Chandra Singh and Another Vs Gayatri Devi and Another

Court: Gauhati High Court

Date of Decision: Aug. 16, 2005

Acts Referred: Motor Vehicles Act, 1988 â€" Section 140, 141, 163A, 166, 167

Citation: (2006) 4 ACC 513 : (2007) ACJ 2355 : (2005) GLT 420 Supp

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

I.A. Ansari, J.
These two appeals have arisen out of the award dated 21.12.2004, hereby two claim cases, namely, M.A.C. Case Nos.

35 and 36 of 2000 have been disposed of by the learned Member, Motor Accidents Claims Tribunal, Dimapur.

2. By this common judgment and order I propose to dispose of both the appeals, for on the request of learned Counsel for the parties, both the

appeals have been heard together inasmuch as the same have arisen out of the same accident and the findings in any of the two appeals may affect

the outcome of the other appeal.

M.A.C. Appeal No. 3 (K) of 2005:

3. This appeal has arisen out the claim application for compensation, which gave rise to M.A.C. Case No. 35 of 2000 aforementioned.

4. The material facts and the various stages, which led to the M.A.C. Appeal No. 3 (K) of 2005 aforementioned, may in brief be stated as follows:

(i) The appellant No. 1 herein, namely, Chandra Singh made an application u/s 166 of the Motor Vehicles Act, 1988 (in short "the Act"), seeking

a sum of Rs. 6,20,670 as compensation for the injuries suffered by him, his case being in brief that on 17.6.1997 when he was driving his truck

loaded with cement, the truck met with an accident at Makhan in Sena-pati District of Manipur due to failure of the brake and as a result of the

said accident, he sustained grievous injuries and became disabled. Pending disposal of the application made u/s 166, the claimant also made an

application u/s 140 of the Act, seeking payment of compensation on the basis of no fault to the tune of Rs. 25,000. In course of time, the learned

Tribunal framed the following six issues for determination:

Issues:

(1) Whether the claim petition is maintainable in the present form?

(2) Whether the claimants are involved in the accident and sustained grievous injuries and became permanently disabled?

(3) Whether the accident took place due to rash and negligence of the driver of the vehicle No. NL 05-A 2401 (Tata)?

(4) Whether the driver of the offending vehicle was having valid and effective driving licence at the time of accident? And whether the vehicle had

all the requisite documents at the material time?

(5) Whether the claimant is entitled to any compensation? If so, to what amount and payable by whom?

(6) Whether claimants are earning, if so, to what amount per month?

(ii) When the evidence was brought on record to the effect that the said accident had taken place due to rash and negligent driving of the said

vehicle by its driver, i.e., the present claimant-appellant himself, the appellant filed a petition u/s 163-A of the Act seeking to amend his claim

application from one u/s 166 to Section 163-A. The amendment, so sought for, was allowed. The learned Tri-bual, however, having reached the

finding that the said accident had taken place due to fault on the part of the present claimant-appellant No. 1, concluded that the present appellant

was not entitled to receive any compensation inasmuch as a wrongdoer, according to the learned Tribunal, cannot be permitted to claim

compensation for injuries suffered by him due to his own fault. With the conclusion so reached, the learned Tribunal held that the claim application

made by the claimant-appellant u/s 163-A was not maintainable inasmuch as the said accident had taken place due to the fault on the part of the

claimant-appellant himself. On the basis of the conclusion so reached, the learned Tribunal dismissed the claim application and it is this dismissal of

the claim application, which stands impugned in the present appeal.

5. I have heard Mr. T.B. Jamir, learned Counsel for the appellants and Mr. B.N. Sharma, the learned Counsel appearing on behalf of the

respondents.

6. Presenting the case on behalf of the claimant-appellant, Mr. T.B. Jamir, learned Counsel for the appellant has submitted that the learned

Tribunal''s conclusion that the application made by claimant-appellant u/s 163-A was not maintainable on account of the fact that the said accident

had taken place due to the fault on the part of the claimant-appellant is incorrect in law, for Section 163-A, contends Mr. Jamir, permits filing of a

claim application seeking compensation even by a person, whose own fault had led to the accident.

7. Support for his above submission is sought to be derived by Mr. T.B. Jamir from the case of The Oriental Insurance Co. Ltd. etc. Vs.

