framed four issues, and re-casted them as three issues, and examined witnesses PWs.1 and 2, and marked the documents Exs.A1 to A10 on behalf of the petitioners. The 1st respondent has adduced neither oral nor documentary evidence on his behalf. On behalf of the 3rd respondent, RW1 was examined and Ex.B1 was marked which is the copy of insurance policy.

7. The Tribunal held Issue No.1 in favour of driver of RTC bus that there was no fault on the part of the driver of RTC bus and held that the accident occurred due to rash and negligent driving of driver of Maruti Car. The Tribunal held Issue No.2 exonerating the liability of respondent No.1 in payment of compensation to the petitioners as the accident did not occur due to the fault of the driver of RTC bus and dismissed the claim against the 1st respondent. The Tribunal held that respondent Nos.2 and 3, who are the

owner and the insurer of Maruti car, are jointly and severally liable to pay compensation. The Tribunal answered Issue No.3 in favour of the petitioners by partly-allowing the petition, and awarding compensation of Rs.3,44,500/- with interest at 7.5%. Aggrieved by the same, the respondent No.3-insurer filed this appeal.

8. Heard the arguments of learned counsel for the appellant, and respondents-claimants.

9. It is contended on behalf of the appellant-insurance company that the provisions of Section 163-A of the Motor Vehicles Act, 1988, are not applicable in the case of death of a person who died of his own negligence. It is submitted that the deceased has driven the car and while driving the car he died due to his own negligence and therefore the claimants are not entitled to claim compensation on account of the death of the deceased who died of his own negligence, and the insurer is not liable to pay any compensation to the claimants.

10. It is appropriate to refer to the provision under Section 163-A of the Motor Vehicles Act, 1988. This is a new Section introduced in the year 1994 to provide for compensation in a motor vehicle accident on a formula given in the Second Schedule. As per Sub-Section (1) of Section 163-A, the owner of the motor vehicle or authorized insurer shall be liable to pay compensation in case of death or permanent disablement if the accident arose out of the use of motor vehicle. As per Clause-2, the claimant shall 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 vehicles concerned or of any other person. Under Section 163-A, compensation will be awarded as per Second Schedule without there being

any burden on the claimant to prove negligence. The said proposition of law was held in Oriental Insurance Co. Ltd. v. Meena Variyal[1].

11. It clearly shows that the claimants need not prove rash and negligent act on the part of the driver of the crime vehicle when they are making a claim under Section 163-A of the Motor Vehicles Act. Though there is no burden on the claimants to prove the rash and negligent act on the part of the driver of the crime vehicle to claim compensation under Section 163-A of Motor Vehicles Act, the vehicle involved in the accident must have valid insurance policy to claim compensation against the insurance company.

12. On behalf of the insurance company, RW1-Assistant Administrative Officer was examined. He deposed to the effect that the Maruti Car bearing No.DL-6-CD-1573 was insured with their company. The 2nd respondent was owner of the car as on the date of accident. The insurance policy was an Act policy. He further says that the deceased was not the owner of the vehicle and he was the friend of the owner of the car and he was driving the car. The owner of the car has not paid any extra premium to cover the risk of the driver of the car.

13. The contention of the learned counsel for the appellant that the deceased while driving the vehicle had died due to his own rash and negligent driving and therefore he is not entitled to claim compensation under Section 163-A of the Motor Vehicles Act, does not hold good for the reason that the very provision under Section 163-A of the Motor Vehicles Act is a special provision as to payment of compensation on a structured formula basis without there being any proof of rash and negligent act on the part of the claimants. Therefore, there is no force in the contention raised by the appellant in this regard.

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[1] AIR 2007 SC 1609

14. It is further contended by the learned counsel for the appellant that the appellant is not liable to pay compensation as the policy in force was an Act policy and no additional premium was paid to cover the risk of inmates of the private car.

15. It is contended that the vehicle involved in the accident is Maruti car bearing registration No.DL-6-CD-1573, and the car was insured by the 2nd respondent with the insurance company. The policy was Act policy and therefore there is no valid coverage of insurance for the person who was driving the car, and since no extra premium was paid to cover the risk of driver of the car, there is no liability for the insurer to pay compensation in this case. It is contended that the Act policy only covers the risk of third parties, and the deceased was the driver of the car at the time of accident and he cannot be considered as a third party for coverage of risk under Act policy.

16. As a matter of fact, the Tribunal, in paragraph 14 of the impugned order, has observed that as per Ex.B1, the Maruti Car involved in the accident belonged to the 2nd respondent and it was validly insured with the 3rd respondent and the policy was in force from 26.08.2000 to 25.08.2001, and the accident has occurred on 25.03.2001, and therefore the policy was in force as on the date of accident.

17. The Tribunal, in paragraph 12 of the impugned order, has arrived at a conclusion that the deceased was a third party as the car wwhich was driven by him belonged to his friend. It is obvious that the Tribunal has arrived at the conclusion that the deceased was traveling in the car as a third party and therefore there is coverage of risk under the insurance policy.

