

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 18th May, 2012
Pronounced on: 2nd July, 2012

+ **FAO 398/2000**

PREM DEVI & ORS.

..... Appellants

Through

Mr. Alok Singh, Advocate

versus

JAGDISH KUMAR & ORS.

..... Respondents

Through

Mr. Pankaj Seth, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appeal is directed against the judgment dated 18.07.2000 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a Claim Petition preferred under Section 166 of the Motor Vehicles Act, 1988 (the Act) was dismissed on the ground that the negligence on the part of the First Respondent, driver of the bus No.DEP-7727 was not established.
2. At the time of filing of the Appeal, a submission was made by the learned counsel for the Appellants that they (the Appellants) would move an application for additional evidence so as to examine the Investigating Officer (IO) and to produce some documents to show the circumstantial evidence regarding the negligence of the driver (the First Respondent). No such application was moved. At the time of hearing of the Appeal, a

statement was made by the learned counsel for the Appellants that the Appeal may be converted to one under Section 163-A of the Act and the compensation may be awarded on the basis of the structured formula.

3. The prayer is opposed on behalf of the Third Respondent, the National Insurance Company Limited. Reliance is placed on Paras 58 to 60 of the report in *Deepal Girishbhai Soni & Ors. v. United India Insurance Co. Limited, Baroda, AIR 2004 SC 2107* to contend that conversion of a Claim Petition from Section 166 of the Act to one under Section 163-A of the Act is not permissible once the Petition under section 166 is decided. Paras 58 to 60 of the report in *Deepal Girishbhai Soni (supra)* are extracted hereunder:-

“58. In Oriental Insurance Company Ltd. v. Hansrajbhai V. Kodala (2001) 5 SCC 175 the contention of the claimant that the 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 Parliament did not want to provide additional compensation in terms of Section 163-A of the Act.

59. 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 of 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?

60. 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.”

4. In *Deepal Girishbhai Soni (supra)* the facts were that the Appellants filed two Claim Petitions under Sections 163-A and 166 of the Act claiming compensation of ₹4,97,800/- for the death of their mother Ms. Prabhaben and a sum of ₹17,30,900/- for the death of their father Shri Girishbhai Soni. On the basis of the proceedings under Section 163-A an interim compensation of ₹4,20,500/- and ₹11,74,500/- respectively was awarded. The Respondent Insurance Company being aggrieved by the order, preferred Appeals before the High Court of Gujarat at Ahmedabad. The High Court reduced the quantum of compensation in view of the cap of an annual income of ₹40,000/- under Section 163-A of the Act. The question before the Supreme Court was whether the proceeding under Section 163-A of the Act is in the nature of interim relief or final relief. The Supreme Court traced the history of enactment of Section 163-A, analyzed the provision of Section 140, 163-A and 166 in

detail and approved the decision of the two Judge Bench in *Oriental Insurance Company Ltd. v. Hansrajbhai V. Kodala (2001) 5 SCC 175* and held that the determination of the compensation under Section 163-A of the Act is in the nature of a final determination of the compensation. The Claimant is not entitled to simultaneously move an application under Section 163-A and 166 of the Act. The observation of the Supreme Court in Para 59 of the report in *Deepal Girishbhai Soni (supra)* at best can be construed to have laid down that the Court cannot *suo moto* convert the petition under Section 166 of the Act to award compensation under Section 163-A of the Act where the negligence is not proved.

5. It is well settled that the Appeal is in continuation of the Suit. (*Bay Berry Apartments (P) Ltd. & Anr. v. Shobha & Ors., (2006) 13 SCC 737* and *Rachakonda Narayana v. Ponthala Parvathamma & Anr. (2001) 8 SCC 173*).
6. The Claimant who impugns a judgment of the Claims Tribunal, which is passed on a Petition under Section 166 of the Act, thus, cannot be deprived of his right to amend the petition from one under Section 166 of the Act to under Section 163-A of the Act in appropriate cases.
7. It is well settled that the Petitions under Section 163-A of the Act and 166 of the Act cannot be filed simultaneously and even in a Petition under Section 166 of the Act, an interim relief under Section 163-A of the Act cannot be claimed. (Per:

Deepal Girishbhai Soni & Ors. v. United India Insurance Co. Limited, Baroda, AIR 2004 SC 2107).

