

# RAJASTHAN HIGH COURT

United India Insurance Co. Ltd.

Vs.

Satya Narain Sharma

S.B. Civil Misc. Appeal No. 1376 of 2000  
(R.M. Lodha, Shiv Kumar Sharma and Ashok Parihar, JJ.)

21.09.2007

## JUDGMENT

**R.M. Lodha, J.**

1. The Single Judge of this Court by his order dated 12th October, 2000 has referred the following questions for consideration and determination by the Larger Bench:

(One) Whether the award passed under Section 163A of the Motor Vehicles Act, 1988 being passed after detailed evidence as to income, age and disability for compensation to be awarded under structured formula basis is in exclusion to the award passed under Section 166 on negligence basis by a court of law ?

(two) Whether an issue which has already been disposed of can be reopened for the purpose of proceeding under Section 166 ?

(three) Whether under Sections 163-A and 166, two modes for determining the compensation one on fixed formula basis and the other on assumption basis to be determined by the Tribunal, the two proceedings are in exclusion of each other and proceeding under Section 163A cannot be construed to be an interim compensation as under Section 140 of the Motor Vehicles Act?

(fourth) Whether the judgment reported in in the case of *Oriental Insurance Company Limited v. Nathu Ram*<sup>1</sup> needs to be reconsidered wherein the award passed under Section 163 has been held to be an interim award.

2. The aforesaid questions arise from the facts which may briefly be noticed immediately here-in-after.

3. On 28.7.1999 at about 13.30 p.m., a seven year old child-Gajanand Sharma was returning hom from the school. At that time, one car bearing registration No. RJ-27-C-8866 coming from Delhi dashed against him and as a result of the accident, the child

sustained grave injuries and he died that very night.

4. The parents applied for compensation under Sections 166 and 163A of the Motor Vehicles Act, 1988 (for short, 'M.V. Act') before the Motor Accident Claims Tribunal, *Jaipur District, Jaipur* claiming compensation of Rs. 8,50,000/-. The owner of the vehicle as well as the insurer were imp ledged as non-applicants and it was alleged that at the time of accident, the vehicle was being driven rashly and negligently by the driver.

5. The owner did not respond despite service. The insurer resisted the claim on diverse grounds available to them in law.

6. On the basis of the claim petition and the reply by the insurer, the Tribunal framed the following issues, namely:

- (i) Whether the death of Gajanand Sharma occurred on 28.7.1999 due to the accident caused by the vehicle RJ-27-C-8866?
- (ii) Whether the non-applicant No. 1 was the registered owner of the concerned vehicle and the said vehicle was insured with non-applicant No. 2 ?
- (iii) What was the age of Gajanand Sharma at the time of his death?
- (iv) What was the income of the deceased at the time of his death?
- (v) Relief?

7. After framing the issues, the Tribunal proceeded with the determination of the compensation under Section 163A by giving it the title of 'interim compensation'. The Tribunal held that the death of the child-Gajanand Sharma occurred because of the accident caused by the vehicle RJ-27-C-8866. The age of the child at the time of death was found to be seven years. The Tribunal applied structured formula provided in Second Schedule appended to the M.V. Act and by estimating the income of the child at Rs. 500/- p.m. multiplied the same by multiplier of 15 and concluded that the claimants were entitled for compensation of Rs. 90,000/-. The Tribunal also awarded a sum of Rs. 2,000/- towards funeral expenses of the deceased child and an amount of Rs. 2,500/- towards loss of estate and, thus, in all granted under Section 163A compensation of Rs. 94,500/- to the claimants. The Tribunal awarded interest @ 12% on the said amount on the date of filing of the claim application until realization.

8. The insurer challenged the said award by filing an appeal before this court principally on the ground that Section 163A of the M.V. Act does not contemplate interim award and, therefore, the award must be treated to be final award. Alternatively, the insurer prayed in the appeal that if the award dated 5th July, 200 is

treated as interim award, the interim compensation be modified to Rs. 50,000/-.

9. On the reference made by the Single Judge for consideration of the aforesaid noticed questions by the Larger Bench, this Full Bench has been constituted by the Chief Justice.

10. Our task of going deep into the controversy has been made easy in view of the two decisions of the Supreme Court which directly cover the controversy in hand.

11. First, we may reproduce Sections 163A and 166 of the M.V. Act. The said sections read thus:

*163A. Special provisions as to payment of compensation on structured formula basis.* - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be 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.

*Explanation.* For the purposes of this sub-section, permanent disability shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

*166. Application for compensation.* - (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made -

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorized by the person injured or all or any of the legal

representatives of the deceased, as the case may be :

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) \* \* \*

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act."

12. The two-Judge Bench of the Supreme Court in a group of matters being Civil Appeal No. 2568/2001 - *Oriental Insurance Company Limited v. Hansrajbhai V. Kodala and others* ,<sup>2</sup> and other connected matters was seized with the question as to whether the compensation payable under Section 163A of the Motor Vehicles Act, 1988 as per the Structured formula was in addition or in the alternative to the determination of compensation on the principle of fault liability, after following the procedure prescribed under the Act. This is exactly the issue before us.

