

***THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

+ M.A.C.M.A.No.1762 OF 2018

% 18—07—2019

United India Insurance Company
Limited, rep. by its Branch Manager

...Appellant

vs.

\$ K.Neelabai and Others

... Respondents

!Counsel for the Appellant: Sri A.Ramakrishna Reddy

^Counsel for Respondent Nos.1 to 4: Sri S.Chandrasekhar

^Counsel for Respondent No.5: None appeared

<Gist :

>Head Note :

? Cases referred

1. 2003 ACJ 203
2. 2003 (6) ALT 230 (D.B.)
3. 2018 (2) ALD 36
4. AIR 1988 GUJ 69

IN THE HIGH COURT FOR THE STATE OF TELANGANA,
HYDERABAD

* * * *

M.A.C.M.A.No.1762 OF 2018

Between:

United India Insurance Company
Limited, rep. by its Branch Manager

...Appellant

vs.

\$ K.Neelabai and Others

... Respondents

JUDGMENT PRONOUNCED ON: 18.07.2019

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

T.AMARNATH GOUD, J

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**M.A.C.M.A. NO.1762 OF 2018****JUDGMENT:**

This appeal is preferred by the appellant/Insurance Company questioning the Order of the Motor Accident Claims Tribunal-cum-III Additional District Judge, Asifabad (for short, the Tribunal) in O.P.No.65 of 2016 dated 02.01.2017.

2. The brief facts of the case are that respondent No.1 is the wife, respondent Nos.2 and 3 are the son and daughter, respectively, and respondent No.4 is the mother of the deceased, K.Pochaiah. The deceased was working as driver on tractor bearing No.AP01W 9886. While so, on 04.08.2012 at about 10.00 am., while the deceased was driving tractor bearing No.AP01W 9886, and when it reached at outskirts of Balgala Village, the tractor turned turtle, in an attempt to avert major accident, as a result of which, the deceased died on the spot. Respondent Nos.1 to 4 herein filed the aforesaid OP under Sections 166 and 163A of the Motor Vehicles Act, 1988 (for short, the Act) against owner of the lorry (respondent No.5 herein) and insurer of the lorry (appellant herein), claiming compensation of Rs.10,00,000/- for the death of the deceased.

3. Before the Tribunal, owner of the lorry, remained *ex parte*. The appellant-Insurance Company filed a counter denying the allegations and contended that the amount claimed by the claimants is highly excessive and that it is not

liable to pay any compensation and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal framed the following issues:

“1. Whether Kotrangi Pochaiah died in the accident that occurred on 04-08-2012 at 10.00 hours in the outskirts of Balgala Village of Kaghaznagar Mandal within the limits of Kaghaznagar Police Station?

2. Whether the said accident occurred due to rash and negligent driving of Tractor bearing No.AP01W 9886?

3. Whether the petitioners are entitled to claim compensation for the accidental death of Kotrangi Pochaiah, if so, how much and against which of the respondents?

4. To what relief?”

5. The Tribunal held issue No.1 in the affirmative and issue No.2 in the negative. Insofar as issue No.3 is concerned, the Tribunal, holding that the claimants are entitled to compensation, awarded total compensation of Rs.4,41,500/- under various heads, with interest at the rate of 9% per annum. Aggrieved by the said order, the appellant/Insurance Company filed the present appeal.

6. Sri A.Ramakrishna Reddy, learned standing counsel for the appellant, submits that if the accident had occurred due to negligence of the deceased, the legal heirs of the deceased are not entitled to any compensation under the Act. He further submits that the owner of the tractor had got his vehicle insured by paying only that much amount of premium which,

so far as his employees were concerned, covered the liability to the extent it is provided under the Workmen's Compensation Act, 1923 (for short, Workmen's Act), and hence, the liability of the appellant is restricted to that, which is provided under the Workmen's Act and it is not liable to satisfy the entire award made in favour of respondent Nos.1 to 4. He relied on a decision of High Court of Andhra Pradesh at Hyderabad in **United India Insurance Co. Ltd. Vs. Kore Laxmi**¹.

7. Sri S.Chandra Sekhar, learned counsel for respondent Nos.1 to 4, submits that in a proceeding under Section 163A of the Act, it is not open for the insurer to raise any defence of negligence on the part of the victim, and hence, the Tribunal rightly awarded the compensation. He further submits that having regard to the provisions of Sections 147 and 149 of the Act, the owner having got his vehicle insured, the insurance company is liable to satisfy the entire award made in favour of the claimants and there is no provision in law under which its liability may be restricted or curtailed. He relied on a Division Bench decision of the Andhra Pradesh High Court in **Kore Laxmi Vs. M/s.United India Insurance Co. Ltd., Nizamabad Dist.**².

8. It is necessary to refer to Sections 163A and 166 of the Act and they read as under:

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

¹ 2003 ACJ 203

² 2003 (6) ALT 230 (D.B.)

(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 sub-section, “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 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.

“166. Application for compensation.— (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) and 4 ...”

9. The Hon’ble Supreme Court, in **United India Insurance Co. Ltd. Vs. Sunil Kumar**³, while dealing with the question *‘whether in a claim proceeding under Section 163A of the Act, is it open for the Insurer to raise the defence/plea of negligence’*, held as follows:

“ 8. From the above discussion, it is clear that grant of compensation under Section 163A 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 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.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim.”

³ 2018 (2) ALD 36

10. A perusal of the above paragraphs, it is clear that in a proceeding under Section 163A of the Act, it is not open for the Insurer to raise any defence of negligence on the part of the victim, and hence, the contention of the learned counsel for the appellant in that regard cannot be accepted. Insofar as the other contention raised by the learned counsel for the appellant that the claimants filed application under Section 166 of the Act and as such the Tribunal gravely erred in awarding compensation under Section 163A of the Act is concerned, the same cannot be appreciated, for the simple reason that, even if a party approaches the Court invoking a wrong provision, the Court is always bound to do justice by applying the correct law. It is to be noted that a Division Bench of the Gujrat High Court in **Harivadan Maneklal Modi Vs. Chandrasinh Chhatrasinh Parma**⁴, held that the option is left to the person entitled to compensation to choose whether he would seek the remedy available under the Motor Vehicles Act or the Workmen's Compensation Act. He has to choose either of these two remedies but not both. In the present case, respondent Nos.1 to 4 availed their option before the Tribunal. Hence, it cannot be said that they committed wrong in exercising their option before the Tribunal. Hence, I see no reason to interfere with the order of the Tribunal and the appeal is liable to be dismissed.

⁴ AIR 1988 GUJ 69

11. Accordingly, the Motor Accident Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date: 18-07-2019

Note: L.R. Copy to be marked.

B/o.TJMR

