

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.291 OF 2010

JUDGMENT:

The unsuccessful claimants/ appellants, by name Sri Kuppala Shankaraiah Goud and Kuppala Yadamma, who are no other than parents of deceased Mahesh Goud, filed O.P.No.354 of 2007 under Section 163-A of the Motor Vehicled Act,1988 (for short, 'the Act') on the file of the Chairman of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Mahaboobnagar (for short, 'Tribunal'), against the owner and Insurer of lorry bearing No.AP-16T-6688 for a compensation of Rs.2,00,000/- for the death of Mahesh Goud in the motor accident, which took place on 27.01.2007.

2. The averments in the claim petition are that on 27.01.2007 at about 3:30 p.m., the deceased Mahesh Goud and Gopal Goud were proceeding on a motor cycle bearing No.AP-21K-5552 from Divitpally to Malleboinpally Village and when they reached Chitteboinpally Village on National Highway No.7 in front of Bridge School near Culvert No.87/ 1, the rider of the said motor cycle, by name, Gopal Goud, overtook said lorry and on seeing an auto trolley coming in opposite direction, turned the bike towards left side of the road and in the meanwhile the said lorry driven by its driver came behind their motor cycle at high speed in a rash and negligent manner and dashed to it and as a result of which, five persons travelling on the motor bike fell down and sustained severe injuries and Gopal Goud and Naresh Reddy died on the spot and Mahesh Goud died on the way to hospital, whereas Yadgiri Reddy and Naresh Goud received bleeding injuries and underwent treatment in Government hospital and other hospitals. A case in Crime No.38 of 2007 under Sections 304-A and 337 of IPC was registered on the life of

Jadcherla Police Station and after completion of investigation, charge sheet was filed against the driver of the said lorry.

3. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

4. Respondent No.2, insurer, filed counter and opposed the claim by raising several pleas. He disputed the manner of accident and the involvement of the lorry in that accident by rash and negligent driving by its driver, which was the outcome of five persons proceeding on the vehicle unable to control themselves and there is no fault of the lorry driver and non-impleadment of the bike owner is fatal and among other general conditions, there is no coverage of risk by the policy holder, he sought to dismiss the claim. He further disputed that the very report in registering the crime is showing fault of the persons proceeding on the bike.

5. The Tribunal, basing on the pleadings, framed three issues.

6. During the enquiry, PWs.1 to 3 were examined and Exs.A1 to A9 were marked. On behalf of respondent No.2, RW.1 was examined and Ex.B1, policy, was marked.

7. The Tribunal, appreciating the evidence on record, and opining that the deceased, in fact, was driving the motor cycle and while attempting to control an auto which was coming in opposite direction, dashed the lorry, held that there is no negligence on the part of the driver of the lorry and dismissed the claim.

8. Before discussing further facts, it is necessary to state the scope of the provisions of the Motor Vehicles Act, 59 of 1988, amended by Act, 54 of 1994 and further amended by Act, 39 of 2001. It is needless to say, the Chapters 10 to 12 are not only inter-related but also

interlinked. Section 140 is incorporated in Chapter X, Section 163A is incorporated in Chapter XI and Section 166 is incorporated in Chapter XII are with different wording. *The wording of Section 140(3) is with self same wording of Section 163A(2), however, there is no similar wording of Section 140(4) in Section 163A to take away the defence right specifically like in Section 140(4).* It is to say, in a claim filed under Section 140 or 163A, the claimant shall not be required to plead and establish the death or permanent disablement relating to the claim were due to wrongful act, neglect or default of owner or owners of the vehicle or vehicles concerned or any other person. A close reading of this provision speaks the claimants are not required to plead or prove negligence of the deceased or injured as well as negligence of the person owned the vehicle against whom the claim is made or in case of more than one vehicle involved of negligence of any one of them or composite or contributory negligence as the case may be of the vehicles drivers or other person.

9. So far as the claim under Sections 140, 163A and 166 concerned, it clearly provides by Sections 163-B & 141 that the claim can be filed under either of said sections and not under both; whereas a person who filed application under Section 140 is entitled to file an independent application under Section 166 with claim therein or simultaneously or later subject to these provisions as the case may be. Therefrom, so far as claim under Section 163A is concerned, there is no requirement and proof of fault even not an interim measure. Similarly, from reading of Section 168 r/w 166 of the Act, Section 168(1) speaks the claim under Section 166 in determining subject to provisions of Section 162 in the award, the amount of compensation appears it to be just and specifying the person or persons to whom compensation shall be

