

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

Sr. No.338

**FAO No.1580 of 2004 (O&M)  
Date of decision : 15.12.2017**

Oriental Insurance Company Limited

..... Appellant

VERSUS

Ram Bhateri Devi and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. Neeraj Khanna, Advocate  
for the appellant.

Mr. Rishav Lohan, Advocate for  
Mr. R.N. Lohan, Advocate  
for respondents No.1 to 4.

Mr. Gagandeep Suri, Advocate for  
Mr. R.M. Suri, Advocate  
for respondent No.10-Insurance Company.

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**SUDHIR MITTAL, J. (Oral)**

The insurer is in appeal against the Award dated 17.01.2004 passed by the learned Motor Accidents Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal').

2. It is stated in the claim petition that the deceased-Jai Chand was an employee of Haryana Police and was posted as a Constable in Police-Post, Jundla, District Karnal. On 02.09.2001, he boarded a Haryana Roadways bus bearing registration No.HR-46-A-1245 for Jind and was sitting on a seat behind the driver. At around 08.00 p.m., the bus met with an accident with a half body truck/dumper coming from the side of Jind and being driven rashly and negligently. As a result of the collision serious multiple injuries were received by the driver and passengers sitting behind

him. Jai Chand was among the injured and was immediately rushed to general hospital, Jind, where he was given first-aid. Since, his condition was serious, he was referred to PGI M.S., Rohtak, where he died on 22.09.2001.

3. The learned Tribunal found that the accident took place on account of rash and negligent driving of the driver of half body truck/dumper bearing registration No.HR-39-4288. Accordingly, compensation of ₹8,83,000/- was awarded to the claimants. It may be noted that the claimants have filed a petition under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), whereas, compensation has been assessed as if the petition was one under Section 166 of the said Act.

4. The insurer has filed the present appeal on the ground that the Tribunal could not have assessed the compensation under Section 166 of the Act, when the claim petition itself was filed under Section 163-A of the Act. However, learned counsel for the claimants submits that no such plea was taken before the learned Tribunal and in any case, where evidence has been led on the premise of the petition being one under Section 166 of the Act and compensation has also been accordingly assessed, the Tribunal would be justified in treating a petition under Section 163-A of the Act as one under Section 166 of the Act, because no prejudice has been caused to the insurer.

5. Learned counsel for the appellant vehemently contends that the procedure adopted by the learned Tribunal was incorrect and that the award is vitiated on account of the error committed by the Tribunal in treating the claim petition as if it had been filed under Section 166 of the Act. This contention has been controverted by learned counsel for the claimants by

relying upon **‘Pepsu Roadways Transport Corporation Nabha Raod, Patiala Vs. Pradeep Kaur and others, 2012(48) RCR (Civil) 409’** and **‘Sudesh Sharma and others Vs. Prahalad Kumar Garg and another, 2014(4) RCR (Civil) 530.**

6. I am of the considered opinion that there can be no impediment in the conversion of a claim petition under Section 163-A to one under Section 166 of the Act because the insurer is in no-way prejudiced by such a conversion. If evidence has been produced on the record to grant a higher compensation and also to prove the negligence on the part of the driver of the offending vehicle, the claimants would be entitled to a higher rate of compensation. The insurer had the opportunity to rebut the evidence led by the claimants and having failed in the exercise before the learned Tribunal, it cannot be permitted to raise such a pleas either in law or in equity. The judgment in **Pepsu Roadways Transport case** (supra) applies to this case with full force.

7. Accordingly, the appeal is dismissed. However, with no order as to cost.

**(SUDHIR MITTAL)**  
**JUDGE**

**December 15, 2017**

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No