

**345 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-5129-2003 (O&M)

Date of decision: 12.09.2017

Paramjit Kaur and others

.... Appellants

Versus

Baldev Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.M.S.Dhammi, Advocate
for the appellants.

Mr.Manoj Bajaj, AAG, Punjab
for respondents No.2 and 3.

Avneesh Jhingan, J.

Present appeal has been preferred by the claimants against the award dated 16.09.2002 passed by Motor Accidents Claims Tribunal, Nawanshahr (hereinafter referred to as the 'Tribunal').

On 12.01.1998, Bahadur Ram while going on cycle was struck by a bus bearing registration No.PB-12-8506 (for short, 'the offending vehicle') near village Majari. As a result of the accident, Bahadur Ram suffered several injuries and was taken to Guru Nank Mission Hospital, Dhan Kaleran, thereafter, referred to C.M.C.Ludhiana. Unfortunately, he succumbed to injuries on 13.01.1998.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the widow and three minor children.

The Tribunal after considering the witnesses and evidence, dismissed the claim petition, as the claimants had failed to prove that the accident occurred due to rash and negligent driving of the driver of the bus.

Aggrieved of the said award, the claimants have filed the present appeal.

During the pendency of the appeal, a civil miscellaneous application No. 24538-CII of 2014 was moved by the appellants for converting the claim petition under Section 166 to under Section 163-A of the Act.

Both the main appeal and the application are being decided together.

I have heard the learned counsel for the parties and have perused the paperbook with their able assistance.

Learned counsel for the appellant has argued that it is not disputed that the deceased lost his life due to accident with the offending vehicle. Further contended that the claimants had produced three witnesses before the Tribunal in order to show that the accident occurred due to rash and negligent driving of the offending vehicle. He further argued that the driver never produced any evidence to show that he was not driving the vehicle rashly and negligently. Alternatively it is submitted, if rash and negligent is not proved, the claim petition under Section 166 be converted to under Section 163-A and compensation be awarded under the said Section.

Learned counsel for the respondent argued that none of the

witness produced by the claimants were there at the time of the accident. Apart from mere statement of the widow there is not even iota of evidence to prove that the accident occurred due to rash and negligent driving. Further, he opposes the application moved in the present appeal.

The first issue regarding onus under Section 166 to establish negligence on the part of owner or driver.

The Hon'ble Apex Court in **Surender Kumar Arora and another vs. Dr. Manoj Bisla and others, 2012(4) SCC 552**, held as under :-

10. In our view the issue that we have raised for our consideration is squarely covered by the decision of this Court in the case of Oriental Insurance Co. Ltd. (supra). In the said decision the Court stated :

"....Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under

Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

A perusal of the above decisions, it has been held that the onus lies upon the claimants to show that the accident occurred as a result of rash and negligent driving of the offending vehicle.

In the present case, the claimants had produced three witnesses i.e PW1 to PW3. Gurdev Ram (brother of the deceased) and Paramjit Kaur (widow of the deceased) deposed that the accident occurred due to rash and negligent driving of the offending vehicle but both of them admitted that they were not present at the place of accident at the relevant time. The third witness produced Tirath Ram, Head Constable, also never stated that he had seen the accident. The brother of the deceased only stated as under :-

"The deceased was my real brother. He was employed as Beldar in Irrigation Department. He died on 13.01.1998, in an accident with the bus PB-12-0506. On that day, I was present at Banga. At about 4:00 in the evening, on receipt of message, I reached the place of accident. I saw that my brother was lying on the left side of his

road, again said, he was lying on the Katcha path adjoining the left side of the road. He was injured and was writhing. The bus was also lying parked nearby and partly its left side was on the katcha path adjoining the left side of its own. The cycle of my brother was also lying on the katcha path near my brother.”

Except the above witness, no other evidence was produced. A mere statement of the persons who were not there at time of accident is not sufficient to discharge the onus of the claimants.

In such circumstances, the claim fails at threshold and no relief can be granted under Section 166 of the Act as the basic requirement of the Section has not been complied with.

Now with regard to the application moved by the appellants for conversion of the claim petition under Section 166 to 163-A, the said relief prayed for cannot be granted. The said matter has been considered by the Hon'ble Apex Court in the case of **Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd., Baroda, 2004 (5) SCC 385** has held as under :-

“54 The question may be considered from different angles. As for example, if in the proceedings under Section 166 of the Act, after obtaining compensation under Section 163-A, the awardee fails to prove that the accident took place owing to

negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefore as a consequence whereto the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, would it be at liberty to award compensation in terms of Section 163-A thereof.

55.The answer to both the aforementioned questions must be rendered in the negative.

In the above decision, the Hon'ble Apex Court has specifically dealt with a question that when the claimant has failed to establish his case under Section 166, his claim cannot be considered under Section 163-A.

In view of the law laid down, the present application has to be rejected and the claim petition cannot be converted into under Section 163-A of the Act.

However, it has not been disputed that Bahadur Ram lost his life in the accident with the offending vehicle. In such circumstances, no fault liability of Rs.50,000/- is granted under Section 140 of the Act. The

same should be paid to the claimants, if not already.

The appeal is partly allowed.

(AVNEESH JHINGAN)
JUDGE

12.09.2017

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Note:

1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes