

The Manager vs Smt Vanaja

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Court : Karnataka

Decided On : May-29-2025

Judge : Venkatesh Naik T

Appeal No. : MFA/6417/2014

Appellant : The Manager

Respondent : Smt Vanaja

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF MAY, 2025 BEFORE THE HON'BLE MR. JUSTICE VENKATESH NAIK T MISCELLANEOUS FIRST APPEAL NO.6417 OF 2014 (MV-D) BETWEEN: THE MANAGER THE NEW INDIA ASSURANCE CO. LTD. DIVISIONAL OFFICE MALLAPPA COMPLEX, I FLOOR B. H. ROAD, SHIMOGA NAGARA SHIMOGA TALUK & DISTRICT NOW REPRESENTED BY ITS REGIONAL MANAGER NEW INDIA ASSURANCE CO. LTD. REGIONAL OFFICE, 2-B, UNITY BUILDING ANNEXE P. KALINGA RAO ROAD BENGALURU-560 027. ...APPELLANT (BY SRI A. N. KRISHNA SWAMY, ADVOCATE) AND: SMT. VANAJA W/O. LATE K. H.

HALESHAPPA NOW AGED ABOUT 45 YEARS OCCUPATION: HOUSEWIFE RESIDING AT KEMPAIYANA THOKKALU GRAMA CHANNAGIRI TALUK DAVANGERE DISTRICT. RESPONDENT (SRI N. K. SIDDESWARA, ADVOCATE) THIS MISCELLANEOUS FIRST APPEAL FILED U/S. 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 12.04.2014 PASSED IN MVC NO.161 OF 2011 ON THE FILE OF THE SENIOR CIVIL JUDGE, MACT, CHANNAGIRI, AWARDED COMPENSATION OF RS.3,02,833/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION. -2- THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN HEARD AND RESERVED ON 29-04-2025, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING: CORAM: HON'BLE MR JUSTICE VENKATESH NAIK T

CAV JUDGMENT

This appeal is filed by the Insurance Company challenging the judgment and award passed by the Tribunal arising out of common judgment and award dated 12-04-2014 passed in MVC No.161 of 2011 on the file of the Senior Civil Judge and MACT, Channagiri, Davanagere District, on the ground of liability.

2. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

3. The brief facts of the case of the claimant and the Insurance Company are as under: On 29-6-2011 at 7:30 p.m., deceased K.H. Haleshappa

was proceeding on a Bajaj Discovery Bike bearing Registration No.KA-17 EE-1064 from Channagiri to his native place Kempaiyana Thokkallu and when he reached near Dondraghatta Village on NH-13, due to skid, he lost control -3- over the vehicle, slipped from bike, fell down and sustained grievous injuries, he was taken to Manipal Hospital for treatment, however, he succumbed to the injuries on 30.06.2011. Thereafter, a complaint was registered in crime No.145 of 2011 which led to investigation and charge sheet.

4. It was contended by the claimant before the

Tribunal that Haleshappa was earning a sum of Rs.5,00,000/- per annum, hence, the claimant had filed petition under Section 163(A) of MV Act. The appellant-New India Assurance Company Limited disputed the liability to pay the compensation in view of Section 147 of the MV Act.

5. The Tribunal after considering the oral and

documentary evidence on record, granted a compensation of Rs.3,02,833/- with interest at the rate of 6% per annum from the date of the petition till the date of its realisation and directed the appellant-Insurance Company to pay compensation to the claimant.

6. Being aggrieved by the judgment and award passed by the Tribunal, the insurer of the vehicle filed this appeal on the ground of liability. -4-

7. Heard the learned counsel for the Insurance Company as well as the learned counsel for the claimant and perused the judgment and award passed by the Tribunal.

