Before K. Kannan, J.

SUDESH SHARMA AND OTHERS—*Appellants*

versus

PRAHALAD KUMAR GARG AND ANOTHER—*Respondents*

FAO No. 2492 of 2002

July 24, 2014

Motor Vehicles Act, 1988 - Ss. 147, 163-A & 166 - Code of Civil Procedure, 1908 - O.6 Rl.17 - Accidental death - Amendment of claim petition - Passenger was killed when driver drove car against tree - Claim Petition was filed - Subsequently, an application was filed seeking for amendment of said claim petition - Insurer raised objection on ground that amendment application was filed after expiry of more than 12 years from date of filing of original claim petition - Held, that Section 163-A of Act, 1988 is a statutory innovation brought to allow for a claim for compensation on strict liability basis - Application for amendment could only be resisted on account of delay where there is a bar of limitation - Delay will not assist insurer to scale down its liability - Insurance company is in business only to pay and not to make profit - Requirement is death or injury by use of a motor vehicle; no further proof is required - There was no dispute as regards same - Owner of vehicle to be liable same way as driver is and this shall be channeled to liability of insurer as a person who is bound to indemnify insured.

Held, that an application for amendment in motor accident case which is welfare legislation could be resisted where there is a bar of limitation or there is a waiver of some rights. Section 163-A is a statutory innovation brought through on amendment in the year 1994 to allow for a claim for compensation on strict liability basis, without having to prove rashness and negligence of any other person involving the injured/or representative of the deceased. This is intended to secure benefit to a class of persons who are economically in a lower strata and as a measure of welfare to see that compensation is not completely deprived by inability to prove rashness and negligence. All that is required is the death or injury should have resulted by the use of a motor vehicle and if there was an insurer that was liable for such an

injury under the terms of the policy, the minimum of what is required under Schedule-II shall be paid by the insurer.

(Para 1)

Further held, that the Insurance Company is in business only to pay and not to make profit. If there shall be an increase in liability, so it shall under the scheme of the Act. I, therefore, reject a plea of behalf of the insurer that conversion shall not be made. The objection is also on the ground that the petition is belated. We have come by sorry spectacle in almost every High Court in India of our inability to tackle cases within any reasonable time. If there is a delay, it is as much an institutional delay than how a party contributes to it. I will not, therefore, let even a delay as prevailing to assist the insurer to scale down its liability. The application in CM No. 6203-CII of 2014 for conversion of the petition under Sections 163-A to 166 is allowed.

(Para 3)

Further held, that an act of a driver dashing against a tree, which, by the very nature of things, cannot shift itself from one place must mean that there had been a negligent act only on the part of the driver. Instance where a driver could plead exoneration of such a responsibility shall be when there is a mechanical failure but there gain the liability of the owner would still be exposed. A vehicle is bound to be kept in a state of repair and if there was a mechanical defect that resulted in accident, it should still be seen as want of care by the owner that would make him liable and, consequently, the insurer is liable for any claim arising out of the accident. That minimal requirement is that the death or injury is by the use of a motor vehicle. There is no dispute as regards the same. I find that the death that as resulted is a typical illustration of a *res ipsa loquitur* situation and no further proof for negligence is necessary than merely statement of fact of death or injury. This is not a claim by the driver or owner of the vehicle, which alone would be barred. The claim is by a passenger in a case where there is a comprehensive insurance cover for risk to a passenger. I, therefore, hold the owner of vehicle to be liable same way as driver is and this shall be channeled to liability of insurer as a person who is bound to indemnify insured.

(Para 4)

Neeraj Khanna, Advocate, *for the appellants.*

Deepak Grewal, Advocate, for Sanjeev Kodan, Advocate, for respondent No.1.

Rohit Goswami, Advocate for Vinod Chaudhry, Advocate for respondent No.2.

K. KANNAN, J. (Oral)

(1) The appeal is for enhancement of claim for compensation filed in a petition under Section 163-A of the Motor Vehicles Act. It was a case of the deceased who was a passenger in a car when the driver drove against a tree and killed the passenger. The petition was filed under Section 163-A of the MV Act and the evidence was that the income of the deceased was more than ₹ 40,000/- per year. An application has been filed before this court seeking for amendment of the claim petition under Section 166 of the MV Act. The objection taken by the insurer is that the application has been filed more than 12 years from the date of the filing of the petition and, therefore, it ought not to be accepted. An application for amendment in motor accident case which is a welfare legislation could be resisted where there is a bar of limitation or there is a waiver of some rights. Section 163A is a statutory innovation brought through an amendment in the year 1994 to allow for a claim for compensation on strict liability basis, without having to prove rashness and negligence of any other person involving the injured/or representative of the deceased. This is intended to secure benefit to a class of persons who are economically in a lower strata and as a measure of welfare to see that compensation is not completely deprived by inability to prove rashness and negligence. All that is required is the death or injury should have resulted by the use of a motor vehicle and if there was an insurer that was liable for such an injury under the terms of the policy, the minimum of what is required under Schedule-II shall be paid by the insurer.

