

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.18 OF 2019

Mr. Giyanraj Topilal Sunar,
S/o. Topilal Sunar,
aged 25 years,
r/o. Flat no.B-4, G-1, Ground Floor,
Queeny Vision, Queeny Nagar,
Birla, Vasco da Gama, Goa.
Pin Code 403 712.

... Appellant

Versus

1. Mr. Krishna P. Fatarpekar,
major in age, s/o. Pandari Fatarpekar,
r/o. H.No.66, Near Sathi Temple,
Bhatulem, Panaji, Tiswadi, North Goa.

2. National Insurance Company Ltd.,
Panaji Division Office-II, Souza Towers 2nd
floor, Dr. Roque D'Souza Road, Near
Municipal Garden, Panaji, Goa 403 001.

... Respondents

Mr. Shailesh Redkar, Advocate for the Appellant.

Mr. Suraj Naik, Advocate for Respondent No.1.

CORAM: M. S. SONAK, J.

DATED: 1st JULY 2022

ORAL JUDGMENT :

1. Heard Mr. Shailesh Redkar for the appellant and Mr. Suraj Naik for respondent No.1.

2. The challenge in this appeal is to the judgment and award dated 07.08.2018 dismissing the Claim Petition no.16/2015.
3. The Tribunal dismissed the claim petition on a finding that the appellant/claimant had failed to establish that the accident was due to rash and negligent driving by respondent no.1.
4. Mr. Redkar, on instructions from the appellant, now states that he will not question the finding on rashness and negligence. Still, liberty may be granted to the appellant to convert the proceedings under Section 166 of the M.V. Act to proceedings under Section 163A of the M.V. Act.
5. Mr. Redkar, again on instructions, submits that the appellant will restrict his income to under ₹40,000/- and thereby restrict the Claim to only ₹2,50,000/-, which would be an entitlement in terms of Section 163A of the M.V. Act.
6. Mr. Redkar, on instructions, further stated that the appellant will not even seek any interest on this amount and would be satisfied if an amount of ₹2,50,000/- is paid in the full and final settlement.

7. Mr. Suraj Naik, learned Counsel for respondent No.1, opposes the above request. He submits that the appellant was prosecuted for rashness and negligence and even convicted by the J.M.F.C. He submits that he also withdrew the appellant's appeal before this Court. Finally, he submits that no indulgence should be granted to the appellant in such circumstances. He relied on *Surender Kumar Arora & anr. V/s. Manoj Bisla & Ors.*¹.

8. The decision in *Surender Kumar Arora* (supra) does not deal with the request of nature now made by Mr. Redkar on behalf of the appellant. However, this decision points out the distinguishing feature between proceedings under Section 166 and 163A of the M.V. Act.

9. Similarly, the decision in *National Insurance Co. Ltd. V/s. Bruno Baltazar Saldanha & Ors.*² relied upon by Mr. Redkar deals with the reverse situation in which the claimant was permitted to convert his Claim from Section 163A to 166 after the Court found that the claimant's income had exceeded ₹40,000/- per annum.

1 2012 LawSuit (SC) 205

2 2011 SCC OnLine Bom 1721

10. *Guruanna Vadi & Anr. V/s. The General Manager, Karnataka State Road Transport Corporation & Anr.*³ decided by the Full Bench of the Karnataka High Court is to a certain extent relevant.

11. In *Guruanna Vadi & Anr.* (supra), several questions were formulated and decided by the Full Bench of the Karnataka High Court. Out of these questions, questions Nos. (4) & (6) are relevant, and the same read as follows :

"4. Whether a claim under Section 163-A of the Act is tenable where the income of the victim was/is more than Rs.40,000/- per annum and where the actual medical expenses incurred is Rs.15,000/-?"

6. As to whether a claimant, during the pendency of the proceedings at the original or the appellate stage, can amend his claim petition under Section 166 as petition under Section 163-A of the Act?"

12. Question No.(4) was answered by the Full Bench in the following terms:

"(iv) Question No.4: A claim application under Section 163A is not tenable if made by a person whose income exceeds Rs.40,000/- per annum. But, in case the person with the higher income notionally brings down his income to Rs.40,000/- in order to

present his Claim under Section 163A the same can be permitted."

