

Subaida vs Nasar

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Court : Kerala

Decided On : Nov-02-2023

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : MACA/94/2018

Appellant : Subaida

Respondent : NASAR

Judgement :

MACA.No.94/2018 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
THURSDAY, THE 2ND DAY OF NOVEMBER 2023 / 11TH KARTHIKA,
1945 MACA NO. 94 OF 2018 AGAINST THE ORDER/JUDGMENT
OPMV 416/2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL
,ATTINGAL APPELLANT/PETITIONER: SUBAIDA, AGED 40 YEARS,
W/O. NASAR, SAJEENA MANZIL, NADAYARA,VARKALA P.O.,
THRIVANANTHAPURAM. BY ADVS. SRI.P.SAMSUDIN SRI.JITHIN
LUKOSE RESPONDENTS/1ST PETITIONER AND RESPONDENTS:

1 NASAR, AGED 42 YEARS, S/O. MUSTHAFA, SAJEENA MANZIL, NADAYARA, VARKALA P.O., THIRUVANANTAHAPURAM-695 141. 2 A NISAMUDEEN, KUTTIVETIL VEEDU, NADAYARA, VARKALA P.O., THIRUVANANTAHAPURAM DISTRICT-695 141. 3 THE MANAGER, ORIENTAL INSURANCE CO.LTD, ROHIHIN BUILDINGS, THAKARPPARAMBU ROAD, THIRUVANANTHAPURAM-695 001. BY ADVS. SRI.PRATHEESH.P MACA.No.94/2018 2 SMT.ANJANA KANNATH SMT.REKHA NAIR SRI.PRATHEESH.P-R1, SMT.REKHA NAIR-R3 THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 02.11.2023, ALONG WITH MACA.1767/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA.No.94/2018 3

JUDGMENT

The appellant is the 2nd petitioner in O.P.(M.V) No.416 of 2010 on the files of the Motor Accidents Claims Tribunal, Attingal. The aforesaid claim petition was submitted by her along with the 1st respondent herein, seeking compensation for the death of one Najeeb, who died due to the injuries sustained in a motor accident that occurred on 12.07.2003. The said claim petition was submitted under Section 163A of the Motor Vehicles Act.

2. According to the claimants, the accident occurred

when the motorcycle ridden by the deceased hit on a concrete post, and he sustained severe injuries. The said motorcycle was owned by the 1st respondent, and the deceased was the employee of the 1st respondent, who was entrusted with the motorcycle as part of his duties for collecting the price of chicken supplied to a

marriage party at Parippally. While undergoing treatment, the said claim petition was submitted in such circumstances seeking a total compensation of Rs.7,00,000/-.

3. The 2nd respondent, the insurance company, submitted

a written statement admitting the coverage of the policy in respect of the said vehicle. However, they contended that since the deceased not being a 3rd party, the claim under Section 163A is not maintainable. It was also contended that the policy issued was only an 'Act only' policy, for which the coverage is not available for a gratuitous rider. The dismissal of the application was sought in such circumstances.

4. The evidence in this case consists of oral testimonies of PWs 1 to 3 and Exts.A1 to A17 from the side of the claimants. Exts.B1 and B2 were marked from the respondents' side. After

the trial, the Tribunal rejected the contention raised by the insurance company that the claim petition under Section 163A is not maintainable as the deceased, being a gratuitous rider, stepped into the shoes of the owner. However, the application was dismissed on the ground that the monthly income claimed by MACA.No.94/2018 5 the claimants was 4,500/-, which is above the ceiling limit contemplated under the 2nd schedule of the Motor Vehicles Act. Challenging the findings above, this appeal is filed.

5. Heard, Sri.P.Samsudin, the learned counsel appearing

for the appellant, Sri.Pradeesh. P, the learned counsel appearing for the 1st respondent and Smt.Rekha Nair, the learned counsel appearing for the 3rd respondent/Insurance Company.

6. The crucial question in this appeal is regarding the

maintainability of an application under Section 163A of the Motor Vehicles Act. Of course, it is true that, in Ningamma & Anr, vs United India Insurance Co.Ltd.[AIR 2009 3056], the Honourable Supreme Court has held that, when a person drives a motor vehicle, with the consent of the owner of the same, he steps into the shoes of the said owner and therefore, he cannot be treated as a 3rd party and consequently an application under Section 163A of Motor Vehicles Act cannot be maintained at his instance or at the instance of the legal heirs of the said person. However, in this case, the factual circumstances are slightly

MACA.No.94/2018 6 different. Here, the specific case of the claimants is that the deceased was the employee of the owner of the motorcycle, and the accident occurred during the course of such employment.

