IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No.714 of 2021

HDFC ERGO General Insurance Company,
4th Floor, Raja Narayanan Towers,
70, Race Course Road, Coimbatore.

... Appellant

Vs.

1. V.Sureshkumar
2. M.Marimuthu

... Respondents

Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, to set aside the decreetal order and award dated 17.10.2019 passed in MCOP. No.2096 of 2016 by the learned Motor Accidents Claims Tribunal (Special Subordinate Judge Court-2) Salem.

For Appellant : M/s.N.Somasundaar

For Respondents : Mr.E.Kannadasan

JUDGMENT

The appellant Insurance Company has filed the present appeal seeking to quash the decreetal order and award dated 17.10.2019 passed in MCOP. No.2096 of 2016 by the learned Motor Accidents Claims Tribunal (Special Subordinate Judge Court-2) Salem.

2. The case of the claimant is that on 12.07.2016 at about 10.00 a.m. when the appellant was riding his motor cycle bearing Reg. No.TN 36 AX 8922 in Pollalchi – Coimbatore Main Road, at that time, the second respondent was riding his TVS XL and suddenly crossed the main road, dashed against the first respondent, due to which, he sustained injuries and admitted in the hospital. It is under these circumstances, the claim petition came to be filed before the Tribunal under Section 163(A) of the MV Act seeking for payment of compensation for a sum of Rs.8,60,000/-

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, the Tribunal has awarded Rs.2,17,186/- as compensation by fixing the liability as against the insurance company.

4. Questioning the quantum of compensation and negligence awarded by the Tribunal, the appellant insurance company has filed the

present appeal.

5. The learned counsel for the appellant submitted that the Tribunal ought to have disallowed the claim petition filed by the claimant himself was the tort-feasor and the first respondent is not entitled to be compensated by the appellant of the other two wheeler bearing Reg. No.TN 41 AC 8832. Ex-P1 FIR dated 12.07.2016 and Ex.X1 Charge sheet filed by Kinathukadavu Police Station in Cr. No.286/16 as against the first respondent/claimant. Further, the claimant has filed a claim petition under Section 163(A) of MV Act and the same is not maintainable when the claimant's annual income is beyond Rs.40,000/- Further, the Tribunal has applied multiplier method contrary to the law laid down on the decision rendered by the Hon'ble Apex Court in the case of Rajkumar Vs. Ajaykumar reported in 2010 (2) TNMAC 581. Without considering the entire fact, the Tribunal has passed the award, which is unsustainable and the same is liable to be quashed.

6. The learned legal aid counsel for the first respondent submitted that before the Tribunal, the claimant has claimed that he was earning a

sum of Rs.20,000/- per month. Even then, the Trial Court has fixed a sum of Rs.40,000/- per annum as notional income. Since the injuries sustained by the first respondent is scheduled injuries in terms of the Workmen's Compensation Act, the Tribunal adopted multiplier method and awarded compensation in respect of disability, which is just and proper and the same needs no interference.

7. Heard the learned counsel for appellant and the learned counsel for the first respondent. This Court has carefully considered the submissions made on either side and the materials available on record.

8. This Court also carefully went through the award passed by the Tribunal.

9. The main ground that was urged by the learned counsel for appellant was that the Tribunal should have been fixed the compensation under own fault liability as there is no fault on the part of the appellant. Further, the FIR and charge sheet has been filed as against the first respondent claimant.

10. Initially the first respondent/claimant filed a claim petition under Section 166 of the MV Act. Subsequently, they filed amendment petition for amending the claim petition under Section 163(A) of the MV Act and the same was allowed. As per the second schedule of the Motor Vehicle Act, the Tribunal has fixed the maximum income at Rs.40,000/- per annum, in which, 18 multiplier has been adopted.

11. The issue arises in the present case is that whether the first respondent is entitled to get Rs.40,000/- per annum as notional income.