Hansrajbhai V.Kodala and Others etc. etc., ; Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, and Union of India

(UOI) and Another Vs. Mrs. Saraswati Debnath and Others,

8. The submission so made on behalf of the claimant-appellant is seriously disputed by Mr. B.N. Sharma, learned Counsel for the insurer-

respondent on two grounds. It is contended by Mr. Sharma that Section 163-A does not permit a wrongdoer to seek compensation and viewed

from this angle, when it was claimant''s own fault as a driver which had led to the accident, the claimant could not have applied for award of

compensation u/s 163-A. The second ground of attack on the appellant-claimant''s plea that his application u/s 163-A was maintainable is that a

person, who earns annually more than Rs. 40,000 is not legally entitled to make any application u/s 163-A and since the claimant''s own statement

made in the claim application and also the evidence on record revealed that claimant''s monthly income was Rs. 5,000, it meant that the annual

income of the claimant-appellant was Rs. 60,000 and his application was, therefore, not sustainable and was rightly rejected by learned Tribunal.

9. Support for his contention that as a wrongdoer or as a person, whose own driving had been the cause of the accident, the claimant-appellant is

not entitled to any compensation and conclusion reached in this regard by learned Tribunal is correct, reliance is placed by Mr. B.N. Sharma,

learned Counsel for the insurer-respondent on National Insurance Co. Ltd. Vs. R. Mohan and Another, United India Insurance Co. Limited Vs.

Bhupinder Singh and Others,

10. For the purpose of sustaining his submission that a person, who earns more than Rs. 40,000 annually, cannot file an application u/s 163-A, Mr.

B.N. Sharma has placed reliance on The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., ; Deepal Girishbhai

Soni v. United India Insurance Co. Ltd. 2004 ACJ 934 and Narshiji Nagaji Majirana Vs. Mangilal Amturam Bishnoi,

11. From the rival submissions made before me on behalf of the parties, two vital questions, which fall for determination in the present appeal are

as follows:

(i) Whether a person whose own wrongful act, negligence or default caused the accident or formed the cause of the accident, can maintain an

application u/s 163-A claiming compensation?

(ii) Whether a person whose annual income is more than Rs. 40,000 is entitled to make an application u/s 163-A claiming compensation?

12. Since the answers to the two questions framed above may determine the fate of the present appeal, let me take up first these two questions for

discussion and decision.

Question No. (i):

Whether a person whose own wrongful act, negligence or default caused the accident or formed the cause of the accident, can maintain an

application u/s 163-A

13. While considering the above aspect of the matter, it is pertinent to bear in mind that the source forming the legal basis for payment of

compensation can be traced to the law of Torts. Subject to statutory modifications to the rules of common law, a right to claim compensation for

tortious act arises under the common law, only when the person proceeded against or against whom the claim is made is proved to have failed to

perform a legal obligation causing injury to any other person or to have committed an act of omission or commission causing legal injury to the

person lodging the claim.

14. As a precursor to the present Motor Vehicles Act, 1988, the Motor Vehicles Act, 1939, provided a statutory mechanism for enforcing the

rights and obligations flowing under the common law. Notwithstanding such statutory support provided to a person claiming compensation, what is,

however, crucial to note is that if a person was not legally liable to pay any compensation, the statutory mechanism conceived under and provided

by Motor Vehicles Act, 1939, did not make the person proceeded against liable to pay compensation except in situations and to the extent to

which the statute made a specific departure, in this regard from the principles governing tortious liability under the common law.

15. The question as to whether proof of fault was a condition precedent for sustaining a claim for compensation under the Motor Vehicles Act,

1939, came to be considered by Apex Court in Minu B. Mehta v. Balkrishna Ramchandra Nayran 1977 ACJ 118. In Minu B. Mehta (supra),

Bombay High Court had taken the view that the fact of an injury resulting from the accident involving the use of a car on the public road is the basis

of liability under the Motor Vehicles Act, 1939 and that it is not necessary to prove any negligence on the part of the driver. Even Andhra Pradesh

High Court had held in Haji Zakaria v. Naoshir Cama 1976 ACJ 320, that the insured and, consequently, the insurer is liable to compensate a

third party dying or getting injured on account of the use of the insured vehicle at a public place irrespective of the fact whether the death or injury

and disablement had been caused by rash and negligent driving or not.