(2) It has been laid down that it shall be impermissible for a person whose income is more than ₹ 40,000/- but deliberately scales down the income to be less than ₹ 40,000/- to bring it within the four corners of Section 163-A. Such a petition is barred in law as held in ***Deepal Girish Bhai Soni & others*** *versus* ***United India Insurance Company Limited***[1]. In this case if the claim is made under Section 163-

[1] 2004 ACJ 934

A and an independent claim is made over again under Section 166, then it could be stated that such a petition would be barred. If, on the other hand, a claim is made under Section 163-A which is found to be wrong as per law and the appropriate claim would be only under Section 166, the claimant indeed takes up the additional burden of what does not exist under Section 163-A. It is another way of saying that the petitioner subjects himself to more rigorous appraisal regarding the issue of negligence and renders his claim open to rejection for absence of proof of negligence. He does not therefore improve the situation except when he is able to prove the negligence of the driver, in which case the scales of compensation get to be different which are driven through precedents. Several of heads of claims for compensation are set out in the form prescribed under the Motor Accident Claims Rules and the method of assessment to compensation is set through several pronouncements and particularly on the lines drawn by the decision of the Supreme Court in ***Sarla Verma*** *versus* ***Delhi Transport Corporation and another***[2] and modified later with reference to the issues relating to loss of consortium and loss of love and affection in the manner suggested in the decision in ***Rajesh versus Rajbir Singh***[3]. There have been some clarifications also with respect to prospect of increase which were originally understood as possible only in respect of settled employments but other decisions following ***Sarla Verma (supra)*** have explained that this prospect could be applied even for self-employments and employments in private institutions.

(3) In this case by an amendment, the Insurance Company cannot be said to be prejudiced, for, as regards the Insurance Company, the permissible defences are always be confined to what is set forth under Section 149 of the Motor Vehicles Act. It shall also become possible apart from the defences available under Section 149 to plead jurisdictional issues regarding maintainability of petitions or non-involvement of vehicles. Beyond this, there shall be no other objection which the Insurance Company could be heard of. A conversion of an application under Sections 163-A to 166 cannot be resisted by an insurer on a plea that such a conversion would result in undertaking a larger slice of liability if the negligence is established. The Insurance Company is in business only to pay and not to make profit. If there shall be an increase in liability, so it shall be under the scheme of the

---

[2] (2009) 6 SCC 121
[3] (2013) 9 SCC 54

Act. I, therefore, reject a plea on behalf of the insurer that conversion shall not be made. The objection is also on the ground that the petition is belated. We have come by sorry spectacle in almost every High Court in India of our inability to tackle cases within any reasonable time. If there is a delay, it is as much an institutional delay than how a party contributes to it. I will not, therefore, let even a delay as prevailing to assist the insurer to scale down its liability. The application in CM No.6203-CII of 2014 for conversion of the petition under Sections 163-A to 166 is allowed.

(4) As regards the proof of negligence which he would require to be established in this case, the driver, in this case, dashed against a tree and one passenger died. An act of a driver dashing against a tree, which, by the very nature of things, cannot shift itself from one place must mean that there had been a negligent act only on the part of the driver. Instance where a driver could plead exoneration of such a responsibility shall be when there is a mechanical failure but there again the liability of the owner would still be exposed. A vehicle is bound to be kept in a state of repair and if there was a mechanical defect that resulted in accident, it should still be seen as want of care by the owner that would make him liable and consequently, the insurer is liable for any claim arising out of the accident. That minimal requirement is that the death or injury is by the use of a motor vehicle. There is no dispute as regards the same. I find that the death that as resulted is a typical illustration of a *res ipsa loquitur* situation and no further proof for negligence is necessary than merely statement of fact of death or injury. This is not a claim by the driver or owner of the vehicle, which alone would be barred. The claim is by a passenger in a case where there is a comprehensive insurance cover for risk to a passenger. I, therefore, hold the owner of the vehicle to be liable the same way as the driver is and this shall be channeled to the liability of the insurer as a person who is bound to indemnify the insured.

(5) The deceased was an Enforcement Officer in the Provident Fund office, drawing an income of ₹ 7,320/-. He was also assessed an income tax assessee at the relevant time. Having regard to the prospect of increase that was possible in government undertaking, I will provide for 30% increase but subject the same to 10% deduction for tax and apply a multiplier of 13 against 7 as taken by the Tribunal. I will also provide for loss of consortium to the wife and to the unmarried

daughter on the scales suggested in ***Rajesh (supra)***. I will tabulate the several heads of claims as under:-

Accident	18.07.1998		
Age	49 years		
Occupation	Enforcement Officer		
Claimants	Wife, 2 major sons and 1 daughter		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1.	Income		7,320
2.	Add, % of increase 30%/50%		9,516 less 10% tax=8,564.40
3.	Deduction ½, 1/3, ¼, 1/5		6,423.30
4.	Multiplicand		77,079.60
5.	Multiplier		13
6.	Loss of dependence		10,02,035
7.	Medical expenses		
8.	Loss of consortium		1,00,000
9.	Loss of love and affection		1,00,000
10.	Loss to estate		2,500
11.	Funeral expenses		10,000
	Total		12,14,535

There shall be an award of ₹12,14,535/- and the amount shall be distributed amongst the widow and children equally. The liability shall be on the Insurance Company.

(6) The award stands modified and the appeal is allowed to the above extent.

P.S. Bajwa