7. In *New India Insurance Company v. Lissy and*

Others [2016 (1) KHC 130 (DB)], the specific question as to the maintainability of a claim petition under Section 163A at the instance of the driver of the vehicle during the course of employment was considered by this Court. It was observed by this Court, after referring to the statutory stipulations contained in Section 147 of the Motor Vehicles Act and also under Section 167 of the said Act, that since the legal heirs of the deceased had an option for invoking provisions of the Motor Vehicles Act or the Employees Compensation Act and the legal heirs having opted for the Motor Vehicles Act, the benefit thereof cannot be denied. The Division Bench of this Court also observed in the said decision that the statutory stipulation contemplated in the proviso to Section 147(1) (b) specifically takes in the coverage of a driver to the extent of the compensation payable under the

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provisions of the Employees Compensation Act. Thus, in the light of the observations made by this Court in *Lissy* (supra), the application submitted by the claimants also has to be treated as maintainable, and it was rightly entertained by the Tribunal rejecting the contentions of the Insurance Company that the deceased was not a third party.

8. However, after holding that the contention raised by

the Insurance Company on the above ground was not acceptable, the Tribunal dismissed the said application, holding that as the monthly income claimed by the claimants was in excess of the ceiling specified in the 2nd schedule of the Motor Vehicles Act (as existed at the relevant time). The learned counsel for the appellant contended that they have specifically raised a ground in the appeal to the effect that the monthly income was declared in the claim petition mistakenly, and the same was not as instructed by the appellants. It was also submitted him

that even though an application for amending the application was submitted, the same was also dismissed by the Tribunal. MACA.No.94/2018 8

9. After considering the entire materials placed on

record, I am of the view that there is some force in the contention put forward by the learned counsel for the appellant. Of course, it is true that, as the amount claimed as monthly

income is Rs.4,500/-, the application as such cannot be maintained under Section 163 A of the Motor Vehicles Act, as it is a settled position of law that the structured method of computation as contemplated under the 2nd schedule of the Motor Vehicles Act read with Section 163A thereof, are confined to the persons who falls under the lower strata of the society where the annual income is less than Rs.40,000/-. Therefore, the benefits of the same are applicable to only those persons who fall under that category. The claim petition under the said provision cannot be entertained at the instance of persons whose salary is

beyond the said statutory ceiling. However, in this case, the appellant has a specific case where the monthly income was below the ceiling stipulated in the 2nd schedule of the Motor Vehicles Act, and a mistake had crept in while preparing the MACA.No.94/2018 9 claim petition. They have also attempted to amend the same by filing an application, which was rejected. In the facts and circumstances of the case, I am of the view that the claimants have to be granted an opportunity to amend the claim petition and to contest the matter. This is particularly because, if the claim petition is not maintained on technical grounds, claimants would be deprived of the liberty to invoke the provisions of the Employees Compensation Act, 1923, which was otherwise available to them. This would result in gross injustice to the parties and would result in failure to ensure just compensation, particularly this being a case of the death of the only son of the claimants. In such circumstances, a lenient view has to be taken in the interest of justice

10. In such circumstances, this appeal is allowed, the award dated 12.08.2016 passed by the Motor Accidents Claims Tribunal, Attingal in O.P(MV).No.416 of 2010 is set aside, and the matter is remanded back to the Tribunal for fresh

consideration, granting the claimants an opportunity to make MACA.No.94/2018 10 necessary amendments in the claim petition and to contest the

matter. In the light of the finding above, Annexure-A1 order

passed by the Motor Accidents Claims Tribunal, Attingal in I.A.No.4853 of 2016 in O.P.(MV).No.416 of 2010 on 10.10.2017 is also set aside to enable the appellants to file an application for amendment of the claim petition. The parties shall appear before the Tribunal, on 27.11.2023, and every endeavour shall be taken by the Tribunal to dispose the matter as expeditiously as possible, at any rate within a period of six months from the date of appearance of the parties.

Sd/- ZIYAD RAHMAN A.A. JUDGE DG/rpk/2.11.23

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