12. The very same issue came up for consideration before the Apex Court in the case of *Deeal Girisbbhai Soni Vs. United India Insurance Company Ltd., reported in 2004 (5) SCC 385*, the relevant paragraphs are as follows:

Chapter XI was, thus, enacted for grant of immediate relief to a section of people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto; compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in column Nos. 2 to 6 thereof leaves no manner of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

"The submission of learned counsel appearing on behalf of the appellants to the effect that Sections 140 and 163-

A provide for similar scheme cannot be accepted for more than one reason. Payment of the amount in terms of Section 140 of the Act is ad hoc in nature. A claim made thereunder, as has been noticed hereinbefore, is in addition to any other claim which may be made under any other law for the time being in force. Section 163-A of the Act does not contain any such provision.

Section 163-A of the Act is interlinked with several sections of Chapters XI and XII thereof. Section 140 imposes a liability upon the owner of the vehicle to pay compensation where death or permanent disablement of any person has resulted from accident arising out of the use of a motor vehicle. By reason of the said provision a fixed sum is to be paid.

Sub-Section (4) of Section 140 provides that the claim for compensation under sub-section (1) thereof shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. Sub-section (5) of Section 140 of the Act categorically provides that *the obligation of the owner of the vehicle shall not be in derogation of any statutory law cast upon the owner of the vehicle to pay compensation under any other law for the time being in force subject, however, to the condition as has been laid down in the proviso appended thereto that the amount of such compensation to be given under any other law should be reduced from the amount of compensation payable thereunder or Section 163-A. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-Section (1) of Section 163-A contains non-obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is 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. Sub-Section (2) of Section 163-A is in pari materia with Sub-Section (3) of Section 140 of the Act.*

Section 163-A does not contain any provision identical to Sub-Section (5) of Section 140 which is also indicative of the fact that whereas in terms of the latter, the liability of the owner of the vehicle to give compensation or relief under any other law for the time being in force continues subject of course to the effect that the amount paid thereunder *shall be reduced from the amount of compensation payable under the said Section or Section 163-A. By reason of the Section 163-A, therefore, the compensation is required to be determined on the basis of a structured formula whereas in terms of Section 140 only a fixed amount is to be given. A provision of law providing for compensation is presumed to be final in nature unless a contra indication therefor is found to be in the statute either expressly or by necessary implication. While granting compensation, the Tribunal is required to adjudicate upon the disputed question as regard age and income of the deceased or the victim, as the case may be. Unlike Section 140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding under Section 163-A of the Act.*

Decisions rendered by this Court are galore where computation as regard the amount of compensation has been related to multiplier method involving ascertainment of loss of dependency and capitalizing the same by appropriate multiplier. (See General Manager, Kerala State Road Transport Corporation, Trivandurm Vs. Mrs. Susamma Thomas and others, (1994) 2 SCC 176). The structured formula provided for in the Second Schedule also provides for similar concept as regard determination of the amount of compensation.

Apart from the fact that compensation is to be paid by applying multiplier method under the Second Schedule other relevant factors, namely, reduction of one-third in consideration of the expenses which the victim would have incurred towards maintaining himself, general damages in case of death as also in the case of injuries and disabilities as also the disability in non-fatal accidents, a notional income for compensation to those who had no income prior to accident are provided for, are required to be considered which is also a clear pointer to the fact that thereby the Parliament intended to provide for a final amount of compensation and not an interim one.

The scheme envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000/- or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society.

It may be true that Section 163-B provides for an option to a claimant to either go for a claim under Section 140 or Section 163-A of the Act, as the case may be, but the same was inserted 'ex-abundanti cautela' so as to remove any misconception in the mind of the parties to the lis having regard to the fact that both relate to the claim on the basis of no-fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims either under Section 163-A or Section 166 does not arise. If the submission of the learned counsel is accepted the same would lead to an incongruity.

Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. (See Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, [AIR 1985 SC 278 : (1985) 1 SCC 218].

The decision of this Court in Kunal Singh Vs. Union of India and Another [(2003) 4 SCC 524] relied upon by Mr. Banerjee cannot be said to have any application whatsoever in the instant case as therein this Court while considering the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 held that the language thereof is plain and certain statutory obligation on the employer was cast to protect an employee acquiring disability during service and only in that situation, it was observed:

"9...In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act..."