8. Learned counsel for the Insurance Company Sri

A.N. Krishna Swamy, contended that the Tribunal was required to have noticed that claim petition under Section 163(A) of MV Act was not maintainable, in view of the fact that the annual income of deceased Haleshappa was shown as Rs.5,00,000/-. The Tribunal was required to have noticed that risk of the insured is to be covered and in fact, it was not covered under the Insurance Policy, thus, claim petition under Section 163(A) of MV Act was not maintainable. The Tribunal without looking into the legal aspect and the spirit of Section 147 of MV Act entertained a claim petition filed by the claimant/respondent. Further, the Insurance Policy is required to insured the person or classes of persons specified in the policy to an extent specified in Sub Section

(2) of Section 147 of the Act, against any liability which may

be incurred by him in respect of death or bodily injury to any person. Hence, no liability was incurred by the insured. Therefore, there exists no requirement of insurance policy to -5-

cover any risk. The Tribunal has passed impugned award ignoring the ratio laid down in the case of Ningamma and another Vs. United India Insurance Company Limited reported in AIR 2009 SC 3056, which would clarify this legal aspect succinctly. The learned counsel in support of his oral submissions relied on the following decisions:

1. New India Assurance Co. Ltd. Vs. Sadanand Mukhi & Others reported in AIR 2009 SC 1788
2. Oriental Insurance Co. Ltd. Vs. Meena Variyal & Others reported in AIR 2007 SC 1609
3. Oriental Insurance Co. Ltd. Vs. Rajni Devi & Others reported in 2008(5) SCC 736 and
4. Raj Rani & Others Vs. Oriental Insurance Co. Ltd. and Others reported in 2009 (13) SCC 654.

9. Per contra, learned counsel for the claimant

submitted that deceased Haleshappa was the owner of the bike, bearing registration No.KA 17 EE 1064, who met with an accident and when deceased Haleshappa was riding the bike and there is no involvement of any other vehicle or any other person in the accident. The accident occurred due to -6-

the negligence of deceased Haleshappa. The charge sheet papers also revealed said aspect, hence, accident was due to negligence of deceased Haleshappa. Further, in order to maintain petition under Section 163(A) of the MV Act, the compensation requires to be paid is not on fault and it is at no fault liability, hence, petition under Section 163(A) of MV Act was maintainable and the appellant-being the insurer of the vehicle is liable to pay the compensation. Thus, learned counsel prayed to dismiss the appeal filed by the Insurance Company. In support of his

submissions, learned counsel relied upon the following decisions:

1. Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd and Others reported in AIR 2018 Supreme Court 3705.

2. United India Insurance Co. Ltd. Vs. Sunil Kumar and another reported in AIR 2017 Supreme Court 5710.

10. In view of the contentions urged by both parties, the points that would arise for the Courts consideration in this matter are as under: -7-

i. Whether the Insurance Company has made out sufficient grounds that deceased Haleshappa was the rider-cum-owner of the motorcycle and he himself was the tortfeasor, thus, it is not liable to pay any compensation? ii. Whether the judgment and award passed by the Tribunal requires interference or not? Point No.i

11. In order to prove the claim of the claimant, the

wife of deceased (claimant Smt. Vanaja) was examined on oath as PW.1 and she reiterated the petition averments in her chief examination. In support of her oral evidence, she relied upon Ex.P1-Intimation letter, Ex.P2-Copy of the FIR, Ex.P3-Copy of the complaint, Ex.P4-Copy of the spot mahazar, Ex.P5-Inquest mahazar, Ex.P6-Post Mortem report, Ex.P7-IMV Report, Ex.P8-Final Report and Ex.P9-Driving license. They clearly demonstrate that the accident occurred due to negligence on the part of the rider/owner (Haleshappa) of the motorcycle. As per Ex.P7-IMV report, the motorcycle sustained damage in the accident. At the time of accident, deceased Haleshappa was -8- possessing driving license and it was in force. As per Ex.P12 Insurance Policy, the policy was in force. Ex.R1 Insurance Policy corroborates the same.

12. To rebut the claim of the claimant,

respondent-Insurance Company got examined its authorized Officer as RW.1. In his evidence, he reiterates the contention of written statement. Thus, it clears that the rider of the motorcycle Haleshappa was the owner of motorcycle, who caused the accident and succumbed to the injuries.

13. So far as liability on the part of the

appellant/Insurance Company is concerned, Insurance Company has taken the contention that since the accident was due to the negligence of rider of the motorcycle and since he was the owner of the motorcycle, the appellant is not liable to pay any compensation.

14. Admittedly, the claimant filed a claim petition

seeking compensation under Section 163(A) of the Motor Vehicles Act, 1988. The Tribunal noted that since the claim petition had been filed under Section 163(A) of the Act, question of proving that the accident occurred due to rash -9- and negligent act of the driver did not arise. Hence, by its award dated 12-04-2014, the Tribunal awarded a claim of Rs.3,02,833/- together with interest at the rate 6% per annum.

