

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

(1)

**FAO No.5841 of 2002
Date of decision : 11.04.2016**

Shanti Ram

.....Appellant

Versus

Nirmala and others

...Respondents

(2)

**FAO No.329 of 2003 (O&M)
Date of decision : 11.04.2016**

National Insurance Company Ltd.

.....Appellant

Versus

Shanti Ram and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the 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. S.N. Pilania, Advocate for appellant
in FAO No.5841 of 2002 and
for respondent No.1 in FAO No.329 of 2003.

Mr. Amit Kumar, Advocate for respondents No.1 to 4
in FAO No.5841 of 2002 and
for respondents No.2 to 5 in FAO No.329 of 2003.

Mr. R.M. Suri, Advocate for respondent-Insurance Company
in FAO No.5841 of 2002 and
for appellant-Insurance Company in FAO No.329 of 2003.

DARSHAN SINGH, J.

This judgment of mine shall dispose of both the appeals mentioned above, which have been arisen out of the same award dated 21.09.2002, passed by the learned Motor Accidents Claims Tribunal, Jind (hereinafter called the 'Tribunal'), vide which the claim petition filed by claimant Shanti Ram appellant in FAO No.5841 of 2002 under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter called the 'Act') has been allowed and he has been awarded the compensation to the tune of Rs.42,000/- for the injuries suffered by him in the motor vehicular accident, which took place on 03.06.1996.

2. FAO No.5841 of 2002 has been filed by claimant-injured Shanti Ram for enhancement of the amount of compensation. FAO No.329 of 2003 has been filed by the National Insurance Company Ltd., which was impleaded as respondent No.5 in the claim petition to assail the award.

3. I have heard learned counsel for the parties and gone through the paper-books carefully.

4. Mr. S.N. Piliaia, Advocate, learned counsel for appellant-claimant Shanti Ram contended that the appellant was driving truck No.HR-38A-0981 on moderate speed by taking precautions of the traffic rules. Suddenly, a cow came in front of the truck. He tried to save the cow and turned the truck towards left, in this process, the truck could not be controlled and struck against a tree on the roadside. Thus, he contended that the appellant-claimant was entitled to receive the just

compensation under Section 163-A of the Act as nobody was at fault for this accident, which was an act of God.

5. He further contended that the learned Tribunal has only awarded Rs.42,000/- as compensation, though the claimant has suffered multiple injuries on his body. The learned Tribunal has not awarded the compensation under various heads. Thus, he pleaded for enhancement of the amount of compensation.

6. On the other hand, Mr. R.M. Suri, Advocate, learned counsel for the appellant-Insurance Company contended that the claim petition filed by claimant Shanti Ram under Section 163-A of the Act was not maintainable as he was not suffered any permanent disability. He further contended that the claimant was himself negligent for the accident as he could not control his vehicle because it was being driven at high and uncontrollable speed. As the claimant himself was negligent, so he being tortfeasor cannot take benefit of his own wrong. He further contended that the claimant was not having any valid driving licence, so the Insurance Company cannot be made liable.

7. Mr. Amit Kumar Jain, Advocate, learned counsel for respondents No.1 to 4 (owners of truck No.HR-38A-0891) has also supported the contentions raised by Mr. R.M. Suri, Advocate, learned counsel for the Insurance Company, that the claim petition was not maintainable as the claimant has not suffered any permanent disablement and he himself was liable for this accident.

8. I have duly considered aforesaid contentions.

9. The learned Tribunal has held the present accident to be an act of God, as the driver lost control over the vehicle in the process of saving the cow, which had come on the road and resultantly the truck struck against a tree on the roadside. So, the compensation has been awarded to claimant Shanti Ram under Section 163-A of the Act. The claimant is claiming compensation under Section 163-A of the Act which is evident from the pleadings in the claim petition as he has not alleged any negligence on the part of anybody else for causing this accident, rather he has pleaded that accident has taken place for no fault on his part.

10. Section 163-A of the Act reads as under:-

“163 – A. Special provisions as to payment of compensation on structured formula basis. – (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. – For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

11. As per the aforesaid provisions of law, the compensation under Section 163-A of the Act can only be claimed in case of death or permanent disablement due to the accident arising out of the use of the motor vehicle. Thus, in order to maintain the claim petition under Section 163-A of the Act, the claimant was required to establish that he has suffered the permanent disablement due to the injuries suffered by him in the present accident. But absolutely, no evidence has been adduced by the claimant in order to establish that he has suffered any permanent disablement. The claimant has examined PW-1 Dr. S.V. Gupta. He has simply deposed about the fracture of right leg bone suffered by the claimant along with injuries of chin and lips. He has nowhere mentioned in his testimony that the claimant has suffered any permanent disablement. In the cross-examination, he said that patient was completely recovered. This witness has also proved the discharge slip Ex.P1, bill Ex.P2, discharge slip Ex.P3, bill Ex.P4, OPD slip Ex.P5, bills Ex.P6 to Ex.P9.

12. PW-2 Satish Kumar is the witness of occurrence. The claimant himself stepped into the witness box as PW-3. He has not placed on record any evidence to show that he has suffered any permanent disablement on account of the injuries suffered by him in this accident. So, on this score alone, the claim petition filed by claimant Shanti Ram was not maintainable under Section 163-A of the Act and he was not entitled to any compensation.

13. Thus, keeping in view my aforesaid discussion, FAO No.5841 of 2002 filed by claimant Shanti Ram has no merits and same is hereby dismissed, whereas FAO No.329 of 2003, filed by the appellant-Insurance Company is hereby allowed. The impugned award dated 21.09.2002 is hereby set aside. The claim petition filed by claimant Shanti Ram stands dismissed.

11.04.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**