16. Disagreeing with the above views expressed by Bombay High Court as well as Andhra Pradesh High Court, the Apex Court pointed out in

Minu B. Mehta 1977 ACJ 118 that the liability of the owner of the car to compensate the victim in a car accident due to negligent driving of his

servant is based on the law of Torts and that the concept of owner''s liability without any negligence is opposed to the basic principles of law. Held

the Supreme Court in Minu B. Mehta''s case (supra), that no legal right arose under the Motor Vehicles Act, 1939, to claim compensation against

the insured or the insurer unless the person who sought award of compensation proved that the accident leading to the injury or death was caused

due to wrongful act, default or neglect on the part of the insured or his servants.

17. Before a person can be made liable to pay compensation for any injuries and damage, which have been caused by his action, it is necessary,

noted the Apex Court in Minu B. Mehta, 1977 ACJ 118 (SC), that the person suffering damage or injury should be able to establish that he has

some cause of action against the party responsible. Explaining as to when a cause of action may arise out of actions for wrongs under the common

law or for breaches of duties laid down by statutes, the Supreme Court in Minu B. Mehta (supra), made it clear that in order to succeed in an

action for negligence, the plaintiff must prove (1) that defendant had, in the circumstances, a duty to take care and that duty was owned by him to

the plaintiff and that (2) there was a breach of that duty and that as a result of the breach, damage was suffered by the plaintiff.

18. Clarifying further, the Apex Court in Minu B. Mehta, 1977 ACJ 118 (SC), held that the owner''s liability arises out of his failure to discharge a

duty cast on him by law and that the right to receive compensation can only be against a person who is bound to compensate due to the failure to

perform a legal obligation and that when a person is not liable legally, he is under no duty to compensate anyone. Pointed out Apex Court in Minu

B. Mehta (supra), that Claims Tribunal is a Tribunal constituted by the State Government for expeditious disposal of the motor vehicular claims,

but the general law applicable was still the common law and the law of Torts and if, under the law, a person becomes legally liable, then only the

person who suffers injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to

be just (sic) the plea, concluded the Apex Court in Minu B. Mehta (supra), that a Claims Tribunal is entitled to award compensation which

appears to it to be just, when it is satisfied, on proof of injury to a third party arising out of the use of a vehicle in a public place without the proof of

negligence, if accepted, would lead to strange results.

19. The Apex Court made it clear in Minu B. Mehta, 1977 ACJ 118 (SC), in no uncertain words, thus:

The concept of owner''s liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury

arising out of the use of a vehicle in a public place cannot justify fastening liability on the owner. It may be that a person bent upon committing

suicide may jump before a car in motion and, thus, get himself killed. We cannot perceive by what reasoning the owner of the car could be made

liable. The proof of negligence remains the lynchpin to recover compensation.

20. From a careful reading of what were observed and laid down in Minu B. Mehta, 1977 ACJ 118 (SC), it becomes abundantly clear that Apex

Court in Minu B. Mehta (supra) rejected the view that for sustaining a claim for compensation under the Motor Vehicles Act, 1939, it was enough

to prove that the person concerned had received injury or died in an accident arising out of use of the vehicle at a public place and that proof of

negligence was not necessary. In no uncertain words the law laid down in Minu B. Mehta (supra), was that notwithstanding the fact that the

provisions for insurance of vehicles had been made in the Motor Vehicles Act, 1939, the owner can be made liable to pay compensation only if

there was proof of fault on his part either on account of the fact that he had driven the vehicle rashly or negligently or that he had allowed the

vehicle to be driven by a person who had driven the same rashly or negligently.

