

HIGH COURT OF MADHYA PRADESH : JABALPUR.

M.A. No.1721/2015

The Oriental Insurance Company Limited

Vs.

Sanju Bai & ors.

CORAM :

Hon'ble Shri Justice A.M. Khanwilkar, Chief Justice

Hon'ble Shri Justice Shantanu Kemkar. J.

Hon'ble Shri Justice J.K. Maheshwari, J.

Whether approved for reporting? -

Shri S.K. Rao, Senior Counsel with Shri Ajit Agrawal and Shri Sanjiv Kumar Chaturvedi, Advocates for the appellants Insurance Company.

None for the respondents.

O R D E R (Oral)

31.08.2015

Per : A.M. Khanwilkar, Chief Justice:

This appeal is placed before us pursuant to order dated 26.11.2008 passed by the learned Single Judge in M.A. No.2508/2007.

2- Indeed, the reference judgment is a common judgment dealing with other Miscellaneous Appeals, but, learned single Judge has disposed of the companion matters and chose to merely refer M.A.No.2508/2007. He has formulated two questions to be referred by the Full Bench. The same read thus:

“1. Whether a claim petition is maintainable and the claimants are entitled for compensation where victim himself is the victimizer to avoid the liability ?

2. Whether in the claim petition filed by the victim under section 163-A of the Motor Vehicles Act, owner/Insurance company is liable to plead and prove that the victim himself was the victimizer to avoid the liability ?”

3- These questions, in our opinion, have already been answered by the Supreme Court in **National Insurance Company Vs. Sinitha and others, reported in 2012 ACJ 1 (SC)**. In that case, the claim for compensation was due to the death of a rider of motor cycle on account of his negligence. In paragraphs No.15 and 16 of the said decision, the Supreme Court observed thus :

“15. The heading of **Section 163A** also needs a special mention. It reads, "Special Provisions as to Payment of Compensation on Structured Formula Basis". It is abundantly clear that **Section 163A**, introduced a different scheme for expeditious determination of accident claims. Expeditious determination would have reference to a provision wherein litigation was hitherto before (before the insertion of **Section 163A** of the Act) being long drawn. The only such situation (before the insertion of **Section 163A** of the Act) wherein the litigation was long drawn was under Chapter XII of the Act.

Since the provisions under Chapter XII are structured under the "fault" liability principle, its alternative would also inferentially be founded under the same principle. [Section 163A](#) of the Act, catered to shortening the length of litigation, by introducing a scheme regulated by a pre-structured formula to evaluate compensation. It provided for some short-cuts, as for instance, only proof of age and income, need to be established by the claimant to determine the compensation in case of death. There is also not much discretion in the determination of other damages, the limits whereof are also provided for. All in all, one cannot lose sight of the fact, that claims made under [Section 163A](#) can result in substantial compensation. When taken together the liability may be huge. It is difficult to accept, that the legislature would fasten such a prodigious liability under the "no-fault" liability principle, without reference to the "fault" grounds. When compensation is high, it is legitimate that the insurance company is not fastened with liability when the offending vehicle suffered a "fault" ("wrongful act", "neglect", or "defect") under a valid Act only policy. Even the instant process of reasoning, leads to the inference, that [Section 163A](#) of the Act is founded under the "fault" liability principle.

16. At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that [Section 163A](#) of the Act has an overriding effect on all other provisions of the [Motor Vehicles Act](#), 1988. Stated in other words, none of the provisions of the [Motor Vehicles Act](#) which is in conflict with [Section 163A](#) of the Act will negate the mandate contained therein (in [Section 163A](#) of the Act). Therefore, no matter what, [Section 163A](#) of the Act shall stand on its own, without being

diluted by any provision. Furthermore, in the course of our determination including the inferences and conclusions drawn by us from the judgment of this Court in **Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala** (supra), as also, the statutory provisions dealt with by this Court in its aforesaid determination, we are of the view, that there is no basis for inferring that **Section 163A** of the Act is founded under the "no-fault" liability principle. Additionally, we have concluded herein above, that on the conjoint reading of **Sections 140** and **163A**, the legislative intent is clear, namely, that a claim for compensation raised under **Section 163A** of the Act, need not be based on pleadings or proof at the hands of the claimants showing absence of "wrongful act", being "neglect" or "default". But that, is not sufficient to determine that the provision falls under the "fault" liability principle. To decide whether a provision is governed by the "fault" liability principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or insurance company) by pleading and proving "wrongful act", "neglect" or "default". From the preceding paragraphs (commencing from paragraph 12), we have no hesitation in concluding, that it is open to the owner or insurance company, as the case may be, to defeat a claim under **Section 163A** of the Act by pleading and establishing through cogent evidence a "fault" ground ("wrongful act" or "neglect" or "default"). It is, therefore, doubtless, that **Section 163A** of the Act is founded under the "fault" liability principle. To this effect, we accept the contention advanced at the hands of the learned counsel for the petitioner.”

(emphasis supplied)

4- Indeed, in the subsequent decision of coordinate Bench of the Supreme Court in the case of **United India Insurance Company Vs. Sunil Kumar, reported in 2013 ACJ 2856 (SC)**, the correctness of the view expressed in **Sinitha's case (supra)** and **United India Insurance Company Vs. Sheela Datta, reported in 2011 ACJ 2729 (SC)**, has been doubted and the question is referred to the larger Bench of the Supreme Court. Nevertheless, it is well settled position that so long as the decision of the Supreme Court on the point is in force, the same will be binding on all the subordinate Courts. The fact that the issue has been referred to larger Bench of the Supreme Court, that cannot be the basis to ignore the decision of the Supreme Court cited on the subject, which is still holding the field and will be, therefore, binding precedent until overturned by a larger Bench of the Supreme Court. Besides the abovesaid decisions, counsel for the appellant wanted to rely on other decisions of different High Courts, which in our opinion, is not necessary.

5- As a result, the questions referred by the learned single Judge having been answered, the Registry shall forthwith place the M.A. No.2508/2007 before the appropriate Court for further consideration, in accordance with law.

6- Ordered accordingly.

(A.M.Khanwilkar) **(Shantanu Kemkar)** **(J.K.Maheshwari)**
Chief Justice Judge Judge