

A ORIENTAL INSURANCE CO. LTD.

v.

DHANBAI KANJI GADHVI & ORS.

(Civil Appeal No. 682 of 2011)

JANUARY 17, 2011

B

[J.M. PANCHAL AND H.L. GOKHALE, JJ.]

Motor Vehicles Act, 1988 – ss. 163A and 166 – Proceedings both u/ss. 163A and 166 – Permissibility of –
C *Motor accident resulting in death of a person – Application u/s. 166 by legal heirs of the deceased – Subsequent application u/s. 163A claiming no-fault compensation – Application u/s. 163A partly allowed by the Tribunal – Thereafter, Tribunal permitting the claimants to proceed with*
D *the application filed u/s. 166 – Order of the Tribunal upheld by High Court – On appeal, held: Claimant must opt/elect to go either for a proceeding u/s. 163A or u/s. 166 but not under both – Claimants having obtained compensation, finally determined u/s. 163A were precluded from proceeding further*
E *with the petition filed u/s. 166 – Thus, order of the Tribunal permitting the claimants to proceed further with the petition filed u/s. 166 as upheld by the High Court, not sustainable and is set aside.*

F *Deepali Girishbhai Soni and Ors. vs. United India Insurance Co. Ltd. Board (2004) 5 SCC 385 – relied on.*

Oriental Insurance Co. Ltd. vs. Hansrajbhai V. Kodala and Ors. (2001) 5 SCC 175 – referred to.

G **Case Law Reference:**

1993 (3) SCC 634	Referred to.	Para 5
(2004) 5 SCC 385	Relied on.	Para 13

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**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 682
of 2011.** A

**From the Judgment & Order dated 15.01.2010 of the High
Court of Gujarat at Ahmedabad in Special Civil Application No.
9400 of 2006.** B

M.K. Dua for the Appellant.

Brajesh Kumar for the Respondents.

The following order of the Court was delivered C

O R D E R

1. Leave granted.

**2. This appeal is directed against the judgment dated
15.1.2010 rendered by the learned Single Judge of the High
Court of Gujarat at Ahmedabad in Special Civil Application
No.9400 of 2006 by which the order dated 23.12.2005 passed
by the Motor Accident Claims Tribunal (MACT) Bhuj, Kachchh
in M.A.C.P. No.759/97 permitting the respondents, who had
already obtained compensation under Section 163A of the
Motor Vehicles Act 1988 ('the Act' for short), to proceed with
the application filed under section 166 of the Motor Vehicles
Act 1988, is affirmed.** D
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**3. The respondents are the original claimants. On 17.6.97,
the deceased viz. Kanji Keshavbhai Gadhvi was riding his two
wheeler i.e. Luna. When he reached near IFFCO, the driver of
taxi bearing No.GJ-12-C-9484 who was coming from the
opposite direction dashed the taxi with the Luna as result of
which Kanjibhai lost his life. Therefore, the respondents who are
legal heirs of the deceased respondent filed MACP No.759 of
1997 under Section 166 of the Motor Vehicles Act against the
driver and owner of the taxi as well as against the petitioner
who is insurer of the taxi and claimed compensation of
Rs.7,50,000/-. The respondents had thereafter filed an** F
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A application at Exhibit 6 under section 163A of the Act and claimed compensation of Rs. 3,93,500/- on the principle of no fault liability.

B 4. The Tribunal had partly allowed the application filed by the respondents under Section 163A of the Act and ordered the petitioner to pay a sum of Rs.2,65,500/- with 12% interest vide judgment dated 18.10.2000. The case of the petitioner is that the petitioner had deposited the said amount and the respondents have already withdrawn and invested the amount of compensation as directed by the Tribunal.

C 5. The present petitioner filed an application with a prayer that the application filed under Section 166 which was pending be rejected in view of the decision of this Court in *Oriental Insurance Co. Ltd. Vs. Hansrajhai V. Kodala & Ors.* (2001) D 5 SCC 175.

E 6. The Tribunal by order dated 25.6.2002 granted stay of further proceedings of the petition filed under Section 166 of the Act till further orders. In the meanwhile, the petitioner challenged the award passed by the Tribunal under Section 163A of the Act by filing First Appeal No.3019 of 2007. The appeal was dismissed on the ground of delay.