paid and 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. It indicates the determination specifically including to the extent of liability in claim under Section 166 on fault liability from pleading and proof. It is leave about sections 167 r/ w 163A or 166-the compensation that can be claimed under Workmen's Compensation Act for death or bodily injury under that Act, anything contained in that Act, the claimants are entitled to compensation may claim such compensation under either of these two Acts but not under both. It appears from said arrangement also of Section 140 is incorporated in Chapter X of totally no fault liability-on proof of accident while vehicle in use, whereas Section 163A is incorporated in Chapter XI-of semi fault liability-on proof of accident while vehicle in use claimant is entitled to compensation, however does not specifically prohibit the respondent to raise plea of negligence or fault of injured/ deceased or his or his vehicle driver contributory or composite negligence for no similar prohibitory clause in Section 163A similar to Section 140 and needless to say Section 166 is incorporated in Chapter XII-of totally fault liability from said combined reading of the three provisions of the three chapters in Juxtaposition, more in particular noticing the difference between Section 140(3&4) with Section 163A(2) detailed supra. This conclusion no doubt lends support from the recent two judge Bench expression of the Apex Court in National Insurance Corporation Ltd. v. Snitha¹ wherein it was held by referring to the earlier two judge bench expression of the Apex Court in Oriental Insurance Co. Ltd. Vs Hansrajbhai V. Kodala² and in answering in affirmative on the aspect of claim for compensation under Section 163A of the Motor Vehicles Act can be defeated either by

¹ (2012) 2 SCC 356

² (2001 (5) SCC 175)

the owner or by the insurance company by pleading and establishing that the accident in question was based on the contributory negligence of the offending vehicle. It was observed that Section 140(3) and Section 163A(2) both are pari-materia provisions and there is no provision corresponding to Section 140(4) in Section 163A and thereby the claim for compensation under Section 163A held is fault based liability from the contributory negligence or fault negligence of deceased/ claimant or disabled victim in causing the accident compensation may be reduced on such proof. However, the onus to prove contributory negligence remain on the defence in opposing the claim under Section 163A i.e. the owner and insurer can defend the claim and the Hansrajbhai V. Kodala (supra) did not decide that determination of compensation under Section 163A is based on no fault liability principle. The claim for compensation raised in Section 163-A need not be based on pleadings or proof of claimants showing absence of contributory negligence, but for onus to prove contributory or composite or total negligence of injured/ deceased or of his traveling vehicle driver; lies on the shoulders of the owner or insurer, opposing and defending the claim to so establish in discharge of the burden lies on them. It was observed for the conclusion that where claim cannot be defeated on account of contributory negligence then such provision would fall under no fault liability principle. It is thereby as per Section 140(4), both claim and defence are precluded from raising any ground of fault and whereas Section 163-A is an independent provision with non-obstinate clause having over riding effect over all other provisions of the Act. It is also a rationale behind it, in saying as fault liability principle from where large compensation amount involved or compensation amount is likely to be high, it is legitimate that insurance company is not fastened with liability when offending vehicle suffered

fault (wrongful act, neglect or doubtful) under alleged act. The appellant/ insurance company also placed reliance upon the decision of *Bandana v. Rajesh Kumar*³ wherein it was held by mainly relying upon *Snitha and Hansrajbhai (supra)* besides *Minu B.Mehta v. Balkrishna Ramchandra Nayar*⁴, that negligence of the victim can be decided by allowing the insurer and owner –being the opposite parties to the claim to defend and fixed 25%contributory negligence on the deceased.

10. However, it is important to notice that after *Hansrajbhai* and before *Snitha*, where correctness of the law laid down in *Hansrajbhai* under Section 163A came for consideration on reference made, was answered by the three judge bench expression in *Deepal Girishbhai Soni and others Vs. United India Insurance Co.Ltd., Baroda*⁵ in the affirmative. While so answering, it was held that though both Sections 166 and 163A are final proceedings, under Section 166 on fault liability, the duty is on the claimants to plead and prove wrongful or negligent act of opposite party to get higher compensation, whereas under Section 163A on no fault liability, there is no duty on the claimants to plead and prove wrongful or negligent act of opposite party to get compensation under the structured formula. It did not specifically say the opposite parties right to defend in this regard by the owner/insurer respondents to the claim of negligence or fault or contribution on the injured/ deceased or their vehicle driver, available under Section 166 is not there and taken away under Section 163-A. Even for so holding it was not specifically considered referring to the Section 140(3) and Section 163A(2) of both are pari-materia provisions and there is no provision corresponding to Section 140(4) in Section 163A

³ 2013 ACJ 1239

⁴ 1977 ACJ 118 (SC)

⁵ [(2004) 5 SCC 385 : AIR 2004 SC 2107]

and thereby the claim for compensation under Section 163A held is fault based liability from the contributory negligence or fault negligence of deceased/ claimant or disabled victim in causing the accident compensation may be reduced on such proof, that was in fact referred and answered in *Snitha supra*. But for that, both the expressions in *Snitha* and in *Deepal Girishbhai Soni (supra)* confirmed law laid down in *Hansrajbhai (supra)*. In fact on this aspect that *Deepal Girishbhai Soni* was not referred in *Snitha supra* while holding Section 163A is founded on fault liability principle, correctness of the law in *Snitha supra* was referred to a larger bench in *United India Insurance Company Vs Sunil Kumar*⁶ and it is pending.