21. The above prominently pronounced position of law continued to govern the field till Motor Vehicles Act, 1939, came to be amended by

Amendment Act 47 of 1982 incorporating therein Section 92-A, which reads as follows:

92-A. Liability to pay compensation in certain cases on the principle of no fault.-(1) Where the death or permanent disablement of any person has

resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the

owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the

provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen

thousand rupees and the amount of compensation payable under the sub-section in respect of the permanent disablement of any person shall be a

fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent

disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or

vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect

of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or

permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

22. It may be carefully noted that it was Section 92-A which introduced for the first time the concept of payment of compensation without proof of

fault or negligence on the part of the owner or driver of the vehicle, for Sub-section (3) of Section 92-A laid down, in clear terms, that the claimant

shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any

wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. The object and reasons for

such noticeable shift in the settled legal position were summarised by the amended Act 47 of 1982 as follows:

(10) ...Having regard to the nature of circumstances in which road accidents take place, in a number of cases it is difficult to secure adequate

evidence to prove negligence. Further, in what are known as ''hit-and-run'' accidents, by reason of the identity of the vehicle involved in the

accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act

suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions, first, for

compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and secondly, for compensation by way of

solatium in cases in which the identity of the vehicle causing an accident is unknown.

23. It was, in fact, in the case of Gujarat State Road Trans. Corporation v. Ramanbhai Prabhatbhai 1987 ACJ 561 that the Supreme Court, taking

note of the fact that under Sub-section (3) of Section 92-A, the claimant shall not be required to plead and establish that the death or permanent

disablement in respect of which the claim had been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or

vehicles concerned or of any other person, recognised for the first time in unequivocal terms that the provisions of Section 92-A of Motor Vehicles

Act, 1939, introduced a clear departure from the common law that a claimant must establish negligence on the part of the owner or driver of the

vehicle in order to enable him to receive compensation for the death or permanent disablement caused on account of use of the vehicle.

24. In Gujarat State Road Transport Corpn. v. Ramanbhai Prabhatbhai 1987 ACJ 561, the court held a pedestrian entitled to recover damages

regardless of the fact as to whether he could prove negligence on the part of the owner or driver of the vehicle involved in the accident or not.

Observed the court in Gujarat State Road Transport Corpn. (supra), in this regard, ""Where a pedestrian without negligence on his part is injured

or killed by a motorist, whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover the damages if

the principle of social justice should have any meaning at all"".

25. Taking note of the language of subsection (3) of Section 92-A, held the Apex Court, as indicated hereinabove, thus- ""This part of the Act is

clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor

vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent

the substantive law of country stands modified"".

26. I may pause here to point out that Indian Motor Vehicles Act, 1914, which was the first enactment relating to motor vehicles in India was

replaced by Motor Vehicles Act, 1939, which consolidated and amended the law relating to the Motor Vehicles Act in India. I may also point out

that Motor Vehicles Act-, 1939, which was based on the Fatal Accidents Act, 1855, still recognised the award of compensation solely based on

the law of Torts. The year 1956 saw, for the first time, establishment of the Motor Accidents Claims Tribunal in India, which were established to

expedite the process of determination of cases for compensation arising out of motor vehicular accidents. However, proof of negligence remained

embodied as a condition precedent for grant of compensation under the Motor Vehicles Act, 1939. It was Section 92-A of the Motor Vehicles

Act, 1939, which introduced the first departure from the usual common law principle that a claimant should establish negligence on the part of the

owner or driver of the motor vehicle before claiming any compensation for death or permanent disability caused on account of a motor vehicular

accident.

27. Notwithstanding the departure from the usual common law principle as indicated hereinabove, doubts still persisted if a person, whose own

fault had led to an accident, could maintain a claim for compensation on the principle of "no fault" u/s 92-A. In order to determine if a claim for

compensation could have been made on the principle of "no fault", u/s 92-A, by a person, whose own wrongful act, neglect or default had been

the cause of accident, one may take note of Sub-section (4) of Section 92-A which read thus:

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect

of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or

permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

28. A bare reading of Section 92-A clearly shows that a claim for compensation on the basis of no fault, envisaged by Section 92-A, could not be

defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement, the claim has been

made. In short, thus, even the person who himself was the cause of the accident or of the injury suffered by him, became entitled to receive

compensation on the principle of "no fault" u/s 92-A.

