

(2014) 05 MP CK 0148
Madhya Pradesh High Court
Case No: M.A. No. 2228/03

Smt. Ramlali Tiwari and Another

APPELLANT

Vs

Vrindawan Tiwari and Another

RESPONDENT

Date of Decision: May 13, 2014

Acts Referred:

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

Hon'ble Judges: Rajendra Menon, J; Anil Kumar Sharma, J

Bench: Division Bench

Advocate: R.N. Tiwari, Learned Counsel, Advocate for the Appellant

Final Decision: Dismissed

Judgement

1. This is an appeal u/s 173 of the Motor Vehicle Act and challenge is made to an award passed by the Motor Accident Claims Tribunal, Rewa in Claim Case No. 77/03. By an award dated 2.08.03, the claim petition filed before the Motor Accident Claims Tribunal u/s 166 of the Motor Vehicle Act has been decided and it was the case of the claimant that they are entitled for compensation of Rs. 25,20,000/-. The claim petition u/s 166 was decided and the Tribunal came to the conclusion that the deceased was not in employment under the respondent no. 1 at the time when he was driving the Tractor and dismissed the claim petition on various grounds.

2. In the appeal filed before this Court u/s 173, an application was filed by the claimants seeking permission to convert the claim petition in an appeal u/s 163A and claim compensation. Conversion of the claim petition into one u/s 163A was opposed and, therefore, by a detailed order passed on 16th October, 2006, the learned Division Bench formulated the following questions of law and directed for placing of the matter before Hon'ble the Chief Justice for constituting a larger Bench for deciding the controversy in the light of the conflicting orders which were available on record.

The Division Bench of this Court in Smt. Mayabai Tomar (supra) has indirectly permitted the conversion of application u/s 166 to Section 163A in appeal and has remanded the matter to the Tribunal with liberty to the claimant to file an application for conversion. While in Deepal Girishbhai Soni (supra) the Apex Court considering the question has held that the aforesaid option is available to the claimant at the time of trial. When the judgment of Smt. Mayabai Tomar (supra) was pronounced on 24.2.2005 the judgment of Apex Court in Deepal Girishbhai Soni (supra) decided on 18.3.2004 was already pronounced by the Apex Court and considering the fact that aforesaid option was available to the claimant at the trial and not before the appellate Court, it appears that in the light of judgment passed by the Apex Court in Deepal Girishbhai Soni (supra) the judgment of Division Bench in Smt. Mayabai Tomar (supra) deserves to be considered by a Larger Bench. The Apex Court held that the aforesaid option is available during the trial and once the trial as held u/s 166 of the Act, the recourse to the claimant to convert this claim petition in appeal u/s 163A is not permissible, but in view of law laid down by the Division Bench which has permitted such conversion though indirectly the matter deserves to be referred to the Larger Bench so that the legal position may be clear.

3. The matter was placed before the learned Full Bench and on 19.02.09, the question formulated by a Division Bench has been answered by a Full Bench in the following manner against the claimants.

12. In view of law laid down by the Apex Court there is no iota of doubt that the claimants were entitled to invoke the jurisdiction of the Tribunal either u/s 140 or 163A of the Act and not under both the sections and after dismissal of the claim petition u/s 166 of the Act, the claimants were not entitled to revert back and put the clock back by converting their application u/s 163A of the Act. This option was available to the claimants at the time of filing of application to invoke jurisdiction of the claims tribunal under either of the section and thereafter to prosecute their case. Once the applicants had invoked the jurisdiction of the Tribunal u/s 166 read with section 140 of the Act contested the case on merits for higher compensation, after dismissal of the claim petition on merits, in appeal were not entitled to seek conversion of their application u/s 163A of the Act.

4. It has been held by a Full Bench in the aforesaid case that in an appeal arising out of dismissal of the claim petition filed u/s 166 of the Motor Vehicle Act, the appellants cannot be permitted to convert the claim petition in the appeal u/s 163A and in para 12 of the judgment rendered by a Full Bench, the principles of law have been laid down.

5. In view of the above, now no further benefit can be granted to the appellants and they cannot be permitted to convert the claim petition in an appeal u/s 163A.

6. Keeping in view the opinion given by the learned Single Judge, we see no reason to permit the appellants to convert the appeal to one u/s 163A.

7. The appeal is therefore dismissed.