

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1199 OF 2016

Royal Sundaram Alliance Insurance Co. Ltd.,
46, Whites Road, Chennai – 600 014,
Through its authorized officer,
at Chennai.

... Appellant.

... **Versus** ...

- 1 Chandrakala Ashok Kadam,
Age 45 yrs., Occ. Household,
R/o N-12, D-27/A, Bharatmata Nagar,
HUDCO, Aurangabad.
- 2 Ashoka Tours and Travels through its
Prop. Ashok Tulshiram Kadam,
R/o Hotel Panchwati, Station Road,
Padampura, Corner, Aurangabad.

... Respondents.

...

Mr. A.S. Deshpande, Advocate for the appellant
Mr. S.S. Chapalgaonkar, Advocate holding for Mr. S.G. Chapalgaonkar,
Advocate for the respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 09th SEPTEMBER, 2019

PRONOUNCED ON : 18th NOVEMBER, 2019

JUDGMENT :

1 Present appeal has been filed by original respondent No.2-the insurance company challenging the Judgment and Award passed in M.A.C.P No.518/2011 by learned Chairman, Motor Accident Claims Tribunal, Aurangabad dated 31.03.2015, thereby the petition under Section 163-A of the Motor Vehicles Act, 1988 filed by the present respondent No.1 came to be allowed.

2 The original claimant had come with a case that one Prashant @ Gajanan Ashok Kadam was driving car bearing No.MH 20/BT-5515 towards Aurangabad. One Kashinath Darade was the regular driver of car, however, as he had chest pain, he was sleeping at the back seat of the car. Original respondent No.1 is the owner of said car, who is the father of Prashant @ Gajanan. When the car reached near spot at about 4.00 a.m. on 20.12.2010, due to the bright lights of the opposite vehicle Prashant could not see the road and the car gave dash to a rock, by the side of the road. Prashant died on the spot. Khultabad police had registered crime against him. The car was duly insured with respondent No.2 on the date of the accident. Petitioner is the mother of said deceased Prashant. Prashant was student of B.A. IInd year and aged 20 years. His yearly income was Rs.40,000/-, by way of contribution in the business to his father. Hence, compensation of

Rs.4,00,000/- has been claimed together with interest.

3 Petition proceeded ex parte against respondent No.1. Respondent No.2 insurance company filed written statement and took objection regarding maintainability of the petition under Section 163-A of the Motor Vehicles Act. It was stated that the accident took place due to the negligence on the part of the Prashant. He was not holding valid and effective driving licence to drive the car, which was a transport vehicle. Prashant is the son of owner of the car and therefore, he cannot termed as “third party” and therefore, insurance company is not liable to pay compensation to the petitioner, as the risk of Prashant was not involved in the policy.

4 Taking into consideration the rival contentions, issues were framed. Petitioner has led evidence. Taking into consideration the evidence and other documents on record, the learned Trial Court held that the Prashant expired in the said accident. Petitioner being the mother of the deceased is entitled to get compensation under Section 163-A of the Motor Vehicles Act and therefore, compensation of Rs.4,40,000/- has been awarded together with interest. The said award is under challenge in this appeal.

5 Heard learned Advocate Mr. A.S. Deshpande for appellant and

learned Advocate Mr. S.S. Chapalgaonkar holding for learned Advocate Mr. S.G. Chapalgaonkar for respondent No.1. Respondent No.2 though served failed to appear.

6 It has been vehemently submitted on behalf of the insurance company that the learned Trial Court failed to consider the fact that the accident had taken place due to the negligence on the part of the Prashant, who was the son of the owner of the vehicle, which was insured with respondent No.2. Due to the death of Prashant, who was in fact, in the shoes of his father, it cannot be stated that the mother of the deceased was entitled to get compensation. The learned Chairman failed to consider that the petition ought not to have been entertained under Section 163-A of the Motor Vehicles Act. Prashant cannot be termed as third party and therefore, the risk of Prashant was in fact not covered under the policy. He relied on the decision in New India Assurance Company Limited vs. Sadanand Mukhi and others, AIR 2009 SUPREME COURT 1788, wherein son of the injured while driving motorcycle met with the accident, resulting in his death. It was held that the insurance company is not liable to pay compensation.

