IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No. 3460 of 2004 (O&M)
Date of decision: May 15, 2014

Mohit Garg and another

...Appellants

Versus

Afrojan and others

...Respondents

(2) FAO No. 4579 of 2004 (O&M)

Afrojan and others

...Appellants

Versus

Mohit Garg and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Ashwani Talwar, Advocate and
Mr. RS Mamli, Advocate,
for the appellants in FAO Nos. 3460 and 4579 of 2004 respectively.

Mr. RS Mamli, Advocate and
Mr. Ashwani Talwar, Advocate,
for all respondents in FAO Nos. 3460 and 4579 of 2004 respectively.

K. KANNAN, J. (Oral)

I The adjudication before the Tribunal.

1. Both the appeals relate to the same accident. The appeal by the owner is FAO No. 3460 of 2004 contending that the accident did not take

place in the manner stated by the claimants and therefore, the liability cast on the owner was not tenable. FAO No. 4579 of 2004 is an appeal by the claimants seeking for enhancement of compensation for the death that resulted in the accident. The death was of a person aged 52 years who left behind a large family of wife and 8 children. The petition was filed under Section 163-A of the Motor Vehicles Act, 1988 (for short '**the Act**'). The Tribunal assessed a compensation taking income at Rs. 36,000/- per annum and provided Rs. 2,64,000/- as compensation payable.

2. The contention in defence had been that his vehicle had been parked on the katcha berm of the road due to the fact that the tyre had been punctured and the scooter came in the same direction and hit against the rear side of the insured vehicle. However, this version was not the case which the claimants gave before the Tribunal. A FIR lodged soon after the accident related the accident having occurred by the two vehicles coming from opposite direction and the accident took place only by the negligent driving of the appellant/driver of the car. Before the Tribunal the person who lodged the FIR was not examined but yet another person who claimed to be an eye witness stated that the accident had taken place only by the negligent driving of the car coming from the opposite direction. It rejected the version of the driver of the car that it had been stationary at the relevant time when the collision took place.

II **Factual consideration—car driver responsible.**

3. Learned counsel appearing for the owner of the car would contend that the presence of the person claiming to be an eye witness is

indeed suspect for he had not given any complaint and the person who had actually given the complaint to the police had not even been examined. I will discard this argument for in summary proceedings under Section 169 of the Act, if statement recorded immediately after the accident sets out a particular manner about how the accident taken place, the recitals in the document would obtain sufficient credibility value for the Tribunal to act on. I do not think it is necessary to examine the author of the FIR to vouch for the recitals contained in the FIR. The car owner's argument would be that he had examined two witnesses to state that the vehicle had been stationary and it did not come in the opposite direction. I will not find also this to be relevant for if the collision is admitted even then the issue of negligence falls to insignificance more particularly when the petition is filed under Section 163-A of the Act. The claim made under Section 163-A of the Act was, therefore, required to be examined only by discounting the issue of rashness and negligence on the part of the driver of the car which was admittedly involved in the collision. I dismiss the appeal filed in FAO No. 3460 of 2004 as regards the arguments placed regarding the liability.

III **Contention of claimants—claim under Section 163-A need not be restricted to formula under Schedule II.**

4. Learned counsel appearing on behalf of the claimants in FAO No. 4579 of 2004 would argue that even in a petition under Section 163A of the Act, the formula provided under Schedule II need not be followed. The recent decisions of the Supreme Court have provided for larger scale of compensation for conventional heads, such as loss of consortium and loss of

love and affection. A sure prospect of future increase is also considered in several decisions. The counsel would urge that in this case the deceased left behind his widow and 8 children and, therefore, the Tribunal could not have merely applied 1/3rd deduction but the formula provided in Sarla Verma Versus Delhi Transport Corporation 2009 (6) SCC 121 must be taken for deduction for personal expenses at 1/5th. Further contention is that the prospects of future increase has been laid down as applicable even for private employment in several of the recent decisions and the same must also be followed. The counsel would refer me to the judgments of the Master Mallikarjun Versus Divisional Manager, The National Insurance Company Limited and another 2013 ACJ 2445 to contend that structured formula need not be applied for determination of compensation for permanent disability suffered by a child. I have gone through the judgment and I am afraid the judgment does not place a proposition in the manner canvassed by the counsel.

IV Theoretical basis for strict liability and norms for restricting quantum.

5. Section 163-A is a legislative innovation providing for strict liability that relieves the claimant of having proved the normal principles of fault that is normative basis for claiming compensation on the principle of tort. The legislature wanted to provide for a quicker means of securing compensation on a structured formula and made these provisions as applicable only to relatively poor class of persons and, therefore, sets a maximum limit of income at Rs. 40,000/- before the claimants could take

benefit under Section 163-A. The section contains, therefore, certain inherent limitation on its applicability. Wherever strict liability is placed, the compensation cannot what is otherwise possible in a tortious situation where a person who had committed a civil wrong shall be made to compensate the victim on how the estate would have lost and the representatives would have been put to financial loss by the death. In case of injury, the compensation will have to be on real terms of all the financial expenses incurred and by making a projection of what loss could occur in future. The manner of determination of compensation in a civil wrong is truly compensatory for it seeks to restitute the claimant in full measures by creating a fiction of what the deceased would have contributed or in case of injury what he would have earned if not for the injury.

V Examinations of other enactments providing for strict liability.

6. All jurisdiction that laid down strict liability deliberately scale down the compensation for it is in not restitutive but the compensation is more symbolic. In India we have strict liability norms brought through legislature such as Carriage by Air Act, where the maximum liability provided is 1,25,000. Under the Merchant Shipping Act, the liability is to be fixed on the tonnage of the vessel and will have no bearing to actual financial loss which would have occurred to the person. Under the Railways Act read with Railways Accidents and Untoward Incidents Compensation Rules, 1990, the maximum liability is ₹4 lakhs for death irrespective of the status of the person who died in the railways accident.

Examples are given only to bring home a point that strict liability, wherever it is imposed by law is not restitutive for making the good the loss in full measure. They ensure quickness of disposal that allow for no free play in the joints but immediacy in securing the compensation itself is recognized as a consolation for relatively less sum that such disposition could give.

VI Breach of Schedule II formula impermissible, when claim is made under Section 163-A.

7. This theoretical discourse is set forth to fend off the argument which is placed by the counsel that even in a claim under Section 163-A, the court can grant compensation in the manner provided under Section 166. If we must import the principle under Section 166 to 163A, we are trying to efface a border that respective provisions set down. The limitation set down under Section 163-A cannot be wished away by fanciful claims. What is possible for the Supreme Court to do under Article 142 of the Constitution, I am afraid I cannot invoke. Again it can be noticed that in Master Mallikarjun's case (supra), the Supreme Court was holding that even a claim under Section 163-A, the court need not feel constrained to refer to formula for determining the compensation for the injuries, was saying so in the case of a claim on behalf of a child. In a case of an injury or death of a child, it is never needed to establish in Tribunal that yet another person was negligent. Indeed, a child can never be attributed to any negligent conduct. On the other hand, to state an extreme position a child is even entitled to roam free the way he wants. Any one else who uses the road or vehicle shall ensure that his own conduct is so circumspect that he commits no harm to a child.

The negligence of a child is an oxymoron. It is the negligence of yet another person that causes injury or death to a child. A person using a motor vehicle in a public place shall so use it whenever we consider the issue on behalf of the child that there is no case made for contributory negligence by a child or to even state any form of negligence by the child. The Supreme Court, therefore, could have very well felt not constrained by having to examine the case of compensation through the prism of Section 163-A. It was possible to see that the child was fully compensated by importing the principle of tort liability. I will, therefore, read this judgment as fully confined to a claim on behalf of the child.

VII Examples when defect under section 163-A was pointed out.

8. Even a three member Bench of the Supreme Court in Reshma Kumari Vs. Madan Mohan 2013 (9) SCC 65 provided that only modification that could be made to a claim under Section 163-A was that in respect of claim of a child less than 15 years, the multiplier shall always be 15. Yet another three member Bench in U.P. State Road Transport Corporation V. Trilok Chandra 1996 (2) R.R.R. 718 found several mistakes in Schedule II brought under Section 163-A. The Supreme Court did not go as far as re-write Section 163A or Schedule II. On the other hand, it exhorted the legislature to set right the provisions. What the Supreme Court would not do in its reading of Section 163-A, this court exercising its jurisdiction in appeal shall not.

VIII Decisions not followed—Reason.

9. The judgment of the Karnataka High Court in Regional Manager, New India Assurance Co. Ltd., Bangalore Versus Vijay Balshiram Walunj and another 2012 ACJ 2292 that even in a claim under Section 163-A where a person who incurred an amount close to Rs. 3.5 lakhs as medical expenses could be awarded compensation more than the statutory limits fixed at Rs. 15,000/- under Section 163-A. I have respectful disagreement with the law as stated and I will not be compelled to follow the same as clearly opposed to the statutory provision. There has been judgment of our court as well where the same principle has been relied on in Oriental Insurance Company Limited Versus Smt. Kulwinder Kaur and another 2013 (4) PLR 372 that medical expenses could be provided more than what statutorily limited under Section 163-A. I respectfully disagree with the view as not setting down the correct law and in direct conflict with the statutory provisions and, therefore, not correct. In yet another Judgment in Reliance General Insurance Company Ltd. Versus Girdhari Lal and another FAO No. 1312 of 2014 decided on 12.3.2014, this court has has held, referring to Master Mallikarjun's case (supra) and the Karnataka High Court decision, that there could be departure from 163-A. Departure from 163A other than in the circumstances permitted by the Supreme Court and to the restricted field, would mean judicial impertinence to a legislative mandate. I feel circumscribed by what the bare provisions clearly lay down and would indulge in no deviation to take to flights to fancy.

10. The appeal is dismissed.

May 15, 2014 **(K.KANNAN)**
prem **JUDGE**