

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 200 of 2013**

The National Insurance Co. Ltd. through its Sr. Divisional Manager,
D.O.-B1 Taha Complex, Ring Road I, Priyadarshini Nagar, Bilaspur,
C.G.

---- Appellant**Versus**

1. Smt. Pratima Thakur Aged About 35 Years, Wd/o Shri Jaswant Thakur, Caste Halba
2. Ku. Laleshwari Thakur D/o Late Jaswant Thakur Aged About 17 Years, Caste Halba
3. Sandeep Kumar Thakur S/o Late Jaswant Thakur Aged About 12 Years, Caste Halba

Note: Respondents No.2 and 3 are minors, represented through their Natural Guardian and next friend Smt. Pratima Thakur, Wd/o late Jaswant Thakur, Caste Halba

All are R/o Ward No. 61, Mouhari Bhatha, Station Madauda, Bhilai (Behind Shiv Mandir), P.O. Nevai, P.S. Nevai, Tahsil and Distt. Durg C.G.

4. Charanjeet Singh S/o Amarjeet Singh Aged About 37 Years R/o New Shanti Nagar, Durg (Adjacent To Ganj Mandi), Near Sahu Kirana Store, P.O. and P.S. Mohan Nagar, Tahsil and Distt. Durg C.G.
5. Rajinder Singh S/o Gurpreet Singh, Aged About 44 Years, R/o Gayatri Mandir Ward, Near Old Gurudwara, P.S. Mohan Nagar, Tahsil and Distt. Durg C.G.

---- Respondents

For Appellant	:	Shri R. N. Pusty, Advocate
For Respondents No.1 to 3	:	Shri C.R. Sahu, Advocate
For Respondents No. 4 & 5	:	None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

15.03.2019

1. By the instant appeal, the appellant/Insurance Company has challenged the legality, validity and propriety of the impugned award dated 08/10/2012 passed by learned 5th Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.125/2011 wherein the learned Claims Tribunal has partly allowed the claim application filed under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') and passed an award of Rs.4,17,500/- in total on account of death of late Jaswant Thakur.
2. Brief facts for disposal of this appeal, are that, on 17/09/2011, at about 7.00 P.M., deceased Jaswant Thakur was returning to his home at Mohari Bhatha, from Durg on his motorcycle bearing registration No.CG-07/LN/9096, at that relevant time, one truck bearing registration No.CG-10/ZB/0240 (hereinafter referred to as the 'offending vehicle') dashed the motorcycle near Rajhara railway crossing, Utkal Nagar Durg. In the aforementioned accident, Jaswant Thakur succumbed to injuries on spot. The matter was reported to the concerned police station and on the basis of which, crime No.1089/2011 was registered against the driver of offending vehicle

under Section 304-A of IPC. The claimants, who are respondents No. 1 to 3 on account of death of husband of respondent No. 1 and father of respondents No. 2 & 3 respectively have filed a claim application before the competent Claims Tribunal claiming Rs.11,13,000/- as compensation on all heads initially under Section 166 of the M.V. Act and during pendency it was amended to an application under Section 163A of M.V. Act.

- 3.** Respondents No. 4 and 5 submitted reply to the claim application and denied all the adverse allegations pleaded in claim application. In addition to denial of claim, they pleaded that on the date of accident, driver of the offending vehicle was possessing valid and effective driving licence to drive the vehicle and further that on the date of accident, offending vehicle was insured with the Insurance Company, therefore, the liability, if any, to pay the compensation would be on the Insurance Company.
- 4.** Appellant/Insurance Company also filed reply to the claim application and denied the claim of the claimants/respondents No. 1 to 3. It has been further pleaded that as the accident took place on account of head on collision of the truck and motorcycle, therefore, there is contributory negligence on the part of the driver of the motorcycle also. It was further pleaded that on the date of accident, driver of the offending vehicle was not possessing valid and effective driving

licence, therefore, there is a violation of conditions of the insurance policy and by virtue of amendment, it has been pleaded that accident took place on account of negligence of driver of motorcycle himself.

5. Learned Claims Tribunal while appreciating the pleadings and evidence available on record arrived at a finding that the accident took place on account of rash and negligent driving of driver of offending vehicle, there was no negligence on the part of the deceased driver of the motorcycle, there was no violation of the conditions of the insurance policy and there is no contributory negligence on the part of the driver of the motorcycle i.e. deceased. The learned Claims Tribunal after recording the aforementioned findings awarded total compensation of Rs.4,17,500/-.
6. Learned counsel appearing for the appellant/Insurance Company submitted that learned Claims Tribunal committed error in permitting the claimants to amend the application and convert the application under Section 166 of the M.V. Act to the application under Section 163-A of the M.V. Act. He further submitted that originally the claimants have pleaded income of the deceased as Rs.6,000/- per month and Rs.72,000/- per year, therefore, the permission could not have been granted for conversion of application under Section 166 to Section 163A of the M.V. Act. He lastly submitted that learned Claims Tribunal failed to take note of evidence of NAW-1 Charanjeet Singh,

driver of the offending vehicle, who specifically stated in his evidence that motorcyclist dashed the stationary truck from its back side and further it has not taken into consideration the contributory negligence on the part of the deceased himself.

7. On the other hand, learned counsel appearing for respondents No. 1 to 3/claimants supported the impugned award and submitted that it is for the claimants to chose the provision under which the application is to be filed and the claimants have chosen to file application under Section 166 of the M.V. Act, but for the fact that during pendency of the claim application, they have amended the provision of the application under Section 163A of the M.V. Act and the pleadings made therein, for which, there is no restriction or bar. He further submitted that there is ample material available on record that the truck dashed the motorcycle from front, therefore, there is no question of negligence on the part of the driver of the motorcycle himself.
8. I have heard learned counsel appearing for the parties and perused the records carefully.
9. It is not in dispute that initially the application has been filed under the provisions of Section 166 of the M.V. Act on 03/11/2011, but during the pendency of the claim application, one application under Order 6 Rule 17 of the CPC for amendment has been filed for bringing

amendment in claim application, which was allowed by the learned Claims Tribunal and the learned Claims Tribunal permitted to amend the claim application, particularly, the provision, in which, application for compensation has been filed, and accordingly convert the application under Section 166 of the M.V. Act to the application under Section 163A of the M.V. Act. The yearly income as pleaded in the application was also amended and pleaded the yearly income as Rs.40,000/-. The provisions of Section 163A of the M.V. Act is reproduced herein below for ready reference:-

“[163A. Special provisions as to payment of compensation on structured formula basis.—

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised 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 the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this subsection, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under subsection (1), 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 vehicle or vehicles concerned or of any other person.

(3) 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.]”

10. From perusal of provisions of Section 163A of the M.V. Act, it nowhere makes any bar that once an application under Section 166 of the M.V. Act filed, then it cannot be converted into an application under Section 163A of the M.V. Act. In fact, if the claimants want to take recourse of Section 163A of the M.V. Act, then they have to plead the income as Rs.40,000/- per annum unless it is proved otherwise.
11. The Hon'ble Supreme Court in the matter of **Oriental Insurance Co. Ltd. v. Hansrajhai V. Kodala and others**¹, had occasion to observe that :-

“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 vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163-A was

¹ (2001) 5 SCC 175

giving limited benefit to the extent provided under Section 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A 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.”

- 12.** Section 163B of the M.V. Act provides for option to file claim in certain cases, where a person having entitlement to file claim application under Section 140 and Section 163A of the M.V. Act, then he has an option to file under either of the Sections and there is only a restriction that he cannot be filed an application under both Sections.
- 13.** In the instant case, the claimants during the pendency of the claim application have chosen to convert the application under Section 163A of the M.V. Act and have also amended the income of the deceased which is not prohibited under law. The income pleaded of the deceased in an application under Section 166 of the M.V. Act initially was not a proved income. It requires further to be proved by clinching piece of evidence particularly when it had been pleaded that

the deceased was doing work of Mason. Therefore, the learned Claims Tribunal has not committed any error in permitting the claimants to convert the application under Section 166 of the M.V. Act to the application under Section 163A of the M.V. Act.

- 14.** The M.V. Act is a beneficial piece of legislation and the claims made by the injured or legal representatives/family members of the deceased cannot be deprived of their legitimate claim on the basis of some technical objections. The object of the M.V. Act is to provide appropriate compensation to the legal representatives of deceased on account of losing of the bread earner, if the application has been filed by complying the provisions, under which, the application has been filed. Merely pleading any income in the claim application cannot be treated as proved income.
- 15.** In the case at hand, it has been pleaded that at the time of accident, the deceased was working as Mason and he was not having any permanent nature of job, therefore, learned Claims Tribunal has also not committed any error in allowing the amendment application filed by the claimants and permitting the claimants to convert the application under Section 166 of the M.V. Act to the application under Section 163A of the M.V. Act.
- 16.** The other ground which the learned counsel for the appellant has argued is with respect to the occurrence of accident of sole

negligence of the driver of the motorcycle (deceased) in view of the evidence of the driver of the offending vehicle, namely, Charanjeet Singh (NAW-1) is not sustainable for more than one reasons. Firstly, the First Information Report was lodged on the same day within four hours of the accident bears that accident took place when the driver of the truck by driving its vehicle rashly and negligently dashed the motorcycle. Secondly, in the reply to the claim application, the driver and owner of the offending vehicle have not pleaded anything mentioning therein that it is the driver of the motorcycle, who dashed the stationary truck from its back side. But, for the first time, when the driver of the offending vehicle appeared into the witness-box, who stated before the Claims Tribunal that when the truck was standing near railway crossing, at that relevant time, the motorcycle dashed the truck from back side. Even in the cross-examination, Charanjeet Singh (NAW-1) has not given any satisfactory reply why he has not mentioned the fact in reply to the claim application with respect to the negligence on the part of the driver of the motorcycle, which he is stating before the learned Claims Tribunal.

- 17.** In view of the above available facts on record, in the opinion of this Court, the statement made on behalf of the driver of the offending vehicle in his evidence before the learned Claims Tribunal appears to be an afterthought. Otherwise, the fact of the accident with stationary

truck on account of negligence of driver of the motorcycle could have been very specifically pleaded in the reply to the claim application, which has not been done. Contrary to the fact that First Information Report has been lodged by one of the persons who is not party to the claim application and an independent person within four hours of the accident, which cannot be disbelieved. Therefore, the argument of the learned counsel for the appellant that the accident took place on account of sole negligence of driver of the motorcycle himself, is not sustainable and it is repealed.

- 18.** The Hon'ble Supreme Court in the matter of **United India Insurance Co. Ltd. v. Sunil Kumar and Another**² held as under :-

“8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163-A of the Act to be

² AIR 2017 SC 5710

contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.”

19. In view of the facts of the case and in the light of the judgment passed by Hon'ble Supreme Court in matter of **Sunil Kumar** (supra), the claimants are not required to prove the negligence in a claim application under Section 163A of the M.V. Act. For the forgoing reasons, the argument raised by counsel for appellant is repealed.
20. The last attempt made by learned counsel for appellant that the driver is also contributory negligent is also not sustainable in view of the law laid down by Hon'ble Supreme Court in the matter of **Sunil Kumar** (supra). Even otherwise the appellant has not brought any specific and clinching piece of evidence to prove the fact of contributory negligence on the part of the deceased driver.

- 21.** In view of the foregoing discussions, in the considered opinion of this Court, the appellant/Insurance Company failed to make out any ground calling interference with the impugned award passed by the learned Claims Tribunal. The appeal being devoid of merit, is liable to be and is hereby dismissed.

**Sd/-
(Parth Prateem Sahu)
Judge**

Yogesh