13. Question No.(6) was also answered by the Full Bench in the following terms:

"(vi) Question No.6: A Claimant during the pendency of the proceedings at the original or appellate stage can amend his claim petition made under Section 166 to a petition under Section 163-A provided he satisfies other conditions such as the income factor etc."

14. The discussion in the context of the answer to question No.6 is to be found in paragraph No.37, and the same reads as follows:

"37. Question No.6: The only bar provided for exercising an option in the matter of filing a claim petition for compensation is to be found in Section 163B which states, 'where a person is entitled to claim compensation under Section 140 and Section 163A, he shall file the claim under either of the said Sections and not under both.' There is no prohibition in any other provision of the Act from switching over the Claim made under Section 166 to 163-A provided the accident took place on 14-10-1994 or thereafter because Section 163A came on the statute book only with effect from 14-10-1994, subject of course, to the claimants satisfying other requirements such as the outer income limit mentioned in the Second Schedule. Section 163 is a beneficial Legislation and provides for payment of

compensation based on structured formula without requiring pleading or establishing that the death or permanent disability in respect of which the Claim has been made was due to any wrongful act or negligence or default of the owner of the vehicle or vehicles concerned or any other person. Such a beneficial legislation has to be given a liberal interpretation. Therefore we answer this question in the affirmative by holding that a claimant can move the Court for amendment of his claim petition filed under Section 166 to that of a petition under Section 163A at any stage of the proceedings and it would be for the concerned Court to pass an order on that application in according with law."

15. Mr. Redkar pointed out that *Guruanna Vadi & Anr.* (supra) was followed by this Court in *Bruno Baltazar Saldanha & Ors.* (supra).

16. Considering *Guruanna Vadi & Anr.* (supra), the request made by Mr. Redkar on behalf of the appellant can be at least partly accepted. The impugned award can be set aside, and the matter remanded to the Tribunal only to enable the appellant to make an application for converting the proceedings to that under Section 163A of the M.V. Act. All parties' objections, including the objections now raised by Advocate Suraj Naik, can be left open for determination by the Tribunal.

17. The above indulgence is granted to the appellant based on his following representations :

- (a) That the appellant will not contest the finding on rashness and negligence now recorded in the impugned order;
- (b) The appellant will restrict the Claim to ₹2,50,000/- by way of full and final settlement;
- (c) The appellant will not claim any interest on the above amount of ₹2,50,000/- from the petition date or any other date.

18. Mr. Redkar, on instructions from the appellant, reiterates that the appellant will stand by the above representations and not act contrary to the same.

19. In my opinion, the appellant should not be permitted to take advantage of his errors of judgment. At this stage, if any liberty is granted to the appellant to seek interest, then the same would be unjust to the opposite parties. In any case, the issue as to whether liberty for conversion is to be granted or not will also have to be decided by the Tribunal. This liberty is granted only to enable the appellant to apply for conversion. The application for conversion will have to be decided on its own merits after giving all parties full opportunity.

20. Accordingly, the impugned award is set aside. The Claim Petition No.16/2015 is restored to the file of the Tribunal. This remand and restoration are for the limited purpose of enabling the appellant to apply for conversion as aforesaid. This liberty is based on the representations as aforesaid. Suppose any application for conversion is made within one month from the date now to be appointed, the Tribunal should dispose of the same on its own merits and in accord with law and after granting all parties full opportunity to urge their respective versions.

21. In this order, the observations, if any, are not intended to influence the Tribunal in deciding the application for conversion. On the contrary, the Tribunal should independently decide such application according to law and on its own merits. The liberty granted by this order is in peculiar facts of this particular case and considering the assurances given by the appellant.

22. The appellant and respondent no.1 to appear before the Tribunal on 25.07.2022 at 10.00 a.m. Mr. Redkar states that he will also give notice to respondent No.2 – Insurance Company about this order and the date of the appearance. However, if respondent No.2 does not appear on the said date, the Tribunal should issue notice after fixing another date.

23. This appeal is disposed of in the above terms.

24. There shall be no orders for costs.

M. S. SONAK, J.

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH
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