

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 37 OF 2023

Indra Kumar Jha	... Petitioner
<i>Versus</i>	
Pramit B. Varak & anr.	...Respondents

Mr. Milton Marshal, Advocate *for the Petitioner.*
Mr. Amey Kakodkar, Advocate *for the Respondent No. 2.*

CORAM: M. S. KARNIK, J
DATED: 28th MARCH 2023

ORAL ORDER

1. Heard learned Counsel for the parties.

2. The challenge in this Petition is to an Order dated 23.11.2022 passed by the Member, Motor Accident Claims Tribunal (*Tribunal* for short), Mapusa, thereby dismissing the application filed by the claimant for amendment under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC).

3. The accident in question occurred on 29.01.2017. One scooter gave dash to the Petitioner's scooter due to which he fell down on the road. The front tyre from the driver's side of the Tipper Truck which Respondent No.1 was driving went over the left leg of the Petitioner resulting in amputation of his four fingers. The Petitioner filed a Claim Petition before the Tribunal under Section 166 of the Motor

Vehicles Act, 1988 (*M. V. Act*, for short), against the Respondents herein being Claim Petition No. 63/2016.

4. On 19.11.2022, the Petitioner filed an application under Order VI Rule 17 of the CPC for amending his Claim Petition from Section 166 to Section 163-A of the Motor Vehicles Act, which application was not seriously objected to by the Respondent No.2-Insurance Company. An endorsement was made by the learned Counsel for the Respondent No.2 to the effect “*I leave it to the Court to decide upon the present application*”. The Tribunal by the impugned Order dismissed the application for amendment for the reason that no FIR was registered against the Respondent No.1 and the driver is unknown. It is further recorded that as per the Claim Petition, the Petitioner-claimant has averred that the accident occurred due to rash and negligent driving of the Respondent No.1. The Tribunal observed that the burden is on the claimant to prove rash and negligence of the Respondent No.1.

5. I have heard the learned Counsel for the Petitioner as well as the learned Counsel for the Respondent No.2. Respondent No.1-cum-driver, is not represented before the Tribunal and there is no appearance on his behalf in this Petition. Affidavit of service has been duly filed.

6. Heard.

7. A reading of the impugned Order reveals that the request for amendment is rejected on the ground that no FIR has been registered against the Respondent No.1 and that the Petitioner-claimant pleaded that the accident is as a result of the rash and negligent driving of Respondent No.1. According to the Tribunal, the burden to prove the rash and negligent driving of Respondent No.1 is on the claimant.

8. The Petitioner prayed that he be allowed to amend the Claim Petition one under Section 166 of the M.V. Act to that of Section 163-A of the said Act. To appreciate the controversy, it would be material to re-produce Section 163-A and Section 166 of the M.V. Act, which reads thus :

“Section 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.

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.”

...

Section 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) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident :

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.”

9. It is pertinent to mention that Section 163-A was brought into force on 14.11.1994. Section 163-A came to be deleted w.e.f. 01.04.2022. As the accident in question occurred on 29.01.2017, the Petitioner's case would be covered by Section 163-A as it then stood at the time of filing of the Claim Petition.

10. The M. V. Act is a beneficial piece of legislation. Section 163-A is a special provision for payment of compensation on structured formula basis. Section 163-A begins with a non-obstante clause making the owner of the Motor Vehicle or the authorised insurer liable to pay in 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. Sub-section (2) of Section 163-A provides that 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.

11. The Petitioner in the present case had requested for conversion of the Claim Petition from the one under Section 166 to that under Section 163-A of the M. V. Act. There is no requirement stipulated under the Act that for such conversion, registration of the FIR against the driver of the offending vehicle is mandatory. On the contrary, sub-section (2) of Section 163-A provides an additional safeguard clarifying that for payment of compensation under Section 163-A, the claimant need not plead or establish wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

12. The Tribunal's Order rejecting the request for conversion on the ground proceeding on the footing that the FIR is not registered and that it is the burden cast on the claimant to prove that the owner/driver of the vehicle is guilty of rash and negligent driving, is in the teeth of the provisions of Section 163-A of the Motor Vehicles Act. Considering the object of the legislation and the beneficial

nature of the statute, there is no reason why the Claim Petition preferred by the claimant under Section 166 should not be permitted to be converted one under Section 163-A of the said M. V. Act.

13. Consequently, the Petition is allowed. The impugned Order is set aside. The Application below Exhibit-27 for amendment is allowed. Amendments to be carried out within two weeks from the date of uploading of the Order. No order as to Costs.

14. Learned Counsel for the Petitioner submits that the matter in all probabilities is likely to be settled with the Insurance Company. In such view of the matter, the Tribunal to consider placing of the Claim Petition before the next Lok Adalat.

M. S. KARNIK, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
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