Further reliance has been placed on the decision in Oriental Insurance Company Limited vs. Meena Variyal and others, AIR 2007

SUPREME COURT 1609(1), wherein it has been held -

“Section 163-A providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a 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 the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of S. 163A 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 concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under S. 166 or under S. 163A. Once they approach the Tribunal under S. 166, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163A, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.”

7 Per contra, the learned Advocate appearing for the respondent No.1-claimant submitted that the issue, which arises in the matter regarding the point of negligence, whether can be considered under Section 163-A of the Motor Vehicles Act, is no longer res integra and has been covered under Three Judge Bench decision of the Apex Court in **United India Insurance Company Limited vs. Sunil Kumar and another**, AIR 2017 SC 2710. As per the decision in **National Insurance Company Limited vs. Sinitha and others**,

(2012) 2 SCC 356, the Apex Court had taken note of scope of Section 163-A of the Act to be enabling an insurer to raise the defence of negligence to counter a claim for compensation. However, in United India Insurance Company Limited vs. Sunil Kumar and another, (2014) 1 SCC 680 the said decision in **Sinitha** was doubted and reference was made to the Larger Bench and accordingly the said decision has been given in **AIR 2017 SC 5710**, wherein it has been held -

“Grant of compensation under Section 163-A of Motor Vehicles Act, 1988, on the basis of structured formula is in nature of a final award and adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of vehicle(s) involved in the accident. This is made explicit by Section 163-A(2). Though aforesaid section does not specifically exclude a possible defence of Insurer based on negligence of claimant as contemplated by Section 140(4), to permit such defence to be introduced by Insurer and/or to understand provisions of Section 163-A of Act to be contemplating any such situation would go contrary to very legislative object behind introduction of Section 163-A of Act, namely, final compensation within a limited time frame on basis of structured formula to overcome situations where claims of compensation on basis of fault liability was taking an unduly long time. In fact, to understand Section 163-A of Act to permit Insurer to raise defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with proceeding under Section 166 of Act which would not only be self-contradictory but also defeat very legislative intention. Therefore, in a proceeding under Section 163-A of Act, it is not open for Insurer to raise any defence of negligence on the part of the victim.”

Further in Shivaji vs. Divisional Manager, United India Insurance

Company Limited, 2018 SCC OnLine SC 877 by relying on the decision in **Sunil Kumar** reference, it has been observed -

“The issue which arises before us is no longer res integra and is covered by a recent judgment of three judges of this Court in *United India Insurance Company Limited vs. Sunil Kumar*, wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is “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”. The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163A of the Act, it would “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”. Consequently, it was held that in a proceeding under Section 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation.”

8 Therefore, the insurance company, now cannot raise the same point stating that it can defend the petition, on the point of negligence. There is no question of any third party involved in this case, when Section 163-A of the Motor Vehicles Act is invoked.

9 It is to be noted that the petition was filed under Section 163-A of the Motor Vehicles Act with clear case, that though the accident had taken place and the driver i.e. Prashant, who was on the driving seat, expired and

offence was registered against him, yet, since the car was insured, the insurance company is liable to pay compensation. It was clearly stated in the petition as well as deposition of the petitioner that the offending vehicle belongs to the company, which is owned by the husband of the petitioner. Therefore, taking into consideration the catena of Judgments earlier referred and the legal position, no longer res integra, no fault can be found with the Judgment and Award passed by the learned Trial Court. In view of the Three Judge Bench decision, the reliance by the learned Advocate for the appellant on the decisions in **AIR 2009 SC 1788** and **AIR 2007 SC 1609(1)** cannot be considered. Further, taking into consideration the structured formula, which is required to be adhered to, in case of a petition under Section 163A of the Motor Vehicles Act, the compensation arrived at by the learned Trial Court is correct. Therefore, there is no merit in the present appeal. It deserves to be dismissed. Accordingly, it is dismissed. No order as to costs.

(**Smt. Vibha Kankanwadi, J.)**

Date : 18th November, 2019.

Amount deposited in this Court be given to respondent No.1-
claimant as per the Award by the Tribunal.

(**Smt. Vibha Kankanwadi, J.)**