

**SUPREME COURT OF INDIA**

United India Insurance Company Ltd.

Vs.

Sunil Kumar

C.A.No.9694 of 2013

(K.S.Radhakrishnan and A.K.Sikri, JJ.)

29.10.2013

**ORDER**

**K.S.Radhakrishnan, J.**

1. Leave granted.

2. Heard learned counsel for the parties. Learned counsel appearing for the Respondent submitted that in view of the judgment of this Court in *United India Insurance Company Ltd. vs. Shila Datta and others*<sup>1</sup>, this matter will have to be referred to a larger Bench, especially with regard to points no.(iii) to (v) referred to in the above-mentioned judgment, which are in conflict with the judgment of this Court in *National Insurance Co. Ltd. vs. Nicolletta Rohtagi*<sup>2</sup>. The impugned order, we notice, is based on the principle laid down in Nicolletta Rohtagis case (supra), the correctness of which is doubted in Shila Dattas case (supra). In the present case, the claim petition was filed by the Respondent under Section 163-A of the Motor Vehicles Act, 1988, claiming compensation for the injury sustained by him in a road accident occurred on 20.11.2006. The Tribunal after recording the evidence and after hearing the parties, vide its order dated 16.8.2011 passed an award for a sum of Rs.3,50,000/- along with interest at the rate of 7% per annum from the date of the filing of the petition till realization. Aggrieved by the same, the Insurance Company filed an appeal before the High Court of Delhi. The High Court placing reliance on the judgment in Nicolletta Rohtagis case (supra) dismissed the appeal since the Insurance Company failed to comply with Section 170 of the Motor Vehicles Act and the Insurance Company has come up with this appeal. Learned counsel for the Respondent

contended that the question whether permission is required or not under Section 170 stands referred to a larger Bench.

3. We have yet another issue to be examined. As already indicated that in the instant case, claim petition was filed under Section 163-A of the Motor Vehicles Act, which was resisted by the Insurance Company contending that the same is not maintainable since the injured himself was driving the vehicle and that no disability certificate was produced. A Two-Judge Bench of this Court in *National Insurance Company Limited vs. Sinitha and others*<sup>3</sup>, examined the scope of Section 163-A of the Motor Vehicles Act and took the view that Section 163-A of the Act has been founded under "fault liability principle". Referring to another judgment of a co-equal Bench in *Oriental Insurance Co. Ltd. vs. Hansrajbhai V. Kodala*<sup>4</sup>, the learned Judges took the view that while determining whether Section 163-A of the Motor Vehicles Act, 1988 is governed by the fault or the no-fault liability principle, Sections 140(3) and (4) are relevant. The Bench noticed under Section 140(3), the burden of pleading and establishing whether or not wrongful act, neglect or default was committed by the person (for or on whose behalf) compensation is claimed under Section 140, would not rest on the shoulders of the claimant. The Court also noticed that Section 140(4) of the Motor Vehicles Act further reveals that a claim for compensation under Section 140 of the Act cannot be defeated because of any of the fault grounds (wrongful act, neglect or default).

4. The Division Bench in Sinitha's case (supra), then took the view that under Section 140 of the Act so also under Section 163-A of the Act, it is not essential for a claimant seeking compensation to plead or establish that the accident out of which the claim arises suffers from wrongful act or neglect or default of the offending vehicle. The Bench then expressed the view that the legislature designedly included the negative clause through Section 140(4) of the Motor Vehicles Act, but consciously omitted the same in the scheme of Section 163-A of the Act intentionally and purposefully. The Court also concluded, on a conjoint reading of Sections 140 and 163-A, the legislative intent is clear, namely, that a claim for compensation raised under Section 163-A of the Act need not be based on pleadings or proof at the hands of the claimants showing absence of wrongful act, being neglect or default, but the Bench concluded that it is not sufficient to determine whether the provision falls under the fault liability principle. The Court held that to decide whether the provision is governed by the fault liability principle, the converse has to be established i.e. whether a claim raised there under can be defeated by the party concerned (the owner or the insurance company) by pleading and proving wrongful act, neglect or default. Interpreting Section 163-A of the Act, the Judges in Sinitha's case (supra) held that it is open to the owner or the insurance company, as the case may be, to defeat a claim under Section 163-A of the Act by pleading and establishing through cogent evidence a fault ground (wrongful act or neglect or default). The Court concluded that Section 163 of the Act is founded under the fault liability principle.