8. The question would be whether on dismissal of a Petition under Section 166 of the Act, the Claimant/Claimants would be debarred from moving an application under Section 163-A of the Act.
9. The question can be analysed from a different angle. If a Petition under Section 166 of the Act is dismissed for want of proof of negligence on the part of the alleged tortfeasor, would a subsequent petition under Section 163-A on the same cause of action be barred. Admittedly, in the subsequent petition under Section 163-A of the Act, the Claimant would not be required to prove and plead the negligence. The subsequent petition would not be barred under Order II Rule 2 CPC as the claim under Section 163-A of the Act was not permissible in the earlier petition. The finding in the earlier petition would also not be *res judicata* against the Claimant, unless a finding is given by the Court that the vehicle alleged to be involved in the accident, was not involved in the accident. Thus, when there is no prohibition or embargo on filing a petition under Section 163-A after dismissal of a Petition under Section 166 of the Act, a victim cannot be debarred from amending a Petition under Section 166 to one under Section 163-A of the Act.
10. The question of conversion of a Petition under Section 163-A of

the Act into one under Section 166 of the Act came up before the Bombay High Court (Aurangabad Bench) in *New India Assurance Company Limited v. Ashabai Kalyan Kothi & Ors.* 2009 ACJ 163, where it was held as under:-

*“15. The Tribunal as well as this Court always has a power to allow the conversion of a claim petition under Section 163-A into a claim petition under Section 166 of the said Act. The procedure is always a handmaid of justice. We are dealing with a beneficial legislation which provides for payment of compensation to the legal representatives of the victims of an accident involving a motor vehicle. The power of the Tribunal or this Court to allow conversion of the claim petition is discretionary. While exercising the discretion of allowing conversion, no doubt, the conduct of the claimants will be relevant. In a given cases, such as the case before the Division Bench in the case of *New India Assurance Company Limited v. Rukhminibai Ashok Gore*, FA No.1349 of 2004; decided on 2.3.2007, the Court can refuse to exercise the discretion. In the present case, the conduct of the claimants is not such that the discretion should not be exercised in their favour. The claim petition was filed through an Advocate after setting out a specific case that income of the deceased was Rs.4000/- p.m. The said stand was reiterated by the first respondent No.1 in the Affidavit in lieu of examination-in-chief. It cannot be said that the action of invoking Section 163-A was deliberate. The claimants have obviously acted as per legal advice. In my view this is a case where the claim petition under Section 163-A should be allowed to be converted into a petition under Section 166 of the said Act.”*

11. The learned Single Judge of this Court in *Rukmani Devi v. New India Assurance Company Limited & Anr.*, 2009 ACJ 2202 held that the provision for award of compensation under the Motor

Vehicles Act is a beneficial piece of legislation and, therefore, an endeavour has to be made to see as to how best the intention of legislation can be achieved so as to safeguard the interest of victims of the accident. In para 14 it was held as under:-

“14. Another question which is of the vital importance is whether the petition filed under Section 166 of the Motor Vehicles Act or visa-versa can be allowed to be converted into a petition under Section 163-A of the Motor Vehicles Act and if the answer is yes, then what should be the stage for allowing such a petition. There cannot be any dispute that Motor Vehicles Act is a beneficial piece of legislation and therefore, endeavour has to be as to how best the intention of the legislation can be achieved so as to safeguard the interest of the victims of the accident rather than defeating the same. The statute has to be construed according to the intent of the makers and it is the duty of the courts to interpret the statute to see that true intention of legislature is achieved. Taking a purposive interpretation of Section 163-A of the Motor Vehicles Act the clear intendment of the legislation was to come to the rescue of all those who in the absence of any evidence are not in a position to file a claim petition under Section 166 of the Motor Vehicles Act where death of the victim or permanent disablement of the victim is required to be proved by establishing the factum of negligence involving the offending vehicle resulting in to causing the accident but under Section 163-A, the requirement of proving the negligence has been dispensed with.”

12. In *State of Orissa v. Sudhansu Sekhar Misra*, AIR 1968 SC 4647, the Constitution Bench of the Supreme Court held that a decision is only an authority for what it actually decides and not

every observation found therein. Para 16 of the report is extracted hereunder:-

16. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury L.C. said in Quinn v. Leathem [1901] A.C. 495:-

"Now before discussing the case of Allen v. Flood [1898] A.C. 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

13. Therefore, what was decided by the Supreme Court in *Deepal Girishbhai Soni (supra)* was that remedy under Section 163-A and 166 of the Act are not available simultaneously and that a Petition under Section 163-A is not in the nature of an interim relief. It was also laid down that once the compensation is

awarded under Section 163-A of the Act, a petition under Section 166 of the Act would be barred.

