

Supreme Court - Daily Orders

United India Ins.Co.Ltd. vs Sunil Kumar on 24 November, 2017

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9694 OF 2013

UNITED INDIA INSURANCE CO.
LTD.

... APPELLANT (S)

VERSUS

SUNIL KUMAR & ANR.

... RESPONDENT (S)

JUDGMENT

RANJAN GOGOI, J.

1. Unable to agree with the reasoning and the conclusion of a two judge bench of this Court in [National Insurance Company Limited vs. Sinitha](#) and others¹ a coordinate bench of this Court by order dated 29th October, 2013 has referred the instant matter for a resolution of what appears to be the following question of law.

“Whether in a claim proceeding under [Section 163 A](#) of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”) it is 1 [(2012) 2 SCC 356] open for the Insurer to raise the defence/plea of negligence?”

2. A second question as to what would be the true scope and meaning of the provisions contained in [Section 170](#) of the Act more specifically as set out in Queries (iii) to (v) in paragraph 10 of the report of United India Insurance Company Limited versus Shila Datta and others², also arises. However, the aforesaid Question stands referred to a Larger Bench in Shila Datta(supra) itself. We are told that answers to the questions referred are awaited. In

view of the above, we would be required to answer only the first question arising in the reference which has been set out herein above.

3. In Sinitha's case (supra), a two judge bench of this Court understood the scope of [Section 163A](#) of the Act to be enabling an Insurer to raise the defence of 2 [(2011) 10 SCC 509] negligence to counter a claim for compensation. The principal basis on which the conclusion in Sinitha's case (supra) was reached and recorded is the absence of a provision similar to sub-section (4) of [Section 140](#) of the Act in [Section 163A](#) of the Act. Such absence has been understood by the Bench to be a manifestation of a clear legislative intention that unlike in a proceeding under [Section 140](#) of the Act where the defence of the Insurer based on negligence is shut out, the same is not be the position in a proceeding under [Section 163A](#) of the Act.

4. We have considered the matter and have heard the learned counsels for the parties.

5. In [Deepal Girishbhai Soni and others vs. United India Insurance Co. Ltd., Baroda](#)³ the issue before a three judge bench of this Court was with regard to the 3 [(2004) 5 SCC 385] mutual exclusiveness of the provisions of [Section 163A](#) and [Section 166](#) of the Act. While dealing with the said question, this Court had the occasion to go into the reasons and objects for the incorporation of [Section 140](#) and [163A](#) of the Act which came in by subsequent amendments, details of which are being noted separately herein below. The Bench also took the view that while [Section 140](#) of the Act deals with cases of interim compensation leaving it open for the claimant to agitate for final compensation by resort to the provisions of [Section 166](#) of the Act, [Section 163A](#) of the Act provides for award of final compensation on a structured formula following the provisions of Second Schedule appended to the Act. Both Sections i.e. [Sections 140](#) and [163A](#) are based on the concept of 'no fault liability' and have been enacted as measures of social security. It was further noted that in a proceeding under [Section 163A](#) of the Act the Tribunal may be required to adjudicate upon various disputed questions like age, income, etc. unlike in a proceeding under [Section 140](#) of the Act.

6. [Deepal Girishbhai Soni's case](#) (supra), in fact, arose out of a reference made for a decision on the correctness of the view expressed in [Oriental Insurance Co. Ltd. vs. Hansrajbhai V. Kodala](#) and other⁴ that determination of compensation in a proceeding under [Section 163A](#) of the Act is final and further proceedings under [Section 166](#) of the Act is barred. The opinion rendered in [Hansrajbhai V. Kodala](#) (supra) contains an elaborate recapitulation of the reasons behind the enactment of Section 92A to 92E of the Old Act (i.e. [Motor Vehicles Act, 1939](#)) (corresponding to [Sections 140](#) to [144](#) of the present Act) introducing for the first time the concept of 'no fault liability' ⁴ [(2001) 5 SCC 175 in departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for death or permanent disablement caused on account of a motor vehicle accident. In the said report, there is a reference to the deliberations of the Committee constituted to review the provisions of the [Motor Vehicles Act, 1988](#) and the suggestions of the Transport Development Council on the basis of which the draft Bill of 1994 was enacted, inter alia, to provide for:

“(h) increase in the amount of compensation to the victims of hit-and-run cases;

(k) a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational.”

7. As observed in *Hansrajbhai V. Kodala* (supra) one of the suggestions made by the Transport Development Council was “to provide adequate compensation to victims of road accidents without going into long drawn procedure.” As a sequel to the recommendations made by the Committee and the Council, [Section 140](#) was enacted in the present Act in place of Section 92A to 92E of the Old Act. Compensation payable thereunder, as under the repealed provisions, continued to be on the basis of no fault liability though at an enhanced rate which was further enhanced by subsequent amendments. [Sections 140](#) and [141](#) of the present Act makes it clear that compensation payable thereunder does not foreclose the liability to pay or the right to receive compensation under any other provision of the Act or any other law in force except compensation awarded under [Section 163A](#) of the Act. Compensation under [Section 140](#) of the Act was thus understood to be in the nature of an interim payment pending the final award under [Section 166](#) of the Act. [Section 163-A](#), on the other hand, was introduced in the New Act for the first time to remedy the situation where determination of final compensation on fault basis under [Section 166](#) of the Act was progressively getting protracted. The Legislative intent and purpose was to provide for payment of final compensation to a class of claimants (whose income was below Rs.40,000/- per annum) on the basis of a structured formula without any reference to fault liability. In fact, in *Hansrajbhai V. Kodala* (supra) the bench had occasion to observe that:

“Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever-increasing motor vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured-formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles.”

8. From the above discussion, it is clear that grant of compensation under [Section 163-A](#) of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by [Section 163A\(2\)](#). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by [Section 140\(4\)](#), to permit such defence to be introduced by the Insurer and/or to understand the provisions of [Section 163A](#) of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of [Section 163A](#) of the Act, namely, final compensation within a limited time frame on the basis of the

structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand [Section 163A](#) of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under [Section 163A](#) of the Act at par with the proceeding under [Section 166](#) of the Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under [Section 163A](#) of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim.

10. The appeal will now be listed before regular Bench for disposal on merits, after the opinion of the larger Bench on the true scope and meaning of the provisions contained in [Section 170](#) of the Motor Vehicles Act, 1939 is rendered.

11. As the final disposal of the appeal may take some time, we are of the view that 50 % of the compensation that is presently lying in deposit in the Registry in terms of the Order dated 24-02-2012 should be released to the claimant on due identification.

.....,J.

(RANJAN GOGOI),J.

(ADARSH KUMAR GOEL),J.

(NAVIN SINHA) NEW DELHI NOVEMBER 24, 2017