5. We find difficult to accept the reasoning expressed by the Two-Judge Bench in Sinitha's case (supra). In our view, the principle laid down in Hansrajbhai V. Kodala's case

(supra) has not been properly appreciated or applied by the Bench. In fact, another Division Bench of this Court vide its order dated 19.4.2002 had doubted the correctness of the judgment in *Hansrajbhai V. Kodala s case* (supra) and referred the matter to a Three-Judge Bench to examine the question whether claimant could pursue the remedies simultaneously under Sections 166 and 163-A of the Act. The Three-Judge Bench of this Court in *Deepal Girishbhai Soni & Ors. vs. United India Insurance Co. Ltd., Baroda*<sup>5</sup>, made a detailed analysis of the scope of Sections 166 and 163-A and held that the 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 there under simultaneously. The Court also extensively examined the scope of Section 163-A and held that Section 163-A was introduced in the Act by way of a social security scheme and is a Code by itself. The Court also held that Section 140 of the Act deals with interim compensation but by inserting Section 163-A, the Parliament intended to provide for making of an award consisting of a pre-determined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The Court noticed that Section 163- A was inserted making a deviation from the common law liability under the Law of Torts and also in derogation of the provisions of the Fatal Accidents Act. The Three-Judge Bench also held that Section 163-A has an overriding effect and provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A contains a non-obstante clause, in terms whereof the owner of the motor vehicle or the authorized 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. The Court also held that the scheme of the provisions of Section 163-A and Section 166 are distinct and separate in nature. 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. The above-mentioned Three-Judge Bench judgment was not placed before the learned Judges who decided the *Sinitha's case* (supra).

6. We find, both Sections 140 and 163-A deal with the case of death and permanent disablement. The expression "permanent disablement" has been defined under Section 142, so far as Section 140 is concerned. So far as Section 163-A is concerned, the expression "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923. Both Sections 140 and 163-A deal with cases of no fault liability. In order to prefer a claim under Section 140(2), claimant need not plead or establish that death or permanent disablement, in respect of which claim has been made, was due to any wrongful act, neglect or default of the deceased or the disabled person. Similarly, under Section 163-A also, claimant shall not be required to plead or establish that death or permanent disablement, in respect of which claim has been made, was due to any wrongful act, neglect or default of the deceased or the injured, as the case may be. In

other words, an enquiry as to who is at fault is foreign to the determination of a claim under Section 140 as well as Section 163-A. Claim under Section 140 as well as Section 163-A shall not be defeated by the Insurance Company or the owner of the vehicle, as the case may be, by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement claim has been made. So also, the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of share of such person in the responsibility for his death or permanent disablement.

7. We find, in Sinitha's case (*supra*), one of the factors which weighed with the learned Judges was the absence of a similar provision like sub-section (4) of Section 140 in Section 163-A which, according to the learned Judges, has been intentionally and purposefully done by the legislature. We find it difficult to accept that view. We are of the view that if such an interpretation is given, the very purpose and object of Section 163-A would be defeated and render the provision otiose and a claimant would prefer to make a claim under Section 140, rather than under Section 163-A of the Act by exercising option under Section 163-B of the Act. Because, if a claim under Section 140, is raised because of Section 140(4), such a claim would not be defeated by the owner of the vehicle or the insurance company, as the case may be, and the claimant may get a fixed sum prescribed under Section 140(2). Sub-section (4) of Section 140 has been introduced by the legislature since claim under Section 140 would be followed by Section 166. So far as Section 163-A is concerned, claim is restricted on the basis of pre-determined formula, unlike in the case of application under Section 166.

8. We are, therefore, of the view that liability to make compensation under Section 163-A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry under Section 163-A. Section 163-A does not make any provision for apportionment of the liability. If the owner of the vehicle or the insurance company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or claimant, naturally it would defeat the very object and purpose of Section 163-A of the Act. Legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or permanent disablement occurred during the course of the user of the vehicle and the vehicle is insured, the insurance company or the owner, as the case may be, shall be liable to pay the compensation, which is a statutory obligation.

9. We, therefore, find ourselves unable to agree with the reasoning of the Two-Judge Bench in Sinitha's case (*supra*). Consequently, the matter is placed before the learned Chief Justice of India for referring the matter to a larger Bench for a correct interpretation of the scope of Section 163-A of the Motor Vehicles Act, 1988, as well as the points no.(iii) to (v) referred to in Shila Datta s case (*supra*).

*Judgment referred*

<sup>1</sup>2011 (10) SCC 0509

<sup>2</sup>2002 (7) SCC 0456

<sup>3</sup>2012 (2) SCC 0356

<sup>4</sup>2001 (5) SCC 0175

<sup>5</sup>2004 (5) SCC 0385