



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 289 OF 2024

Vidarshana Prakash Gondane
Aged about 26 years, Occ. Business,
R/o. House No. 438/211, Ward No. 7,
Ram Nagar, Rajnandgaon, Chattisgarh.

. . . APPELLANT

// VERSUS //

1. HDFC ERGO General Insurance Co. Ltd.
Through its Branch Manager,
5th Floor, Shriram Tower, Sadar,
Nagpur.

2. Shyambaba Gulabchand Patle @
Ghanshyam Gulabchand Patle
@ Shyambaba Ghodiwale,
Age 42 years, Occ. Business,
R/o. Arihant Colony, Kudwa, Gondia.

3. Chaturlal Hasmatrai Lilwani,
Age Major, Occ. Business,
R/o. Kavar Ram Ward, Sindhi Colony,
Gondia.

4. Sanjay Fattuji Katre,
Aged 40 years, Occ. Driver,
R/o. Mata Chowk, Kudwa, Gondia.

. . . RESPONDENTS

Shri Lalit Limaye, Advocate for appellant.
Shri H. N. Verma, Advocate for respondent no. 1.

CORAM :- M. W. CHANDWANI, J.

DATED :- 16.10.2024

ORAL JUDGMENT :-

Heard.

2. Correctness of the impugned award dated 06.11.2023 passed in MACP No. 104/2017 by the MACT, Gondia is challenged in this appeal, whereby, claim of the appellant for compensation on account of a vehicular accident has been dismissed on the ground that the appellant failed to prove involvement of the Tata Variant vehicle bearing registration no. MH35-1658 and negligence of its driver.

3. The appellant was a pillion rider on the motor-cycle bearing registration no. MH31-BY-2835, which was being driven by her deceased father while proceeding from Jamunia towards Sub-District Hospital, Tiroda at night on 21.05.2016. The offending Tata Variant vehicle was proceeding towards Gondia without any indicator, therefore, the father of the petitioner could not notice the Tata Variant vehicle due to which the motor-cycle collided with the Tata Variant vehicle from behind. In the said accident, father of the appellant died, whereas, the appellant suffered fracture injury on muscle bone and fracture of nasal bone with B/L Maxilla fracture, Palatal split of right Malar Zygomatic Arch fracture. She was operated at Bhilai and suffered permanent disability. An offence came to be registered against the driver of the Tata Variant vehicle. The appellant filed a claim petition before the Tribunal under Section 163A of the Motor Vehicles

Act, 1988 (for short, “the Act of 1988”). The petition came to be dismissed on the ground that the appellant failed to prove negligence on the part of respondent no. 4 hence, she is not entitled for any compensation.

4. It is a matter of record that the application for compensation is filed under Section 163A of the Act of 1988, wherein the appellant/claimant is not required to prove negligence of the offending vehicle but the Tribunal lost sight of this legal position and erroneously dismissed the claim petition of the appellant. Therefore, the findings of the Tribunal are required to be set aside.

5. Ironically, the same Tribunal at Gondia has allowed Claim Petition No. 105/2017 filed by the dependent of deceased father of the appellant, who died in the very same accident, holding the driver of the Tata Variant vehicle negligent in driving the vehicle at the time of accident and awarded the compensation, wherein the Insurance Company/respondent nos. 1 was directed to pay the compensation to the dependents of the deceased and it may recover the same from the owner of the offending vehicle. Not only this, the respondents accepted the said award and did not challenge the said award. Rather, the award has been satisfied by respondent no. 1. Therefore, the findings of the Tribunal in the impugned award does not stand.

6. At this stage, the learned counsel for respondent no. 1 vehemently submitted that the appellant has herself pleaded that she was earning an amount of Rs.18,000/- per month i.e. Rs.2,16,000/- per annum, which is more than Rs.40,000/- mentioned in Schedule-II of the Act of 1988, which is the highest head of income to grant compensation under Section 163A of the Act of 1988.

7. The legal position is enunciated in the case of ***Deepal Girishbahi Soni Vs. United Insurance Co. Ltd., Baroda***¹, wherein in para 67, the Apex Court has held that proceedings under Section 163A of the Act of 1988 is a social security provision providing for a distinct scheme and only those whose annual income is upto Rs.40,000/- can take benefit thereof. All other claims are to be determined in terms of Chapter XII of the Act of 1988. Thus, I find substance in the argument of the learned counsel for respondent no. 1 that the application under Section 163A of the Act of 1988 filed by the appellant is not maintainable. However, it is to be noted that, by way of amendment in the year 2022, which came into force from 01.04.2022, Section 163A of the Act of 1988 has been deleted and consequently, the Schedule also does not remain a part of the Act of 1988. By the same amendment, Section 164 of the Act of 1988 is also amended, wherein the amount of compensation to the dependent/injured has been fixed

1 AIR 2004 SC 2107

in case where claimant/injured is unable to prove negligence on the part of offending vehicle which is, Rs.5,00,000/- in case of death and Rs.2,50,000/- in case of grievous injury.

8. In wake of deletion of Schedule-II, providing compensation under Section 163A of the Act of 1988 to the deceased/injured having annual income up to Rs.40,000/- and under Section 164 of Act of 1988, no cap of income has been introduced, therefore, legal position which appears from the reading of Section 164 of the Act of 1988 is that, any person can file a claim under Section 164 of the Act of 1988, irrespective of his/her income. The record depicts and the Tribunal also observed that the appellant suffered grievous injuries, therefore, she is entitled for fixed amount of compensation i.e. Rs.2,50,000/-

9. Now, the question arising in this appeal is whether the amendment will apply to pending claim petitions. To substantiate his statement, learned counsel for the appellant relied upon the case of ***Durgaram Vs. Arjunan and others***² decided by the Madras High Court. It is held that if the matter is to be adjudicated after passing of the amended Act, the benefit of the amended Act can be granted to pending applications. It is a settled law that provisions in respect of

compensation on account of vehicular accident is a beneficial legislation. The case in hand was decided on 06.11.2023 i.e. after coming into force of the new amended Section 164 of the Act of 1988. Therefore, I see no difficulty in coming to the conclusion that the claim petition of the appellant is maintainable under Section 164 of the Act of 1988 irrespective of the fact that she was earning Rs.18,000/- per month.

10. It is pertinent to note here that the Claim Petition No. 105/2017 arising out of the same accident, which came to be allowed with a direction to pay the compensation to the dependents of the deceased-father of the appellants and the insurer may recover from the owner of the offending vehicle on account of breach of the policy. However, in the present case, there is no findings with this regard therefore, the matter is required to be remanded back to the Tribunal for deciding the petition afresh. Hence, I proceed to pass the following order:-

- i) The appeal is partly allowed.
- ii) Consequently, the impugned award dated 06.11.2023 passed in MACP No. 104/2017 by the MACT, Gondia is quashed and set aside.

iii) The matter is remanded back to the Tribunal for deciding the petition afresh in view of the observations made herein above.

iv) The Tribunal shall decided the petition by giving opportunity of hearing to all the parties.

(M. W. CHANDWANI, J.)