15. It is the contention of appellant-Insurance Company

that, the petition under Section 163A of MV Act was not maintainable, since deceased Haleshappa, who was rider of motorcycle in this case was the tortfeasor and responsible for the accident.

16. The issue which arises before this Court is no longer

res integra and is covered by a recent judgment of the Hon'ble Apex Court in the case of Sunil Kumar's case referred (supra), wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163(A) of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is 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. The Hon'ble Apex Court further observed

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that, if an insurer was permitted to raise a defence of negligence under Section 163(A) of the Act, it would bring a proceeding under Section 163(A) 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. Consequently, it was held that in a proceeding under Section 163(A) of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation.

17. In National Insurance Company Limited Vs.

Sinitha and others reported in AIR 2012 Supreme Court 797, the Hon'ble Apex Court dealt with the principles of no fault liability, wherein, the Hon'ble Apex Court observed that the claim under Section 163(A) can only be raised at the behest of a third party.

18. In Sinitha's case referred (supra), the Hon'ble Apex

Court enlightened the scope of Section 163(A) of the Act to be enabling an Insurer to raise the defence of negligence to counter a claim for compensation. The principle basis on which the conclusion in Sinitha's case referred (supra) was reached and recorded is the absence of a provision similar to - 11 -

sub-section (4) of Section 140 of the Act in Section 163(A) of the Act. Such absence has been explained 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 163(A) of the Act.

19. In Deepal Girishbhai Soni and others Vs.

United India Insurance Co. Ltd. reported in (2004)5 SCC 385, the Hon'ble Apex Court enlightened the difference between the provisions of Section 163(A) and Section 166 of the Act. 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 163(A) 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 163(A) of the Act 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 163(A) of the Act, the Tribunal

- 12 - may be required to adjudicate upon various disputed questions like age, income, etc. unlike in a proceeding under Section 140 of the Act.

20. 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 163(A) 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 claimant (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 *Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala and Others* reported in AIR - 13 -

2001 SC 1832, the Hon'ble Apex Court has observed as under: 15. xxxx 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.

21. Hence, 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 163(A)(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 - 14 -

contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163(A) 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.

22. For the aforesaid reasons, the Court is of the

view 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 rider of the motorcycle. - 15 -

23. Section 163(A) of the Act was inserted in

the Act via an amendment in the year 1994. It is a beneficial legislation as it awards compensation to the claimant on a no fault liability basis. Section 163A of the Act reads as under: 163(A). 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 authorised 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. - 16 -

24. By the 2019 amendment, which came into force on 01.04.2022, Section 163A of the Act has now been repealed for the reason that a similar provision has been inserted in the Act, in fact, an entirely new Chapter, i.e. Chapter XI which bears the similar provision in Section 164 of the Act, is now incorporated. Be that as it may, for Court purpose, what is relevant is that at the time when the accident occurred, it was Section 163A of the Act, which was applicable.

25. A bare perusal of Section 163A of the Act

would show that it starts with a non-obstante clause and moreover, it is a beneficial piece of legislation and in a case like the one at hand where, in a motor accident case, the husband of claimant died, the need for a more comprehensive scheme of no-fault liability was felt, for reason of the ever-increasing instances of motor vehicle accidents and the difficulties in proving rash and negligent driving as

a cause, leading to the accident. - 17 -

26. It clearly indicates that even when fault liability

claims under Section 166 of the MV Act are filed, it is incumbent on the insurer to confirm their prima-facie liability and after such confirmation, the claimant should be required to exercise their option for conciliation under structured compensation formula. In the present case, the Court notices that the rider/owner of the motorcycle died in the fatal accident and since the owner himself died in the accident, a no fault liability could be imposed on the insurer of the vehicle.

27. Having regard to the above position, the Tribunal

has rightly granted compensation to the claimant under structured formula basis, which requires no interference. The contention of the appellant fails. Accordingly, the Court proceeds to pass the following:

ORDER

1. The appeal is dismissed.

2. The impugned judgment and award dated 12-04-2014 passed by the Senior Civil Judge and MACT at Channagiri in MVC No.161 of 2011 is hereby confirmed.

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3. Registry is directed to send the copy of the

judgment to the Tribunal forthwith along with

the Tribunal records.

4. No order as to costs. Sd/- (VENKATESH NAIK T) JUDGE MN

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