

Civil Appeal
Present: The Hon'ble Mr. Justice Bhaskar Bhattacharya
And
The Hon'ble Mr. Justice Prasenjit Mandal

F.M.A.T. No. 1914 of 2007
With
C.A.N. 1398 of 2008
Judgment on: 16th April, 2010.

Bajaj Allianz General Insurance Co. Limited

Versus

Smt. Supriya Das & Anr

POINT-

WRONG SECTION, INSURER'S LIABILITY-Owner of vehicle himself victim-Wrong caption of an application-Tribunal, whether entitled to adjudicate an application under Section 163A of the Act-Application for compensation against an Insurance Company at the instance of the heirs of the deceased insured, whether is maintainable - Motor Vehicles Act, 1988 Ss. 147,163A, 165, 166, 168.

FACTS:

This appeal is at the instance of the Insurance Company and is directed against an award passed by the Motor Accident Claims Tribunal disposing of the proceedings under Section 163A of the Motor Vehicles Act, 1988 with a direction upon the Insurance Company to pay the said amount.

HELD:

The provisions of Section 163A of the Act has no application to a case where the claim is not made against the owner of the involved vehicle at the instance of a third party. In the case before the Court, the claim has been made by the heirs of a party to insurance for the purpose of enforcement of the contract of insurance made between the insurer and the predecessor-in-interest of the applicants. Thus, Section 163A of the Act has no application to the facts of the present case.

Para-10

The law is now settled that mere caption of an application does not determine the real nature of the same and in order to consider whether an application is maintainable or not before a Court of law, the substance of the application is the decisive factor. In other words, even if a wrong section of a statute is mentioned in the cause title of the application for that reason the Court or Tribunal will not reject the same if it appears that such Court or Tribunal is vested with the authority to entertain and decide the disputes involved therein.

Para-11

The insured himself or in case of his death, his heirs and legal representatives are entitled to make an application for compensation only against the Insurance Company for enforcement of such liability of the insurer and the only requirement of maintaining the application under Section 166 of the Act is that it must be proved that the liability to pay compensation arose out of an accident caused by or use of a vehicle in a public place.

Para-19

The heirs of the deceased insured are entitled to move the Tribunal constituted under the Act under Section 166 of the Act only against the insurer for enforcing its liability under the contract of insurance notwithstanding the fact that there was no liability incurred by the insured against any third party.

Para-21

CASES CITED:

- 1) Oriental Insurance Company Ltd. vs. Rajni Devi & Ors., (2008) 3 WBLR (SC) 282
- 2) Dhanraj vs. New India Assurance Co. Ltd. & Anr. (2004) 8 SCC 553.
- 3) State of Karnataka v. Muniyalla AIR 1985 SC 470;
- 4) State of Karnataka vs. Krishnaji Srinival Kulkarni and others (1994) 2 SCC 558.

For the Appellant:

Mr. Mainak Bose,
Mr. Amitabha Mitra,
Ms. Dolon Dasgupta,
Mr. Paritosh Sinha.

For the respondents:

Mr. Uday Sankar Chattopadhyay.

THE COURT:

1) This appeal is at the instance of the Insurance Company and is directed against an award dated 13th April, 2007, passed by the Motor Accident Claims Tribunal, Fast Track Court, First Court, Burdwan, in Motor Accident Claim Case No.47 of 2006 thereby disposing of the proceedings under Section 163A of the Motor Vehicles Act, 1988 by awarding a sum of Rs.3,34,820/- with interest @ 10% per annum from the date of filing of the application till actual realization in favour of the claimants with a direction upon the Insurance Company to pay the said amount.

2) Being dissatisfied, the Insurance Company has come up with the present appeal.

3) There is no dispute as regards the death of the victim in the accident in which the victim himself was the owner of the one of the vehicles involved in the accident and the said vehicle was insured by the appellant. It appears that the victim while proceeding on his own motorcycle was dashed by an unknown truck, as a result, he died. On that basis, a claim-application under Section 163A of the Motor Vehicles Act was filed against the insurer of the own vehicle of the victim.

4) A specific plea was taken by the Insurance Company that the claim-application under Section 163A of the Act was not maintainable at the instance of the heirs of the owner where the owner himself has died because the owner cannot be said to be a third party to the contract of Insurance.

5) The learned Tribunal below overruled such defence and consequently, passed an award.

6) Being dissatisfied, the Insurance Company has come up with the present appeal.