18. In the instant case, the deceased had driven the car of his friend and due to his own negligence, the accident occurred. No doubt, Section 163-A of Motor Vehicles Act, 1988, comes to the rescue of the deceased that his negligence is not material for the accident, and the claimants of the deceased

are to be awarded compensation in case of no fault liability when a claim is made under Section 163-A of the Motor Vehicles Act, 1988.

19. As far as coverage of risk under an Act policy, in case of death of a third party is concerned, in the instant case, whether the deceased can considered as a third party to the Act policy. The Tribunal held that the deceased was a third party as the Maruti car belonged to his friend and the deceased was traveling in the car as a third party.

20. It appears that the appellant has not taken this plea before the Tribunal that the deceased was a gratuitous passenger and, for the first time, the appellant has raised this plea in this appeal before this Court.

21. The main contention of the appellant is that this is a case of death of the deceased due to his own negligence while driving the Maruti Car and the policy is an Act policy which covers the risk of only third parties to the accident. It is further contended that since the insurance policy of the crime vehicle is an Act policy, the insurance company is not liable to pay compensation as the deceased is not a third party and there is no insurance coverage for the friend of the owner of the crime vehicle who stands on the same footing as that of the owner of the crime vehicle.

22. Learned counsel for the appellant further contended that there is contributory negligence on the part of both the vehicles involved in the accident namely APSRTC bus and Maruti Car.

23. In Sudhir Mahajan v. United India Insurance Company Ltd and Anr[2], a Division Bench of the High Court of Himachal Pradesh held as under:

> *"A Division Bench of this Court in Kokla Devi v. Chet Ram and Anr, in paragraphs-33, 34 and 39, has held, as follows:*

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[2] 2007 LawSuit (HP) 349

On the other hand, when Section 163-A of the Act was incorporated, legislature was well aware that Sections 147 and 149 were already there on the statute book. Both these Sections provide defences available to an insurer and extent of its liability under the Act. Similarly, Chapter XII was already there when this provision was incorporated in the year 1994. As such the object and reasons assume significance in the context of consideration of Section 163-A which starts with non obstante clause, we feel that it was intended to have an overriding effect on all the provisions of the existing law. Otherwise, there was nothing that prevented the legislature to have provided something in Section 163-A itself enabling the insurance company to contest the claim where it had some defence to offer under the Act."

"In fact while lodging a claim under this provision of law even proof of negligence has also been done away with. Thus, the compensation is assessed on structured formula and becomes payable at once, subject of course to fulfillment of other conditions. Otherwise, if a claimant had to contest and fight out the insured as well as insurer (as urged by Mr. Sharma), he would file a regular claim petition under Section 166 of Chapter XII of the Act and would get just compensation without any deductions or otherwise, as per Section 168 thereof."

"Looking to the provisions of law and decisions referred to hereinabove we are of the view that the claim petition was maintainable on behalf of the claimant under Section 163-A of the Act and on fulfillment of the requirements as envisaged thereunder, she was entitled for payment of compensation. Decisions relied upon by the Tribunal below while rejecting the claim of the appellant, were of no consequence keeping in view the change in law as made by the Act as compared to the provisions of Motor Vehicles Act, 1939 and then by Central Act No. 54 of 1994. At the risk of repetition we may also observe that Section 163-A (supra) starts, firstly, with non obstante clause and further makes owner of the vehicle or the authorized insurer liable to pay in case of death or permanent disability due to accident arising out of the use of motor vehicle as indicated in the Second Schedule. Another marked distinction in Section 163-A and Section 166 of the Act is that under the former legal heirs or the victim, as the case may be, is entitled for payment of compensation under Section 163-A; whereas in the latter provision compensation payable in case of

death (with which we are concerned in the present case) is claimable by the legal representatives of the deceased.

10. In the present case, no specific finding has been recorded by the Tribunal that the accident had taken place due to the negligence of the petitioner himself, but the petitioner has been non-suited by the Tribunal on the ground that compensation for the death of or injury to a person who himself is responsible for causing an accident cannot claim through the Motor Accident Claims Tribunal constituted under Section 165 of the Act. Assuming that petitioner himself was responsible for the accident, still the present petition under Section 163-A of the Act, is maintainable. The Section 163-A, in view of Deepal Girishbhai Soni's case (supra), covers cases where even negligence is on the part of the victim. The decisions relied upon by the learned Tribunal for rejecting the claim of the petitioner are of no consequence in view of change in law. Therefore, the finding recorded by the learned Tribunal that petition under Section 163-A is not maintainable on the ground that a wrong doer cannot file petition under Section 163-A, is not sustainable. But the matter does not end here. The claimant in the present case has pleaded his income. Rs. 12,000/- per month and accordingly he has claimed compensation amounting to Rs. 5,00,000/-. In Deepal Girishbhai Soni's case (supra), the Hon'ble Supreme Court in para-67, has held as follows:

We, therefore, are of the opinion that Kodala's case, 2001 ACJ 827 (SC), 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 shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for distinct scheme, only those whose annual income is up to Rs. 40,000 can take the benefit thereof. All the other claims are required to be determined in terms of Chapter XII of the Act."