29. Be that as it may, a Division Bench of Madras High Court in K. Nandakumar Vs. Managing Director, Thanthai Periyar Transport Corporation

Ltd., held that even for the purpose of invoking Section 92-A, it was for the claimant to prove that he was not in any manner responsible for the

accident. In other words, the court held that in the cases where the injured or the deceased was himself responsible for the accident, question of

paying compensation on no fault basis even u/s 92-A did not arise at all. Rejecting this view, the Apex Court, in K. Nandakumar Vs. Managing

Director, Thanthal Periyar Transport Corpn., observed and held as follows:

(4) By reason of Sub-section (1) of Section 92-A, an absolute liability is cast upon the owner of a vehicle to pay compensation in respect of death

or permanent disablement resulting from an accident arising out of its use. By reason of Sub-section (3), the claimant is not required to plead or

establish that the death or disablement was due to a wrongful act or neglect or default of the owner or any other person. Sub-section (4) is in two

parts. The first part states that a claim for compensation under the section is not defeated by reason of any wrongful act, neglect or default of the

person who had died or suffered permanent disablement. The second part states that the quantum of compensation is not to be diminished even if

the person who had died or suffered permanent disablement bore some responsibility for his death or disablement.

(5) There was, therefore, on a plain reading of Section 92-A, particularly the first part of Sub-section (4) thereof, no basis for holding that a claim

thereunder could be made only if the person who had died or suffered permanent disablement had not been negligent. The provisions being clear,

no external aid to its construction, such as the Statement of Objects and Reasons, was called for.

30. For what has been discussed above, the observations made in K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn., by

the Apex Court and the law laid down therein, it becomes abundantly clear that the decision of the Apex Court in Minu B. Mehta v. Balkrishna

Ramchandra Nayan 1977 ACJ 118 wherein the Supreme Court had held that in the absence of proof of fault on the part of the owner or driver of

the vehicle, no claim for compensation under the Motor Vehicles Act, 1939, could be entertained, was rendered before Section 92-A was

introduced into the statute and that after the introduction of Section 92-A, particularly in view of what Sub-section (4) of Section 92-A stated, a

claim u/s 92-A, on the principle of no fault, could be made even by a person whose own wrongful act, neglect or default had formed the cause of

the accident. In short, a claim for compensation u/s 92-A was held maintainable as long as the victim is shown to have suffered death or permanent

disablement and it was immaterial in such a case whether it was the victim''s own wrongful act, neglect or default which had caused the said

accident. To put it differently, a claim for compensation on the basis of no fault u/s 92-A was maintainable even if the victim had suffered death or

permanent disablement on account of his own wrongful act, neglect or default.

31. It is worth noticing that Section 92-A of Motor Vehicles Act, 1939, stood replaced by Section 140 of Motor Vehicles Act, 1988, when the

latter statute came into force. Since Section 92-A is replaced by Section 140 and Sub-section (4) of Section 140 embodies the same provisions as

were contained in the Sub-section (4) of Section 92-A, it logically follows that even after coming into force of Motor Vehicles Act, 1988, Apex

Court''s decision in K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn., still holds the field and the effect is that regardless

of the fact as to whether the person, injured or killed in a motor vehicular accident, was himself, partially or wholly, responsible for the accident,

compensation under subsection (4) of Section 140 is payable to the victim or his legal representatives, as the case may be.

32. Turning to Section 163-A, which is the real subject-matter of controversy at hand, it may be pointed out that no provision such as the one that

we have now, in the form of Section 163-A, existed in the Motor Vehicles Act, 1939. No such provision existed even in Motor Vehicles Act,

1988, when this Act initially came into force. As a matter of fact, Section 163-A has been introduced by Amendment Act 54 of 1994 with effect

from 14.11.1994 as against the fixed minimum interim compensation awardable on the principle of no fault u/s 140, which merges in terms of

Section 141, inthe final award to be made on the basis of ''fault liability'' u/s 166.

33. Section 163-A allows a victim of a motor vehicular accident to obtain a final award of compensation based in the structured formula contained

in the Second Schedule to the Act and such compensation may be obtained without the claimant being required to plead or establish that the

injuries sustained or death caused was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any

other person. The compensation finally payable u/s 163-A is, however, materially different from the minimum prescribed compensation payable u/s

140, though both these provisions dispense with the proof of negligence on the part of the owner of the vehicle or vehicles concerned or of any

other persons.