7) Mr. Bose, the learned advocate appearing on behalf of the appellant, vehemently contended before us that the learned Tribunal below erred in law in allowing the application under Section 163A of the Act at the instance of the heirs of the owner of the vehicle involved where the owner and the insurer of the other vehicle involved has not been made parties. According to Mr. Bose, in a proceeding under the Motor Vehicles Act before the Tribunal constituted under the said Act, there is no scope of lodging a claim by either the owner of the vehicle or by his heirs, as a person cannot be both the plaintiff and the defendant in a particular litigation. In the case before us, we find that the insurance coverage was not only restricted to the third party's benefit but additional premium was also taken by the Insurance Company for covering the accidental death or injury of the owner to the limited extent of Rs.1,00,000/-. Mr. Bose, however, contends that his client is liable to pay compensation to the extent of Rs.1,00,000/- for the death of the owner but such amount cannot be claimed by filing a claim-petition under the provision of the Motor Vehicles Act. Mr. Bose contends that it was the duty of the heirs of the insurer to lodge claim direct before the Insurance Company and if the Insurance Company refused, in such a case, the heirs of the victim could either approach Civil Court or Consumer Disputes Redressal Forum for its remedy. Mr. Bose, therefore, submits that the application under Section 163A of the Act was not maintainable at the instance of

the heirs of the insured against the insurer. Mr. Bose further contends that as one is not entitled to maintain an application for damages against oneself, for the same reason, there is no scope of maintaining an application for compensation against one's own insurer. He, therefore, prays for setting aside the award impugned and with liberty to the appellants to lodge claim direct before the Insurance Company or to approach Civil Court or Consumer Disputes Redressal Forum.

8) In support of such contention, Mr. Bose relies upon the decision of the Supreme Court in the case of Oriental Insurance Company Ltd. vs. Rajni Devi & Ors., reported in (2008) 3 WBLR (SC) 282 and Dhanraj vs. New India Assurance Co. Ltd. & Anr., reported in (2004) 8 SCC 553.

9) Therefore, the first point that arises for determination in this appeal is whether a Tribunal constituted under the Motor Vehicle Act is entitled to adjudicate an application under Section 163A of the Act where the owner of the vehicle himself is the victim and the Insurance Company coverage included his personal injury or death to the extent of Rs.1,00,000/-.

10) After hearing the learned counsel for the parties and after going through the decisions referred to above, there is no scope of doubt that the provisions of Section 163A of the Act has no application to a case where the claim is not made against the owner of the involved vehicle at the instance of a third party. In the case before us, the claim has been made by the heirs of a party to insurance for the purpose of enforcement of the contract of insurance made between the insurer and the predecessor-in-interest of the applicants. Thus, Section 163A of the Act has no application to the facts of the present case.

11) Nevertheless, the law is now settled that that mere caption of an application does not determine the real nature of the same and in order to consider whether an application is maintainable or not before a Court of law, the substance of the application is the decisive factor. In other words, even if a wrong section of a statute is mentioned in the cause title of the application for that reason the Court or Tribunal will not reject the same if it appears that such Court or Tribunal is vested with the authority to entertain and decide the disputes involved therein. (See State of Karnataka v. Muniyalla reported in AIR 1985 SC 470; State of Karnataka vs. Krishnaji Srinival Kulkarni and others reported in (1994) 2 SCC 558.)

12) Therefore, the next question that arises for determination before us is whether an application for compensation against an Insurance Company before a Tribunal constituted under the Motor Vehicles Act at the instance of the heirs of the deceased insured is maintainable if the death of the insured occurred due to a motor accident and such liability is accepted by the Insurance Company by taking additional premium.

13) Mr. Bose in this connection vehemently contended that the only other provision of adjudication of dispute is the provisions contained in Section 166 of the Act but in order to maintain such an application, the claim must be made against the insured and in such proceedings, the insurer can be held liable in view of the terms of the insurance. In other words, according to Mr. Bose, an application under Section 166 of the Act cannot be filed only against the insurer without lodging any claim against the insured and in this case, the heirs of the insured being the claimants, such application is not maintainable under the law.

14) Therefore, the next question is whether for the purpose of enforcing the terms of insurance covering the death of the insured, an application under Section 166 of the Act is maintainable before a Tribunal constituted under the Act only against the insurer at the instance of the heirs of the insured.

15) In order to appreciate the said question, the provisions contained in Sections 147, 165, 166 and 168 of the Act are relevant and those are quoted below:

“147. Requirements of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) **insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—**

(i) **against any liability which may be incurred by him in respect of the death of or bodily injury to any person**, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party **caused by or arising out of the use of the vehicle in a public place;**

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen’s Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that **the death of or bodily injury to any person** or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, **if the act or omission which led to the accident occurred in a public place.**

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), **shall cover any liability incurred in respect of any accident, up to the following limits**, namely:—

(a) save as provided in clause (b), **the amount of liability incurred;**

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

165. Claims Tribunals.—(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification **for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.**

Explanation.—For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under Section 140 and Section 163-A.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he—

- (a) is, or has been, a Judge of High Court, or
- (b) is, or has been, a District Judge, or
- (c) is qualified for appointment as a Judge of a High Court or as a District Judge.

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

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 authorised 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.

(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.

168. Award of the Claims Tribunal.—On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under Section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.”