14. In my view, on the basis of Supreme Court report in *Girishabhai Soni(supra)* it can be said that the Claims Tribunal cannot *suo moto* convert a petition under Section 166 to the one under Section 163-A of the Act if negligence is not proved. *Girishabhai Soni(supra)* does not foreclose the right of a party to convert a Petition under Section 166 to under Section 163-A in an Appeal if a Claimant otherwise satisfies the Court that the amendment should be allowed.
15. In a later decision of the Supreme Court in *Oriental Insurance Company Ltd. v. Dhanbai Kanji Gadhvi & Ors., (2011) 11 SCC 513*, the Supreme Court relied on *Deepal Girishbhai Soni (supra)* and held that where the Claimants have obtained compensation finally determined under Section 163-A of the Act they are precluded from proceeding further with a Petition under Section 166 of the Act. Para 14 of the report is extracted hereunder:-

“14. Applying the principle laid down in Deepal Soni (supra) to the facts of the case, it will have to be held that the Respondents having obtained compensation, finally determined under Section 163A of the Act are precluded from proceeding further with the petition filed under Section 166 of the Act. The exception mentioned by the learned Single Judge in the impugned judgment that a petition under Section 166 of the Act can be proceeded further if it is filed before passing of an award passed under Section 163A of the Act is not supported by the

scheme envisaged under Sections 163A and 166 of the Act and is contrary to the principle of law laid down by this Court in Deepal Soni's case. Therefore, this Court is of the opinion that the impugned judgment of the High Court upholding the order passed by the Tribunal to permit the Respondents to proceed further with the petition filed under Section 166 of the Act cannot be sustained and will have to be set aside.”

16. In view of above, I accede to the request of the Appellants to convert the Petition under Section 166 of the Act to the one under Section 163-A of the Act.
17. For claiming compensation under Section 163-A of the Act from the owner/insurer only involvement of the vehicle in an accident is required to be proved.
18. A case FIR No.501/95 dated 15.09.1995 P.S. Seema Puri under Section 279/304-A IPC was registered against the First Respondent. In the written statement Respondents No.1 and 2 denied the involvement of the vehicle. They, however, did not come forward to give any reason as to why Jagdish Kumar, the First Respondent was involved and a criminal case was registered against him. Jagdish Kumar did not enter the witness box to rebut the involvement of the vehicle. In the circumstances, it is established that the accident was caused with bus No.DEF-7727. Thus its owner (the Second Respondent and Insurer (the Third Respondent) are liable to pay the compensation under Section 163-A of the Act.

19. Coming to the quantum of compensation, in the Claim Petition, the Appellants claimed deceased Sant Lal's income to be ₹1969/- per month. During evidence, the Appellants tried to build a case that the deceased was engaged in typing and was earning ₹3,000/- to ₹4,000/- per month. A Salary Certificate (Mark A) from M/s. Suri Auto Pvt. Ltd. showing the deceased's salary to be ₹1969/- per month was also placed on record, though not proved. The deceased was a Matriculate. The minimum wages of a Matriculate at the relevant time were ₹1969/- per month. In the circumstances, I would accept the deceased's income to be ₹1969/- per month as is claimed and set out in the Salary Certificate Mark A.
20. In a petition under Section 163-A of the Act, compensation has to be awarded as per the structured formula (*Deepal Girishbhai Soni v. United India Insurance Company Limited*, (2004) 5 SCC 385; *Oriental Insurance Company Limited v. Meena Variyal* (2007) 5 SCC 428; *Oriental Insurance Company v. Hansrajbhai V. Kodala*, (2001) 5 SCC 175; and *New India Assurance Co. Ltd. v. Pitamber & Ors.*, MAC APP.304/2009 decided by this Court on 23.01.2012).
21. The deceased was aged a little less than 40 years on the date of the accident. The appropriate multiplier as per Schedule II is '16'.

22. The loss of dependency thus comes to ₹2,52,032/- (1969/- x 12 x 2/3 x 16).
23. In addition, the Appellants would be entitled to compensation of ₹9,500/- i.e. (₹2,500/- towards loss to estate, ₹5,000/- towards loss of consortium and ₹2,000/- towards funeral expenses).
24. The compensation of ₹2,61,532/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till the date of its deposit with the UCO Bank, Delhi High Court, New Delhi in the name of the Appellants.
25. The compensation shall be deposited by the Insurance Company within eight weeks and shall be paid to the Appellants in equal shares.
26. Since this accident took place in the year 1995, 50% of the compensation awarded shall be released immediately on deposit. Rest 50% shall be held in fixed deposit for a period of two years.
27. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

JULY 02, 2012

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