13. The Supreme Court referred to Sections 140, 161, 163-A and 168 of the M.V. Act and in paragraph 22 of the report recorded its conclusion thus:

"22. In the result, the contention of the claimants that right to get compensation under Section 163A is additional to claim compensation on no fault liability is rejected for the following reasons :-

(1) There is no specific provision in the Act to the effect that such compensation is in addition to the compensation payable under the Act. Wherever the Legislature wanted to provide additional compensation, it has done so. (Sections 140 and 141).

(2) In case where compensation is paid on no fault liability under Sections 140 and 161 in case of hit and run motor accidents, the Legislature has provided adjustment or refund of the said compensation in case where compensation is determined and payable under the award on the basis of fault liability under Section 168 of the Act. There is no such procedure for refund or adjustment of compensation paid where the compensation is paid under Section 163A.

(3) The words "under any other law for the time being in force" would certainly have different meaning from the words "under this Act or under any other provision of this Act."

(4) In view of the non-obstante clause notwithstanding anything contained in this Act the provisions of Section 163A would exclude determination of compensation on the principle of fault liability.

(5) The procedure of giving compensation under Section 163A is inconsistent with the procedure prescribed for awarding compensation on fault liability. Under Section 163A compensation is awarded without proof of any fault while for getting compensation on the basis of fault liability claimant is required to prove wrongful act, neglect or default of the owner of the vehicle or vehicles concerned.

(6) Award of compensation under Section 163A is on predetermined formula for payment of compensation to road accident victims and that formula itself is based on criteria similar to determining the compensation under Section 168. The object was to avoid delay in determination of compensation."

14. The correctness of the aforesaid judgment in the case of Kodala was put in issue before the Supreme Court in the case of *Deepal Girishbhai Soni and others v. United India Insurance Company Limited, Baroda*,<sup>3</sup>. The matter, thus, was referred to a three Judge Bench of the Supreme Court. The judgment of the three Judge Bench in the case of Deepal Girishbhai Soni and others is reported in (2004)5 SCC 385. The three Judge Bench surveyed the relevant statutory provisions contained in M.V. Act, particularly Sections 140, 141, 142, 163A, 163B, 166 and 168. On analysis of the statutory provisions, the three Judge Bench of the Supreme Court held that Kodala's case was rightly decided. The Bench, however, did not agree with the finding in Kodala's case that if a person invokes the provisions of Section 163A, annual income of Rs. 40,000/- per annum shall be treated as a cap. The Larger Bench held that the proceedings under Section 163A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs. 40,000/- can take the benefit thereof and all other claims are required to be determined in terms of Chapter

XII of the Act.

15. The Supreme Court in Deepal Girishbhai Soni authoritatively pronounced that the remedy for payment of compensation both under Section 163A and 166 was final and independent of each other; the claimant cannot pursue his remedies under Sections 163A and 166 simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163A or under Section 166 but not under both. This is what the Bench held in paragraphs 57, 59, 60, 61, 62, 63 and 66 thus:

"57. 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 there under 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.

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 awarded fails to prove that the accident took place owing to negligence on the part of the driver or if it found as of fact that the deceased or the victim himself was responsible there for 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.

61. 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.

62. 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 authorized insurer has been made so liable.

63. 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.

66. 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."

16. In the light of the legal position exposted by the Supreme Court in Kodala's case and reiterated in Deepal Girishbhai Soni, we do not deem it necessary to have a fresh look at the matter; it need not be since the answer to the questions referred by the Single Judge can be found from the two decisions of the Supreme Court referred to hereinabove.

17. We answer thus:

*Re : Question (One)*

We hold that the award passed by the Tribunal under Section 163A of Chapter XI of the M.V. Act under structured formula is a final award and once that award has been passed, no further award under Chapter XII of the M.V. Act could be passed by the Tribunal.

*Re : Question (Two)*

Our answer to question No. 1 answers question No. 2 as well.

*Re : Question (Three)*

We hold, as we must, that the provisions contained in Sections 163A and 166 of the M.V. Act provide for two different modes but the two modes cannot simultaneously be invoked by the claimants. The claimants must opt/elect to go either for a proceeding under Section 163A or under Section 166 of the M.V. Act but not under both. The award under Section 163A is final and cannot be described as 'interim' and no proceeding for compensation under Section 166 can be undertaken once the award is declared under Section 163A.

*Re : Question (Four)*

The judgment of this Court in the case of *Oriental Insurance Company Limited v. Nathuram & Others*,<sup>4</sup> does not lay down the correct law and is over-ruled.

18. The appeal shall now be posted before the Single Judge for its disposal

accordingly.

Order accordingly.

Cases Referred.

1. 1999 WLC (UC) 182
2. 2001(2) RCR(Civil) 629 (SC)
3. 2004(2) RCR(Civil) 466 : (2004)5 SCC 385
4. 1999 WLC (Raj.) UC 185