11. In fact, in *Deepal Girishbhai Soni supra*, it was observed in paras 39 to 42 that *“Section 163A was introduced in the Act by way of a social security scheme. It is a code by itself. Section 140 of the Act dealt with interim compensation but by inserting Section 163-A, the Parliament intended to provide for making of an award consisting of a pre- determined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The Amendment was, thus, a deviation from the common law liability under the Law of Torts and was also in derogation of the provisions of the Fatal Accidents Act. The Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought to be evolved so as to grant a quick and efficacious relief to the victims falling within the specified category. The heirs of the deceased or the victim in terms of the said provisions were assured of a speedy and effective remedy which was not available to the claimants under Section 166 of the Act”*.

12. Thus, from a combined reading of the provisions *supra* with reference to the law as laid down in *Snitha*, confirming *Hansrajbhai supra* including with reference to *Deepal Girishbhai Soni supra* that for

⁶ 2014(1)SCC680

the efficacious and as final relief under Section 163-A that can be maintained even negligence is on the part of the victim/claimant for there is no need of proof required much less plea, but for proof of accident while the vehicle in use, as a deviation from general law of burden on the Claimant to plead and prove negligence of the other side and with no fault of victim/claimant; however, it no way speaks from said combined reading in juxtaposition of these provisions that opposite parties are prohibited from taking defence plea and prove any negligence of victim/complainant or their vehicle driver for non-liability or proportionate liability, as maintainability of claim is one thing proved or not proved or disproved as contemplated by the general principles and as defined in Section 3 of the Indian Evidence Act is other thing.

13. Leave apart, even in case of negligence of the victim once claim is maintainable under Section 163-A to plead and prove, there is no duty on the claimant/s and they can ignore their negligence and maintain a claim, but for the controversy as to does it take away the opposite party's right to plead and prove under the common law but for such deviation is only to the extent of exempting the complainant from duty to plead and prove to avail quick relief.

14. In *Reshma Kumari v. Madan Mohan*⁷ the Apex Court (3JB) in answering a reference while approving the propositions laid down in *Sarla Verma Vs Delhi Transport Corporation*⁸ held that in a claim for compensation under Section 163-A as per structured formula based on schedule II of the Act, the claimants are not required to plead or establish that death or permanent disablement was due to any wrongful act or neglect or default of the driver of the vehicle concerned and the

⁷ 2013(1) An.W.R.808(SC)

⁸ 2009 ACJ 1298.

Second Schedule does not apply to determine compensation for a claim under Section 166 where to award just compensation for such fault liability to plead and establish. Thereby the principles relating to determination of liability and entitlement of compensation either under Section 163A or under Section 166 is to opt anyone.

15. From the above legal position, it is to be seen whether the death of the deceased in this case, by name Mahesh Goud, along with two others, is the outcome of crush injuries due to passing of the lorry over them and whether there is any involvement, much less therefrom any contribution of the driver of the lorry, the 1st and 2nd respondents. A perusal of Ex.A3 – Post Mortem report of the deceased Mahesh Goud shows that the death is the outcome of only head injury and not by any crush injury. The report shows there is fracture by avulsion of scalp towards right side back and it could be the result of fall from the bike and not from crush under the wheels of the lorry.

16. Even it can be assumed that for any claim maintained under Section 163-A of the Act, the negligence need not be established whether it is by the opposite vehicle rider or own vehicle, in the present case, when it is clear from the post mortem report and the Motor Vehicles Report, as concluded by the Tribunal, that there is no involvement of the lorry as there is no damage to the lorry even by any scratch but since an auto was coming in opposite direction, the rider of the bike, on which five persons were travelling, could not control the bike and dashed the auto and as such when the auto driver, owner and insurer are not even made parties to the claim, the claim cannot be sustained, as rightly concluded by the Tribunal against the lorry driver or owner or insurer for no involvement of the lorry at all even to maintain claim under Section 163A of the Act against them.

17. Therefore, the Tribunal has rightly observed that the claimants would have proceeded against the owner or insurer of the bike. Thus, for this Court sitting in appeal it no way requires any interference. Consequently, the Appeal is liable to be dismissed.

18. The Appeal is accordingly dismissed which is without prejudice to other available remedies of claimants to proceed against bike owner and insurer and auto driver, owner and insurer, if any as the case may and only in accordance with law. No costs.

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

Dr. B.SIVA SANKARA RAO, J

Date:21.02.2017
vvr/ kh

