

A

SHIVAJI AND ANR.

v.

DIVISIONAL MANAGER, UNITED INDIA
INSURANCE CO. LTD. AND ORS.

B

(Civil Appeal No. 2816 of 2018)

AUGUST 09, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]**

C

Motor Vehicles Act, 1988 – s.163A – Fatal accident – A car dashed into a truck, resulting in the death of three persons including the driver of the vehicle and injuring two others, all of them were travelling in the car – Claim petition u/s.163A filed by appellants-parents of the deceased driver – Allowed by the Tribunal – However, High Court held that since the deceased driver was the tortfeasor and responsible for causing accident, therefore, compensation could not have been awarded and absolved the insurer of the liability – On appeal, held: Insurer cannot raise a defence of negligence on the part of the victim to counter a claim for compensation in a proceeding u/s.163A – Permission to raise such a defence in a proceeding u/s.163A of the Act would bring the proceeding at par u/s.166 of the Act, which would be inconsistent with the legislative intention – The impugned judgment of the High Court absolving the insurer set aside and the order of the Tribunal restored.

D

E

United India Insurance Co. Ltd. v. Sunil Kumar & Anr.

AIR 2017 SC 5710 – relied on.

F

Case Law Reference

AIR 2017 SC 5710 relied on Para 5

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2816 of 2018.

G

From the Judgment and Order dated 05.06.2017 of the High Court of Karnataka at Dharwad Bench in MFA No.20469/2012(MV).

H

Manjunath Meled, Ms. Vijayalaxmi U. (for Mr. Anil Kumar), Rajesh Kumar Gupta, Ms. Meenakshi Midha, Kapil Midha, Ms. Abhivandana Chaudhury, Adv. for the appearing parties.

The Judgment of the Court was delivered by A

DR. D.Y. CHANDRACHUD, J. 1. The present appeal arises from a judgment of a learned Single Judge of the Karnataka High Court in an appeal against an award of the Motor Accident Claims Tribunal (MACT), Belgaum.

2. The appellants are parents of Shaji Shivaji Dudhade, who was the driver of a car bearing Registration No. MH-06/W-604, which met with an accident on 15 June 2010. The accident occurred when the car dashed into a truck, bearing Registration No. KA-25/B-5363, resulting in his death; the death of two other persons and injuries to two more persons, all of whom were travelling in the car. B C

3. The appellants filed a claim petition seeking compensation under Section 163A of the Motor Vehicles Act, 1988. The Tribunal noted that since the claim petition had been filed under Section 163A of the Act, the question of proving that the accident happened due to the rash and negligent act of the driver did not arise. By its award dated 30 July 2011, the Tribunal allowed a claim of Rs 4,60,800 together with interest at the rate 9% per annum. D

4. The insurer preferred an appeal before the High Court of Karnataka. The appellants also filed an appeal before the High Court seeking enhancement of compensation awarded by the Tribunal. The High Court, by its impugned judgment, allowed the insurer's appeal and set aside the order of the Tribunal. The High Court opined that the idea behind enacting Section 163A is to ensure that even in the absence of any mistake on the part of the driver of the offending vehicle, the injured person or the legal heirs of the deceased person are compensated by the owner and the insurer. As a result, under this provision, since the victim has been contemplated to be an innocent third party, protection is extended only to the injured person or to the legal heirs of the deceased victim, and not to the driver who is responsible for causing the said accident. Since the deceased driver in this case was the tortfeasor and responsible for causing the accident, the High Court held that compensation could not have been awarded to the appellants. E F G

5. The issue which arises before us is no longer *res integra* and is covered by a recent judgment of three judges of this Court in **United India Insurance Co. Ltd. v. Sunil Kumar &Anr.**,¹ wherein it was

¹AIR 2017 SC 5710

- A held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is “final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time”. The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163A of the Act, it would “bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention”.
- B Consequently, it was held that in a proceeding under Section 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation.
- C

6. Having regard to the above position, the Civil Appeal will have to be allowed.

- D 7. Accordingly, the appeal is allowed. The impugned judgment of the High Court absolving the insurer is set aside and the order of the Tribunal is restored. There shall be no order as to costs.