It is also not a case where an exception or exclusion clause in a beneficial legislation has been provided for and, therefore, the decision of this Court in State of Tripura and Another Vs. Roopchand Das and Others [(2003) 1 SCC 421] cannot also be said to have any application.

It is now well-settled that for the purpose of interpretation of statute, same is to be read in its entirety. The purport and object of the Act must be given its full effect. [See

High Court of Gujarat & Anr. Vs. Gujarat Kishan Mazdoor Panchayat & Ors. [JT 2003 (3) SC 50], Indian Handicrafts Emporium and Others vs. Union of India and Others [(2003) 7 SCC 589], Ameer Trading Corporation Ltd. vs. Shapoorji Data Processing Ltd. [JT 2003 (9) SC 109 = 2003 (9) SCALE 713 and Ashok Leyland Vs. State of Tamil Nadu and Anr. [2004 (1) SCALE 224]. The object underlying the statute is required to be given effect to by applying the principles of purposive construction.

We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.

In Kodala (supra) the contention of the claimant that right to get compensation is in addition to the no-fault liability was, thus, rightly rejected. In agreement with Kodala (supra) we are also of the opinion that unlike Sections 140 and 141 of the Act the Parliament did not want to provide additional compensation in terms of Section 163-A of the Act.

The question may be considered from different angles. As for example, if in the proceedings under Section 166 of the Act, after obtaining compensation under Section 163-A, the *awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefor as a consequence whereto the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, would it be at liberty to award compensation in terms of Section 163-A thereof.*

The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under Section 163-A of the Act is interim in nature.

It is, therefore, evident that whenever the Parliament intended to provide for adjustment or refund of the compensation payable on the basis of no-fault liability, as for example, Sections 140 and 161 in case of hit and run motor accident, from the amount of compensation payable under the award on the basis of fault liability under Section 168 of the Act, the same has expressly been provided for and having regard to the fact that no such procedure for refund or *adjustment of compensation has been provided for in relation to the proceedings under Section 163-A of the Act, it must be held that the scheme of the provisions under Sections 163-A and 166 are distinct and separate in nature.*

It is also not of much relevance that in terms of Section 140 of the Act, the owner of the vehicle has been fastened with the statutory liability and in Section 163-A thereof both the owner as also his authorised insurer has been made so liable.

In Sub-Section (5) of Section 140 of the Act the expression "also" has been used which is indicative of the fact that the owner of the vehicle would be additionally liable to pay compensation under any other law for the time being in force. Proviso appended to Sub-Section (5) of Section 140 states that the amount of compensation payable under any other law for the time being in force is to be reduced from the amount of the compensation payable under Sub-Section (2) thereof or under Section 163-A of the Act. Right to claim compensation under Section 140, having regard to the provisions contained in Section 141 is in addition to any other right to claim compensation on the principle of fault liability. Such a provision does not exist in Section 163-A. If no amount is payable under the fault liability or the compensation which may be received from any other law, no refund of the amount received by the claimant under Section 140 is postulated in the Scheme. Section 163-A, on the other hand, nowhere provides *that the payment of compensation of no-fault liability in terms of the structured formula is in addition to the liability to pay compensation in accordance with the right to get compensation on the principle of fault liability. It is also not correct to contend that the expression "any other law for the time being in force" used in Section 140(5) would include any other provisions of the Motor Vehicles Act. Had the intention of the Parliament been to include the other provisions of Motor Vehicles Act within the meaning of the expression "any other law for the time being in force", it could have said so expressly. The very fact that the Parliament has chosen to use the expression "any other law", the same, in our considered opinion, would mean a law other than the provisions of the Motor Vehicles Act. The proviso appended to Sub-Section (5) of Section 140 of the Act is required to be given a purposive meaning.*

It is not in dispute that the claim of compensation irrespective of the death or bodily injury may arise under other statutes as, for example, Workmen's Compensation Act, Factories Act, Fatal Accidents Act and other acts governing various industries including hazardous industries.