24. In New India Assurance Company Limited rep. by its Divisional Manager, Hyderabad v. Nellakoti Kanthamma and others[3], this Court while referring to the judgment of the Apex Court in

[3] 2015 (3) ALT 285

Oriental Insurance Company Limited v. Rajni Devi and others[4], held as under:

> *"The Apex Court observed thus:*
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> *6. It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof.*
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> *The Apex Court ultimately held thus:*
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> *10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs 4989 paid under the heading 'Own damage' is for covering liability towards personal injury. Under the heading 'Own damage', the words 'premium on vehicle and non-electrical accessories' appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance.*
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> *So, in the above decision while reiterating that the claim under Section 163-A is basically a third party claim, the Supreme Court observed that the owner cannot claim under Section 163-A of MV Act and in such an instance the terms of the contract have to be resorted and compensation would be payable to that extent alone.*
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> *d) In the light of above rulings, it is now to be seen whether the claim is maintainable under Section 163-A or not. Sofaras ownership of the crime motorcycle bearing No.AP 28AA 6268 is concerned it belongs to first respondent but not the deceased. So, the deceased though riding the vehicle, was only a third party with reference to the vehicle. Sofaras negligence is concerned, since the claim is one under Section 163-A, the tribunal has not given any positive finding as to whether accident was occurred due to the fault of deceased himself. It may be noted that as per the decision reported in National Insurance Company Limited vs. Sinitha and*

[4] 2008 (4) SCJ 170

others , though owner and Insurance Company are entitled to prove the fault of the claimant/deceased in a claim under Section 163-A of MV Act, they have not established the same by adducing any positive evidence except the Insurance Company taking a plea in its counter. Therefore, there is no positive evidence to the effect that deceased himself was responsible for the accident. On the other hand, the evidence of PW1 is to the effect that the accident was occurred due to failure of break system. So, briefly, facts and evidence would show that the deceased while driving the vehicle of the first respondent met with accident and died as a third party. Ex.B1policy copy covers the risk of third parties. Therefore, his risk shall be deemed covered under the terms of the policy."

25. In National Insurance Co. Ltd., Madras v. V.S.R. Kumaresan and others[5], the Madras High Court, while deliberating on the expression "third party" held as under:

"Expression 'third party' in a policy of insurance cannot be construed to mean one outside the vehicle on the road and not one inside the vehicle, especially when the policy does not so read. Section 93(3), Motor Vehicles Act which defines 'third party' as including the Government does not help. It is not an exhaustive definition. But it is now well settled that the insurer or the insurance company, being one party to the contract; the insured or the policy-holder being another, the claims made by others in respect of the negligent use of the motor vehicle would be claims made by third parties. The defence plea is not sustainable even with reference to Proviso II to S.95(1)(b) because the exception thereunder is only with reference to nature of the vehicle and not with reference to the persons carried in the vehicle. The vehicle involved being one in which passengers are carried for hire or reward falls outside the said proviso and comes within the general provision in sub-section(1)(b)(i) and (ii). Section 95(2)(b) squarely applies and by clauses (i) and (ii) two categories are covered, one in respect of persons other than the passengers carried for hire or reward; and the other in respect of passengers. This statutory requirement cannot be got over by any condition incorporated in the policy, militating against or abrogating from the statutory requirement. The insurer would be liable for injuries sustained by the claimant who was inside the vehicle at the time of the accident and who was not

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[5] AIR 1991 Madras 3

a passenger being carried in the bus for hire or reward at the time of the accident."

26. The facts of the case are not in dispute in this case. The contention of the appellant that the accident occurred due to the own negligence of the driver of the Maruti Car is no doubt proved. Since the claim was made under Section 163-A of the Act, the Tribunal fixed the liability against the owner and insurer of the vehicle. The Tribunal held that since Ex.B1 insurance policy was in force by the date of accident, and the deceased was a third party to the insurance policy, the 2nd respondent being the owner of the vehicle, is liable to pay compensation, and vicariously the 3rd respondent who is the insurer of the crime vehicle has to indemnify the 2nd respondent.

27. In view of the foregoing discussion, since Ex.B1 is an Act Policy and the appellant is a third party, then there is valid coverage of insurance policy. Therefore, the insurer is liable to pay the compensation, and hence, the order of the Tribunal awarding compensation against respondents 1 and 2 does not require any interference.

28. In the result, the appeal is dismissed, and the Order and Decree dated 08.09.2005 in O.P.No.903 of 2001 passed by the Tribunal is confirmed. No order as to costs. Pending miscellaneous petitions, if any, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

23rd June, 2017

KSM

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 288 of 2006

23rd June, 2017

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