NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1116 of 2013

- Shankar Chaand, S/o Late Bancha Chaand aged about 34 years, Occupation-Labour R/o Subhash Nagar Charcha Colliery, P.S. Charcha Tahsil Baikunthpur, District Koriya, C.G.

----Appellant/Claimant

VERSUS

1. Shyam Bilas S/o Madho Prasad, Occupation-Driver R/o Bichhi, Post Bichhi, P.S. Rahasganj, District Sonbhadra U.P.
2. Hafeezuddin Ansari S/o Azeemuddin Ansari, R/o Rasulpur, Ambikapur, District Surguja, C.G.
3. The Manager, Bajaj Alliance General Insurance Company Limited, G.E. Plaza, Airport Road, Yerwada, Pune M.H.

-----------Respondents

For Appellant	:	Mr. Praghalba Sharma, Advocate on behalf of Mr. Farah Minaj, Advocate
For Respondent No. 3	:	Mr. Sangeet Kushwah, Advocate on behalf of Mr. S.S. Rajput, Advocate
For Respondent No. 2	:	Mr. Priyanka Mehta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

20/12/2019

1. The appellant-claimant has filed this appeal challenging the impugned award dated 05-08-2013 passed by Additional Motor Accident Claims Tribunal (F.T.C.) Baikunthpur District Koriya in Claim Case No. 36/2013 whereby learned Claims Tribunal dismissed the claim application.

2. Facts of the case are that, on 30-05-2009 when appellant/ claimant while driving his Auto Rickshaw bearing registration No. CG-16-A-1332 was going to Ganjam (Orrisa) from Charcha Colliery, at that relevant time, when he reached

between Karamdihi and Sabdega, he met with an accident with one truck bearing registration No. CG-04-JA-0117 (hereinafter 'offending truck') driven by respondent No. 1/ non-applicant No. 1 and thereafter his auto-rickshaw dashed with a tree standing beside the road. In the aforementioned accident, appellant suffered grievous injuries over his right leg and during the course of treatment at Ayush Hospital, Bhuvneshwar, his right leg was amputated. Due to aforementioned injuries suffered by the appellant in the said accident, he filed a claim application before the competent Claims Tribunal under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') and claimed for a total sum of Rs. 9,70,000/- as compensation.

3. Respondent No. 1/ non-applicant No. 1 who is driver of the offending truck did not appear before the Claims Tribunal even after service of notice, thereafter, he was proceeded *ex parte*.

4. Respondent No. 2 who is owner of the offending truck submitted his reply to the claim application and pleaded that the accident took place on account of rash and negligent driving of the appellant himself who dashed the offending truck from its back side.

5. Respondent No. 3/ non-applicant No. 3-Insurance Company submitted its separate reply to the claim application and denied the fact of monthly income of the appellant-claimant as pleaded in the claim application and further pleaded that the accident did not take place on account of negligence on the part of respondent No. 1/non-applicant No. 1-driver of the offending truck and the accident resulted due to rash and negligent act of appellant. On the date of accident, respondent No. 1/non-applicant No. 1-driver of the offending truck was not possessing valid and effective driving license, therefore, Insurance

Company would not be liable for payment of any amount of compensation.

6. Based on the pleadings made by the respective parties, the learned Claims Tribunal has framed as many as three issue for consideration and on appreciation of evidence placed on record and pleadings made by the respective parties, the Claims Tribunal dismissed the claim application by recording a finding that the appellant-claimant himself was negligent in the accident, therefore, he is not entitled to get any amount of compensation.

7. Learned counsel for the appellant submits that the learned Claims Tribunal has not considered the provisions of Section 163-A of the Act in its entirety where the provisions of Section 163-A of the Act is in the form to award the amount of compensation on the basis of 'no-fault liability'. He also submits that in the Claim filed under Section 163-A of the Act, the claimant(s) does not require to prove the negligence on the part of the driver of the other vehicle but it is only to be seen that there was a motor accident and the appellant-claimant suffered injuries or the driver of the motor vehicle against the death of whom the claim application has been filed, suffered motor accidental death. Learned counsel further submits that learned Claims Tribunal committed error in arriving at a finding that appellant-claimant himself was negligent while driving the vehicle and accident took place due to his own negligency, making him dis-entitled to seek compensation. He further submitted that the learned Claims Tribunal committed error in recording a finding that there is no involvement of the truck in the accident.

8. Learned counsel for respondent No. 2-owner of the offending truck supported the impugned award passed by the learned Claims Tribunal.

9. The learned counsel appearing for respondent No. 3-Insurance Company

submits that the learned Claims Tribunal has recorded in paragraph-10 of the award that the accident took place as the Auto Rickshaw dashed with the standing tree beside the road side on account of rash and negligent act of the appellant, there was no involvement of the truck in the accident, therefore, the Insurance Company of the truck cannot be held liable for payment of any amount of compensation. He also submits that two passengers who were sitting in the auto-rickshaw at the time of accident, have not been examined by the appellant, who could have stated about the manner in which the accident took place.

10. I have heard learned counsel for the parties and perused the records.

11. The accident took place in Oddisa and the final report submitted by the concerned police station is recorded in Orria language, therefore, with the assistance of Mr. Harpreet Alhuwalia and Mr. Raghvendra Pradhan, Advocates of this High Court, who are well acquainted with the Orria language have read out the fact recorded in the F.I.R. and they pointed out that contents of F.I.R. speak about that auto-rickshaw dashed with the rear wheel of the offending truck and then dashed with the standing tree beside the road.

12. Perusal of reply filed by the non-applicant No.2/ respondent No. 2- owner of the offending truck would also show that the auto-rickshaw dashed with the back side of the truck.

13. The appellant was examined as AW-1 who in his statement has stated that when he was going to Ganjam, Orrisa, at that time, on the way, the offending truck driven by respondent No. 1/non-applicant No. 1-driver dashed his auto-rickshaw and due to said accident his auto-rickshaw dashed with the tree on the road side. He also stated that, after accident he was taken to Hospital at

Sundargarh and looking to the grievous injuries, he was then referred to Burla Medical College where he took treatment as an indoor patient for about 10 days; when he could not recovered from the injuries, then he was referred to Ayush Hospital, Bhuvneshwar where he took treatment for about 40 days. During the course of treatment, his right leg was amputated due to which he became permanent disabled. Respondent No. 2/ non-applicant No. 2 was also examined before the learned Claims Tribunal as NAW-2(1), he in his examination-in-chief has stated that when his truck driven by respondent No. 1/ non-applicant No. 1 was returning to Ambikapur, at that relevant time, near Karamdiha Chouk the appellant hit the truck from its back side and then his auto-rickshaw dashed with the tree standing on the road side. He stated that there was no fault of the driver of the offending truck. This witness was cross-examined by the Advocate of respondent No. 3-Insurance Company but no question has been put to him with regard to the statement made by him that the auto-rickshaw dashed the truck, is not correct as argued by the learned counsel for respondent No. 3-Insurance Company. The only suggestion given to him was with regard to the license of the driver of offending truck.

14. In view of the aforementioned evidence available on record showing the manner in which the accident occurred. The submission made by learned counsel for respondent No. 3- Insurance Company that there was no involvement of the truck in the accident is not sustainable. From perusal of the contents of F.I.R. as read out by two advocates practicing in this High Court and also looking to the evidence of the appellant as well as respondent No. 2, it is explicit that auto-rickshaw first dashed/ collided with the back side of the offending truck and then dashed with the tree standing on the road side.

15. The learned Claims Tribunal has recorded a finding that the accident took place due to rash and negligent act of the appellant himself and further considering the judgment passed by the Hon'ble Supreme Court in the matter of ***National Insurance Company Ltd. v. Sinitha & Ors.*** reported in **AIR 2012 SC 797** has held that even in the claim application filed under Section 163-A of the Act, it is open for the insurance company to take defence regarding the negligence of the claimant/ deceased driver of one of the vehicle and held that it is the appellant who was negligent.

16. The provisions of Section 163-A of the Act is independent provisions than that of Section 166 of the Act. The provisions of Section 163-A of the Act is based on the principle of "no fault liability". The claimant who has filed the claim application under Section 163-A of the Act is not require to plead or establish that the accident out of which the claim arises, suffers from wrongful act or negligence on the part of the driver of the vehicle, but it is essential to prove that there was involvement of the vehicle against whom the claim for compensation has been filed. Section 163-A of the Act is reproduced below for easy understanding of the provisions:

> "163-A. **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.
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> *Explanation*.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).
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> (2) In any claim for compensation under sub-section (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."

17. The Hon'ble Supreme Court in the matter of ***United India Insurance Co. Ltd. v. Sunil Kumar and Anr.*** reported in **AIR 2017 SC 5710** has considered the issue with respect to the principle under which the provisions of Section 163-A were incorporated under the Act, in which it has taken into consideration its earlier judgment of **Sinitha case** (supra) and held thus:

> "3. In Sinitha's case (AIR 2012 SC 797) (supra), a two Judge bench of this Court understood the scope of Section 163A of the Act to be enabling an Insurer to raise the defence of negligence to counter a claim for compensation. The principal basis on which the conclusion in Sinitha's case (supra) was reached and recorded is the absence of a provision similar to sub-section (4) of Section 140 of the Act in Section 163A of the Act. Such absence has been understood by the Bench to be a manifestation of a clear legislative intention that unlike in a proceeding under Section 140 of the Act where the defence of the Insurer based on negligence is shut out, the same is not be the position in a proceeding under Section 163A of the Act.
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> 7. … The Legislative intent and purpose was to provide for payment of final compensation to a class of claimants (whose income was below Rs.40,000/- per annum) on the basis of a structured formula without any reference to fault liability. In fact, in Hansrajbhai v. Kodala (supra) the bench had occasion to observe that:
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>> '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 vehicles accidents in a fast-moving society. Further, the law before insertion of Section 163-A was 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.'
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> 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). Through 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 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A 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 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A 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."

18. Looking to the facts of the case where it has come that there is involvement of the offending truck in accident in the pleadings made by non-applicant No. 2 and also in his evidence and further taking into consideration the law laid down by the Hon'ble Supreme Court in the case of **Sunil Kumar** (supra), in the opinion of this Court, the learned Claims Tribunal committed error in dismissing the entire claim application by posing wrong question of negligence in claim application filed under Section 163-A of the Act.

19. For the foregoing reasons, the impugned award passed by the learned Claims Tribunal in claim case No. 36/2013 is hereby set aside. As the learned Claims

Tribunal has not assessed the amount of compensation, the case is remitted back to the concerned Claims Tribunal for passing award afresh after calculating the amount of compensation, as expeditiously as possible within a period of 4 months.

20. Parties are directed to appear before the Claims Tribunal on **12th February, 2020**.

21. With the aforesaid observation, the appeal is allowed in part.

Sd/-
(Parth Prateem Sahu)
Judge

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