In the event, the motor vehicle in question is insured, ultimately the liability would also be fastened upon the insurer having regard to the provision laid down in Chapter XII of the Act. We may also notice that Rule 211(1) of Gujarat Motor

Vehicle Rules provides for the application for compensation in terms of Sub-Section (1) of Section 166 of the Act. A claim application is to be filed in Form Comp. A. Rule 231 thereof provides for an application for compensation in respect of liability without fault and for the said purpose the claim application prescribed therefor is to be filed in Form No. CWF. The very fact that different forms had been prescribed as regard determination of the final compensation is also suggestive of the fact that both proceedings are meant to be final in nature. Column No. 10 in Form Comp. A requires the claimant to give brief particulars of the accident which would include the nature and extent of fault on the part of the driver of the vehicle, but no such column is provided for in Form CWF. Subject to the said distinction, all other particulars required to be furnished are almost identical.

We may notice that Section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, "under the provision of the Act", "provisions of this Act", "under any other provisions of this Act" or "any other law or otherwise". In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in *force" has been used, which goes to show that the Parliament intended to insert a non- obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of.*

Conclusion :

We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annual shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

However, in this case, we may notice that the parties have proceeded to file two applications - one, under Section 163-A and another under Section 166 of the Act. Both have been entertained. Both the Tribunal as also the High Court have proceeded on the basis that the amount of compensation under Section 163-A is by way of an interim award and the *same would not preclude the claimants to proceed with his claim made in terms of Section 166 of the Act. It is submitted at the Bar that the appellants have withdrawn 50% of the amount and rest of the amount has been invested. The appellants have lost both of their parents in the accident. Only one of the appellants at the relevant time was a major. It appears that 70% of the amount permitted to be withdrawn has been deposited in the Fixed Deposit. We agree with the submission of Mr. Banerjee that the claim of the appellants made under Section 163-A be treated to be one under Section 140 of the Act and upon adjusting the amounts provided for thereunder, the appellants may refund the rest thereof to the insurer.*

Keeping in view of the limited questions posed before us, in our opinion, it is not necessary to go into the purported discrepancies existing in the Second Schedule of the Act.

We, for the reasons aforementioned, do not find any merit in the review applications which are dismissed.

So far as Civil Appeal Nos. 3126/2002 and 3127/2002 are concerned, we in exercise of our jurisdiction under Article 142 of the Constitution direct that the claim applications of the appellants under Section 163-A of the Act be treated to be applications under Section 140 thereof. The amount invested by the Tribunal may be allowed to be withdrawn by the *respondent - Insurance Company. The appellants shall refund the excess amount withdrawn by them after adjusting the amount payable in terms of Section 140 of the Act and the interest which would have accrued thereon shall be adjusted towards the compensation received by the claimant within four weeks from the date of communication of this order whereafter, the Motor Vehicles Accident Claims Tribunal shall proceed to determine their claim petitions filed under Section 166 of the Act in accordance with law. This order shall not be treated as a precedent.*

Section 163-A was introduced in the year 1994. The executive authority of the Central Government has the requisite jurisdiction to amend the Second Schedule from time to time. Having regard to the inflation and fall in the rate of bank interest; it is desirable that the Central Government bestows serious consideration to this aspect of the matter.

Subject to the aforementioned directions, the appeals and the review petitions are dismissed. No Costs."

13. After careful consideration of the decisions cited, it is clear that as per the 163 A of MV Act, the Tribunal fixed a sum of Rs.40,000/- as notional income to the claimant is unsustainable. The Tribunal does not have the discretionary power which has to be set aside. In respect of injury sustained by the claimant must be schedule injury under Workmen compensation Act. Hence, the first respondent is not entitled to get compensation under Section 163 A of the MV Act.

14. In the light of the above discussion, this appeal is allowed and the impugned order dated 17.10.2019 in MCOP. No.2096 of 2016 is hereby quashed and set aside. No costs.

09.12.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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M.DHANDAPANI.,J
rli

To,

Motor Accident Claims Tribunal, Chief Judge,

(Special Subordinate Judge -II) Salem.

Civil Miscellaneous Appeal No.714 of 2021

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