
K P Aboobacker and another

Vs.

Abdul Khalil and another

Ms. A S Zinu ... for the appellants

Mr. N A Khan ... for the respondents

July 11, 2025
[SR]
Item No. 12

The appellants in this case, as claimants, filed an application under Section 166 of the Motor Vehicles Act, 1988. It was alleged that on June 27, 2007, the claimant's son was travelling from Bathubasthi towards Port Mout to his residence in a Maruti Car bearing Registration No. AN 01 D 1054. At around 9:45 PM, when the car reached Dhanikhari junction, a large tree suddenly fell on the vehicle, resulting in the death of the deceased along with his two friends, namely Azad Munda and Kurma Rao.

It was further contended that the deceased was taken to G.B. Pant Hospital and that the accident occurred due to the negligence of the driver of the said car. An FIR was registered on the basis of the aforementioned allegation.

It appears from the record that the claim was originally filed under Section 163-A of the Motor Vehicles Act, 1988, but at the instance of the claimant/respondent no.1, it was subsequently converted to an application under Section 166 of the Act.

Upon consideration of the evidence on record, the learned Tribunal found that the accident in question could not be considered a road traffic accident within the meaning of Section 166 of the Motor Vehicles Act, 1988, as the incident occurred due to the sudden fall of a tree caused by heavy rain and wind. Consequently, the Tribunal dismissed the claim petition.

Ms. A.S. Zinu, learned counsel appearing for the appellant/claimant, has relied upon on the judgment reported in *(2003) 7 Kant LJ 722 (DB) (Sulochana vs. Karnataka State Road Transport Corporation)*, rendered by a Division Bench of the High Court of Karnataka, In that case, a similar issue was considered—whether a claimant is entitled to compensation when a Banyan tree fell on the head of the deceased while he was riding a bus. After examining various precedents, the Division Bench answered the issue in the affirmative.

A similar view was taken by the Single Bench of the Madras High Court in *CMA No. 919 of 2024 and CMP No. 8516 of 2024 (Shri Ram General Insurance Co. Ltd. vs. Mala)*, which considered the issue of whether a tree falling on an insured vehicle can be treated as an accident under the Motor Vehicles Act, 1988.

No different view is called for. The Hon'ble Supreme Court in the judgment reported at *(1991) 3 SCC 530 (Shivaji Dayanu Patil vs. Smt. Vatschala Uttam More)*, held that the expression "**arising out of the use of a motor vehicle**" must be interpreted broadly. It was held by the Supreme Court in the judgment reported at *(2001) 2 SCC 9 (Kaushnuma vs. the New India Assurance)*, the jurisdiction of the Tribunal is not limited

only to cases involving negligence. Negligence is merely one of the grounds for claiming compensation under the Motor Vehicles Act.

In the present case, though the claimant himself had converted the original petition filed under Section 163-A into one under Section 166, I am of the considered view that, in the interest of justice and considering the beneficial nature of the legislation, the application ought to have been treated under Section 163-A of the Motor Vehicles Act, 1988.

Although Mr. N.A. Khan, learned counsel for the respondent, has strongly opposed the maintainability of reverting the petition back to one under Section 163-A after having converted it to Section 166 at the claimant's own instance, I am of the considered opinion that, given the welfare objective of the Motor Vehicles Act and in the interest of justice, the application should be treated under Section 163-A.

This view is fortified by the judgment reported at (2009) 13 SCC 710 (*Ningamma vs. United India Insurance Co. Ltd.*), where it was held:

“Undoubtedly, Section 166 of the MVA deals with ‘just compensation’ and even if no specific claim was made under Section 166 in the pleadings, a party should not be deprived of ‘just compensation’ if a case is otherwise made out. The MVA is a beneficial and welfare legislation, and the court is duty-bound to award just compensation regardless of the absence of specific pleadings.”

Therefore, regardless of whether there was any negligence on the part of the driver, the claimant is entitled to compensation in accordance with Schedule II of the Motor Vehicles Act, 1988.

In the present case, accident was occurred on June 27, 2007. The victim at the relevant point of time was a 27 year-old-bachelor.

I have considered the notional income of the deceased to be Rs. 25,000/- per annum in terms of the judgment passed by the Supreme Court reported at (2022) 1 SCC 317 (*Kurvan Asnari alias Kurvan Ali vs. shyam Kishore Murmu*).

Accordingly, in view of the judgment reported at (2017) 16 SCC 680 (*National Insurance company Limited vs. Pranay Sethi*), the compensation is computed as follows:

Particulars	Amount (Rs.)
Notional Income per annum	25,000.00
1/3rd deduction (being a bachelor)	8,333.00
Annual dependency after deduction	16,667.00
Multiplier (Age 27 years × 17)	16,667 × 17 = 2,83,339.00
Loss of estate	15,000.00
Funeral expenses	15,000.00
Loss of consortium	40,000.00
Total Compensation	3,53,339.00

The claimant shall be entitled to interest at the rate of **6% per annum** from the date of filing the claim application before the Tribunal until realization. The entire compensation shall be paid to the appellants by the insurance company within four weeks from date.

Accordingly, the **appeal is allowed.**

(**Kausik Chanda, J.**)