
(2022) 02 BOM CK 0020

Bombay High Court (Aurangabad Bench)

Case No: First Appeal No. 69 Of 2007

Bhausahab S/O
Rakhama Rohokale

APPELLANT

Vs

Shamrao N. Kulat And
Others

RESPONDENT

Date of Decision: Feb. 8, 2022

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 163A, 166, 173

Hon'ble Judges: R. G. Avachat, J

Bench: Single Bench

Advocate: N. D. Kendre, P. B. Vikhe Patil, S. G. Chapalgaonkar

Final Decision: Dismissed

Judgement

R. G. Avachat, J

1. This is an appeal under Section 173 of the Motor Vehicles Act (for short, "M.V. Act"). The challenge herein is to the judgment and award

refusing to grant compensation on account of injuries and permanent disability suffered in an accident involving motor vehicles. The original petitioner

has, therefore, preferred the present appeal.

2. Facts giving rise to the present appeal are as follows : The petitioner was travelling in a Jeep MH-20-E-8074, from Shirdi to Supa, on 25.07.1997.

An unknown truck approaching from opposite side, dashed against the Jeep and fled. It was about 9.15 p.m., the petitioner and others in the Jeep

suffered multiple injuries. The petitioner's right leg was amputated. He, therefore, preferred the petition (Motor Accident Claim Petition No.328 of

1998) against the owner and the insurer of the Jeep he was travelling in.

3. The Tribunal, on appreciation of the evidence in the petition, dismissed the same mainly on the ground of the petitioner having failed to even aver

and prove the Jeep driver to have been responsible for the accident.

4. Heard.

Learned Advocate Shri N. D. Kendre (appointed) and the learned Advocate Shri P. B. Vikhe Patil, representing the petitioner, would submit that it

was a case of composite negligence of the drivers of both the vehicles involved in the accident. The petitioner was one of the passengers in the Jeep.

Although, the First Information Report was lodged against the driver of the truck, it was only in respect of a criminal liability. The petitioner averred in

the petition that the accident took place due to rash and negligence on the part of the drivers of the vehicles. According to the learned Advocates, the

petitioner's right leg had to be amputated. He had to spend a lot for medical treatment. Both the learned Advocates, therefore, urged for allowing

the appeal. Both of them, in the alternative, urged for permitting them to convert the petition to one under Section 163-A of the M.V. Act.

5. Learned Advocate for the respondent " Insurance Company would, on the other hand, submit that proof of negligence and/or rashness on the

part of driver of the offending vehicle/vehicles is a sine qua non for grant of compensation under Section 166 of the M.V. Act. The learned

Advocate took this Court through the averments in the petition, police papers relied on and even the own testimony of the petitioner to ultimately

submit that even there is no slightest of whisper attributing rashness or negligence to the driver of the Jeep. According to the learned Advocate, the

Tribunal has therefore rightly dismissed the petition. On the alternative, prayer for converting the petition to one under Section 163-A of the M.V. Act,

the learned Advocate would submit that the petitioner had already taken recourse to Section 166. He preferred application under Section 140 as well,

concerned, it is to be stated that in case of New India Assurance Co. Ltd. Vs Smt. Ashabai (supra), this Court has observed that, for invoking

provisions of Section 163-A, annual income of Rs.40,000/- shall be treated as cap. Claimants cannot notionally bring down income to Rs.40,000/-.

Moreover, a Three Judge Bench of the Hon'ble Supreme Court of India in the case of Deepal Girishbhai Soni and others Vs United India Insurance

Co. Ltd. (supra), has observed that the proceeding under Section 163-A being a social security provision providing for a distinct scheme only those

whose annual income is upto Rs.40,000/-, can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the

Act.

8. Section 163-A was brought on the statute book way back in November 1994. We are in 2022. About 28 years have passed. The Second Schedule

of M. V. Act has remained unchanged in spite of Apex Court directions to amend it in view of dwindling value of rupee, inflation and cost of living,

index etc. (Kurvan Ansari alias Kurvan Ali & Anr. Vs. Shyam Kishore Murmu & Anr. - Supreme Court of India Civil Appeal No.6902 of 2021). A

thought had come to the mind of this Court to allow the petitioner to convert the petition to one under Section 163-A of the M.V. Act on this ground

alone. It is, however, found that the accident took place in July 1997 i.e. within a 2 ½ years of Section 163-A of the M.V. Act was brought on the

statute book. For grant of compensation, necessarily, income of the petitioner when the accident did take place, will have to be taken into

consideration. With a passage of only 2 ½ years, there would not have been substantial change in the income and value of rupee. The petitioner, in

the petition itself has averred that his annual income from salary was Rs.84,000/-, plus from agriculture, Rs.2,000/- per month. This aspect, necessarily

comes in the way of the petitioner for grant of an alternate prayer. The Court is very much conscious of the fact that the merits of the proposed

amendment cannot be looked into. The fact, however, remains that no fruitful purpose would be served by granting alternative prayer. Even this Court

takes his petition under Section 163-A of the M.V. Act and proceed to grant relief, the petitioner would not be entitled to any compensation therein in

view of his income being more than double the ceiling of Rs. 40,000/- per annum at the relevant time.

9. Be that as it may. In view of the cap of income of Rs.40,000/- per annum for grant of compensation under Section 163-A of the M.V. Act and the

petitioner's annual income from salary being Rs.84,000/- per annum, plus Rs.24,000/- per annum as an agricultural income in the year 1997, the

petitioner would not be entitled to prefer a claim under Section 163-A of the M.V. Act. The alternative prayer cannot be considered favorably.

Unfortunately, the appeal fails. The same is thus, dismissed.

10. The fees of Shri N. D. Kendre, learned Advocate, who was appointed for the appellant is quantified at Rs.10,000/- (Rupees Ten Thousand), to be

paid by the Legal Aid Services Sub-Committee, Aurangabad.