16) After going through the aforesaid provisions of the Act, we find that the Claims Tribunals are constituted for the purpose of adjudicating the claim for **compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.** Therefore, the dispute involved before the Tribunal may be between a third party or his heirs in one hand and the insured and the insurer on the other or even be restricted to a dispute only between the insured and the insurer regarding enforcement of the liability accepted by the insurer on payment of additional premium to cover the injury or the death of the insured to any extent as provided in the policy.

17) As provided in Section 147(1) of the Act, the liability of the Insurance Company arises when it by issuing a policy, *inter alia*, **insures a person or classes of persons specified in the policy to the extent specified in sub-section (2). According to such sub-section (2), subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—**

- (a) **save as provided in clause (b), the amount of liability incurred;**
- (b) in respect of damage to any property of a third party, a limit of rupees six thousand:

18) Therefore, if an Insurance Company issues a policy undertaking to take the liability of death or bodily injury to even the insured himself by taking additional premium, it shall be liable to the extent indicated in the policy and such liability can be enforced by the insured in case of injury and by his heirs and legal representatives in case of his death.

19) Therefore, in the above situations, the insured himself or in case of his death, his heirs and legal representatives are entitled to make an application for compensation only against the Insurance Company for enforcement of such liability of the insurer and the only requirement of maintaining the application under Section 166 of the Act is that it must be proved that the liability to pay compensation arose out of an accident caused by or use of a vehicle in a public place. The language employed in sub-sections (a), (c) or (d) of Section 166(1) indicating the classes of persons who can make an application for compensation, are wide enough to include an injured insured or in case of his death, his heirs and legal representatives and in the said section, there is no prohibition of maintaining an application at the instance of an injured insured or the heirs of the insured against only the insurer for realisation of the risk coverage under the terms of the insurance.

20) We are unable to accept the contention of Mr. Bose that in the above situations, the insured or his heirs, as the case may be, must either move Civil Court or Consumer Disputes Redressal Forum for the relief and not the Tribunal constituted under the Act. As provided in Section 168 of the Act, on an adjudication under Section 166 of the Act, the Tribunal shall make an award determining the amount of compensation which appears to it to be just and “specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.”

21) Therefore, in a case like the present one, the heirs of the deceased insured is entitled to move the Tribunal constituted under the Act under Section 166 of the Act only against the insurer for enforcing its liability under the contract of insurance notwithstanding the fact that there was no liability incurred by the insured against any third party.

22) Even in the case of in the case of Oriental Insurance Company Ltd. vs. Rajni Devi & Ors. (Supra), relied upon by Mr. Bose, the Apex Court after holding that the application under Section 163A of the Act was not maintainable in the absence of third party involvement, for the above reason, affirmed that the claimants were entitled to get the compensation to the extent provided in the policy and allowed the appeal only to that extent.

23) In the case of Dhanraj vs. New India Assurance Co. Ltd. (supra), the other decision cited by Mr. Bose, it will appear from paragraph 10 of the judgment that in that case it was established from the evidence on record that there was no coverage of risk of injury to the owner of the vehicle unlike the present one and thus, in that case, the Supreme Court turned down the contention of the claimant that he was entitled to any compensation for the injury suffered by him. The said decision, consequently, does not help the Insurance Company in anyway.

24) We, therefore, find no substance in the contention of Mr. Bose that the claimants were required to move other forum for enforcement of the liability incurred by the insurer and accordingly, hold that in this case, the heirs and the legal representatives of the victim are entitled to get a sum of Rs.1 lakh in tune with the terms of the policy with interest at the rate of 8% per annum from the date of filing of the claim-application till the actual deposit of the amount before the Tribunal below.

25) The award impugned is, thus, modified to the extent indicated above.

26) In the facts and circumstances, there will be, however, no order as to costs.

(Bhaskar Bhattacharya, J.)

27) I agree.

(Prasenjit Mandal, J.)

Later :

It appears that as a condition of stay of execution of the order impugned a Division Bench of this Court directed the appellant to deposit the entire awarded sum with the learned Registrar General of this Court and it was further directed that the said amount will be invested in any Nationalised Bank.

Now, as we have allowed the appeal to the extent indicated above, we direct the learned Registrar General of this Court to pay a sum of Rs.1,00,000/- with interest at the rate of 8% *per annum* from the date of filing of the application (20th January, 2006) till 31st May, 2010 in favour of the claimant on or after 10th June, 2010 and to return the balance amount lying in the account including interest to the Insurance Company.

After this order is passed, Mr. Bose, the learned Advocate appearing on behalf of the appellant prays for stay of operation of the above order.

Since we have directed the learned Registrar General of this Court to release the amount in favour of the claimant on or after 10th June, 2010, there is no necessity of granting further stay of operation of our order.

Xerox certified copies of this order, if applied for, be given to the parties by Tuesday next upon compliance of all the requisite formalities.

(Bhaskar Bhattacharya, J.)

(Prasenjit Mandal, J.)