F 7. The respondents thereafter filed an application with a prayer that they be permitted to proceed with the petition filed under Section 166 of the Motor Vehicles Act and they were ready to give undertaking to give credit of the amount awarded to them as compensation in the claim petition filed under Section 163A of the Act. The Tribunal by an order dated 23.12.2005 permitted the respondents to proceed with the G petition filed under Section 166 of the Act. The Tribunal also directed that amount already disbursed in favour of the respondents and invested by them, pursuant to the award made under Section 163A shall be adjusted to the final award to be passed under Section 166 of the Motor Vehicles Act.

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8. Feeling aggrieved, the petitioner preferred Special Civil Application No.9400 of 2006 before the High Court. The learned Single judge of the High Court has rejected the same by judgment dated 15.1.2010 giving rise to the instant appeal.

9. This Court has heard the learned counsel for the parties.

10. This Court has perused the impugned judgment of the High Court. The reasons given by the High Court for upholding permission granted by the Tribunal, to the respondents to proceed further with the petition filed under Section 166 of the Act, read as under.

“After hearing and on perusal of the record and from the scheme of the Act, it is clear that proceedings under Sections 163A and 166 of the Act i.e. both proceedings are permissible. In my view, claimant can file both the proceedings and opt for either of proceedings. The only condition is that application for proceeding under section 166 should be filed before the award is passed . Here, in this case, the proceedings were filed before the award is passed”.

11. On consideration of the object of section 163A of the Act which was inserted by Section 51 of the Act 54 of 1994 w.e.f. 14-11-1994, and the non-obstante clause with which sub-section (1) of Sec. 163A commences, it is manifest that the legislature did not intend to prevent the claimant from getting compensation as per the structured formula merely because in his original claim petition he had prayed for compensation on the basis of “fault liability” principle. There is no prohibition in any provision of the Motor Vehicles Act 1988 against the claimant praying for compensation as per the structured formula after having filed a claim petition under section 166 of the Act. Therefore, this Court finds that the respondents were perfectly justified in making an application at Exhibit 6 in MACP No.759 of 1997 which was filed under Section 166 of the Act and praying the Tribunal to award compensation to them on the

A basis of the structured formula mentioned in Section 163A of the Act. This Court further finds that the Tribunal did not commit any error in entertaining the said application and awarding a sum of Rs.2,65,500/- as compensation to the respondents under Section 136A of the Act.

B 12. However, in *Deepal Girishbhai Soni & Ors. Vs. United*
C *India Insurance Co. Ltd., Baroda* (2004) 5 SCC 385, the
D question which was considered by a three Judge Bench of this
E Court was whether a proceeding under Section 163A of the
F Motor Vehicles Act, 1988 is a final proceeding, by reason
whereof, the claimant who has been granted compensation
under Section 163A, is debarred from proceeding with any
further claims on the basis of fault liability in terms of Section
166. After considering the scheme envisaged by Section 163A
of the Act, it is held in the said case that Parliament intended
to lay down a comprehensive scheme for the purpose of grant
of adequate compensation to a section of victims who would
require the amount of compensation without fighting any
protracted litigation. What is ruled therein is that the
compensation determined and paid under Section 163A of the
Act is final and not an interim one. The clear proposition of law
which emerges from the decision of this Court in *Deepal G. Soni*
(supra) is that the remedy for payment of compensation both
under Sections 163A and 166 being final and independent of
each other as statutorily provided, a claimant cannot pursue his
remedies thereunder simultaneously. As explained by this Court
in the said decision, a claimant, thus, must opt/elect to go either
for a proceeding under Section 163A or under Section 166 of
the Act, but not under both.

G 13. Applying the principle laid down in *Deepal Soni* (supra)
to the facts of the case, it will have to be held that the
respondents having obtained compensation, finally determined
under Section 163A of the Act are precluded from proceeding
further with the petition filed under Section 166 of the Act. The
exception mentioned by the learned Single Judge in the

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impugned judgment that a petition under Section 166 of the Act can be proceeded further if it is filed before passing of an award passed under Section 163A of the Act is not supported by the scheme envisaged under Sections 163A and 166 of the Act and is contrary to the principle of law laid down by this Court in Deepal Soni's case. Therefore, this Court is of the opinion that the impugned judgment of the High Court upholding the order passed by the Tribunal to permit the respondents to proceed further with the petition filed under Section 166 of the Act cannot be sustained and will have to be set aside.

14. For the foregoing reasons, the appeal succeeds. The order of the Tribunal dated 23.12.2005 allowing the respondents to proceed with the petition filed under Section 166 of the Motor Vehicles Act, 1988 on the certain terms and conditions mentioned therein and the impugned judgment of the High Court upholding order of the Tribunal are hereby set aside.

15. The appeal accordingly stands disposed of

N.J.

Appeal disposed of.