34. In fact, the present Motor Vehicles Act, 1988, provides an option to the claimant to obtain interim compensation u/s 140 being the minimum

prescribed compensation until final adjudication of his claim u/s 166 on the basis of ''fault liability''. In the final award which may be so reached,

would get merged with the interim compensation, if any, already received by the claimant u/s 140. The other course, which the claimant can opt

for, is to obtain a final award of compensation on the basis of structured formula as depicted in Second Schedule u/s 163-A.

35. What is now worth noticing is that Section 163-A does not incorporate a provision, such as the one, which we can notice in Sub-section (4) of

Section 140, namely, that a claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of

the person in respect of whose death or permanent disablement the claim has been made.

36. Notwithstanding, however, the fact that Section 163-A does not contain the provisions, such as the one, which subsection (4) of Section 140

embodies, what is of paramount importance to note is that Section 163-A opens with a non obstante clause of extremely wide nature, namely,

notwithstanding anything contained in this Act or in any other law for the time being in force''''. This non obstante clause shows that by inserting

Section 163-A, Parliament intended to provide a mechanism for awarding compensation with the help of a pre-determined formula without

insisting on proof of negligence. Section 163-A has, thus, been introduced by way of a social security scheme and it is a Code by itself. Section

163-A is an exception to Section 166 and takes within its sweep even those cases wherein the victim''s own negligence leads to the accident.

37. In short, even whether the victim himself was responsible for the accident, he can, as an injured, or his legal representatives, when the victim

dies in accident, maintain an application for compensation u/s 163-A and compensation cannot be refused by the Tribunal on the ground that the

victim himself was responsible for the injury suffered by him or the death which he met with.

38. I may, however, point out that though Section 163-A opens with a non obstante clause of extremely wide nature as indicated hereinabove and

makes provisions for compensation available even in those cases in which the victim''s negligence had been the cause of the accident, a Division

Bench of Karnataka High Court held in Appaji (since deceased) and Another Vs. M. Krishna and Another, that Section 163-A was not intended

to provide relief to those who suffer in a road accident because of their own rashness, negligence or imprudent act. The views so expressed in

Appaji (supra), goes contrary to a Division Bench judgment of Gujarat High Court in New India Assurance Co. Ltd. Vs. Muna Maya Basant,

wherein Gujarat High Court took the view that non obstante clause appearing in Section 163-A permitted even the tortfeasor to claim

compensation and that the insurance company can contest the claim only on the ground of total absence of a contract of insurance and not

otherwise.

39. Setting at rest the controversy as to whether Section 163-A would cover the cases wherein negligence of the victim was the cause of the

accident, the Apex Court in Deepal Girishbhai Soni v. United India Insurance Co. Ltd. 2004 ACJ 934 observed thus:

We may notice that Section 167 of the Act provides that where the death of or bodily injury to any person gives rise to a claim of compensation

under the Act and also under the Workmen''s Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles

Act contains different expressions as, for example, ''under the provision of the Act'', ''provisions of this Act'', ''under any other provisions of this

Act'' or ''any other law or otherwise''. In Section 163-A, the expression notwithstanding anything contained in this Act or in any other law for the

time being in force has been used, which goes to show that Parliament intended to insert a non obstante clause of wide nature which would mean

that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in

force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and

the concept of social justice has been duly taken care of.

40. In the face of the position of law so clearly pronounced by the Apex Court in Deepal Girishbhai Soni v. United India Insurance Co. Ltd. 2004

ACJ 934 there can be no escape from the conclusion that it is permissible even for a driver, whose own wrongful act, neglect or default might have

formed the cause of the accident resulting into his own injuries, to maintain an application for compensation u/s 163-A. Considered thus, it is clear

that in the present case, the application made u/s 163-A of the Act could not have been rejected merely on the ground that it was the claimant

whose negligence as a driver had caused the said accident.

Question No. (ii):

41. Let me now come to the deal with the question No. (ii), namely, whether a person whose annual income is more than Rs. 40,000, is entitled to

make an application u/s 163-A, claiming compensation?

42. While dealing with question No. (ii), it is of paramount importance to note that in case of The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai

V.Kodala and Others etc. etc., a two-Judge Bench of Apex Court held that the benefit of Section 163-A can be availed of by a claimant by

restricting his income at a slab of Rs. 40,000 which is the highest slab in the Second Schedule appended to Section 163-A. In other words, in

Kodala (supra), the view of the Supreme Court was that even a person, who earns more than Rs. 40,000 annually, can take the benefit of Section

163-A by restricting his income to the slab of Rs. 40,000 and thereby dispense with the onus to prove wrongful act, neglect or default on the part

of the driver or the owner of the vehicle concerned. This view of the Apex Court can be discerned from the observations which run thus:

However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs. 40,000 which is the

highest slab in the Second Schedule which indicates that the legislature wanted to give the benefit of no fault liability to a certain limit.

43. Disagreeing, however, with the views expressed in The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., that

u/s 163-A, even a person whose annual earnings is more than Rs. 40,000, can maintain a claim for compensation by restricting his income to Rs.

40,000 annually, a three-Judge Bench in Deepal Girishbhai Soni v. United India Insurance Co. Ltd. 2004 ACJ 934 , has held:

However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs. 40,000 which is the

highest slab in the Second Schedule which indicates that the legislature wanted to give the benefit of no fault liability to a certain limit.

[sic (67) ...However, we do not agree with the findings in Kodala (supra), that if a person invokes provisions of Section 163-A, the annual income

of Rs. 40,000 shall be treated as a cap. In our opinion, proceedings u/s 163-A being a social security provision, providing for a distinct scheme,

only those whose annual income is up to Rs. 40,000 can take the benefit thereof. All the other claims are required to be determined in terms of

Chapter XII of Motor Vehicles Act.""]

44. From what has been observed and held above in Deepal Girishbhai Soni v. United India Insurance Co. Ltd. 2004 ACJ 934 , it is abundantly

clear that Section 163-A can be resorted to by only that person, whose annual income is not above Rs. 40,000. In other words, a person whose

annual income is more than Rs. 40,000 is not eligible to make an application u/s 163-A for compensation by restricting his income to the slab of

Rs. 40,000.

45. In the backdrop of the eligibility criterion, which the Apex Court laid down in Deepal Girishbhai Soni v. United India Insurance Co. Ltd. 2004

ACJ 934, when I revert to the facts of the present case, what becomes glaringly noticeable by the eyes is that there is no dispute that the claimant-

appellant''s monthly income, according to what he himself had claimed, Rs. 5,000 per month and hence, his annual income was more than Rs.

40,000. In the face of this undisputed finding one has no option but to hold and I do hold that the present application made u/s 163-A was

misconceived and could not have been maintained.

46. The impugned award, therefore, passed in M.A.C. Case No. 35 of 2000, while rejecting the claim application of the claimant-appellant made

u/s 163-A deserves no interference. Claimant-appellant No. 1 is, however, left at liberty to take recourse to such other provisions of law as may

be available to him for remedy of his grievances.

M.A.C. Appeal No. 4 (K) of 2005:

47. In this appeal the claimant, was a handyman in the vehicle, which gave rise to the claim for compensation in M.A.C. Case No. 36 of 2000. In

the present appeal, the claimant''s grievance is that the sum of Rs. 25,000 awarded to him as compensation for the injuries sustained by him is

grossly inadequate.

48. While dealing with the above grievance of the claimant-appellant, what needs to be noted is that though the claimant has deposed that he had

suffered serious injuries and has not been cured, the fact remains, as the learned Tribunal too noticed, that the claimant remained in the hospital

only for a day and even the doctor who had initially certified that the claimant had suffered disablement to the tune of 75 per cent, admitted during

the course of his cross-examination in the proceeding that the certificate was given to him by examining the claimant on the very first day. There is

not even an iota of material on record to show that the claimant had suffered any injury of severe or grave nature. This position could not be

assailed by the learned Counsel for the claimant-appellant.

49. Situated thus, I have no hesitation in holding that even amount of Rs. 25,000 granted by the learned Tribunal, as compensation to the claimant-

appellant, was on the higher side.

50. This appeal has, therefore, no merit and the award impugned in this appeal too deserves no interference.

51. In the result and for the foregoing reasons, both these appeals fail and the same shall accordingly stand dismissed.

52. The parties are, however, left to bear their own costs.

53. Send back the L.C.Rs.