

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 3081 of 2007 (O&M)

Date of Decision: 15.9.2017

Ravi Yadav

.....Appellant

Versus

Dr. Kusum and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ajai Vir Singh, Advocate
for the appellant.

Mr. Munish Behl, Advocate
for respondents No.1 and 2.

Mr. R.C. Kapoor, Advocate
for respondent No. 3-Insurance Company.

AVNEESH JHINGAN, J.

The present appeal is filed against the award dated 7.5.2007 passed by the Motor Accidents Claims Tribunal, Faridabad (for short 'the Tribunal').

This was burnt case and has been reconstructed from the salvaged record and copies supplied by counsels subject to all just exceptions.

The claim petition was filed by Ravi Yadav son of Om Parkash, r/o Faridabad under Section 166/163-A of the Motor Vehicles Act, 1988 (for short 'the Act').

The brief facts necessary for adjudication of the present appeal are noted below:

On 20.4.2003 when the claimant was on his scooter bearing

registration No.HR-51-E-204, he was struck by a car bearing registration No. HR-51-E-9942 (for short 'the offending vehicle'). As a result of the accident, claimant suffered multiple injuries and he was taken to Sunflag Hospital, Faridabad and from there he was referred to Escorts Hospital, Faridabad. The claimant remained admitted there w.e.f. 20.4.2003 to 29.4.2003. FIR No. 238 dated 2.5.2003 was registered at Police Station Faridabad.

The claim petition under Sections 166/163-A of the Act claiming compensation of ₹ 5,00,000/- was filed.

The Tribunal dismissed the claim petition holding that the petition has been moved under Section 166 read with Section 163-A of the Act and no option has been exercised as to under which provision the claim was being pursued. Petition was dismissed as not maintainable.

Aggrieved of the award, the present appeal has been filed.

Learned counsel for the appellant argued that the Tribunal has erred in dismissing the claim petition as not maintainable simply because it was filed under Section 166 read with Section 163-A of the Act. Learned counsel further stated that no option was asked from the claimant that under which provision the claim petition is to be pursued.

Learned counsel for the respondents have argued that the Tribunal has decided the issue that there was no rash and negligent driving on part of the offending vehicle. Learned counsel further contended that after the said issue has been decided, there is no question that the appellant should be allowed to covert his claim under Section 163-A of the Act.

I have heard learned counsel for the parties and perused the paper book.

Hon'ble the Apex Court in **Deepal Girishbhai Soni and others Versus United India Insurance Co. Ltd., Baroda** 2004(2) RCR (Civil) 466 held as under:

"52. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.

53. In Kodala (supra) the contention of the claimant that right to get compensation is in addition to the no-fault liability was, thus, rightly rejected. In agreement with Kodala (supra) we are also of the opinion that unlike Sections 140 and 141 of the Act the Parliament did not want to provide additional compensation in terms of Section 163-A of the Act.

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 therefor 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 other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under Section 163-A of the Act is interim in nature.

56. It is, therefore, evident that whenever the Parliament intended to provide for adjustment or refund of the compensation payable on the basis of no-fault liability, as for example, Sections 140 and 161 in case of hit and run motor accident, from the amount of compensation payable under the award on the basis of fault liability under Section 168 of the Act, the same has expressly been provided for and having regard to the fact that no such procedure for refund or adjustment of compensation has been provided for in relation to the proceedings under Section 163-A of the Act, it must be held that the scheme of the provisions under Sections 163-A and 166 are distinct and

separate in nature."

In *Himachal Road Transport Corporation and another*
Versus Baldev Kumar Nayyer and others, (2006) 2, RCR (Civil) 682,
this Court has held as under:

"4. In this view of the matter, we are satisfied that the impugned award dated 6.11.2003 cannot be sustained. The Tribunal could not have treated the petitions filed under Section 166 of the Act as petitions under Section 163-A of the Act by restricting the income to ₹ 40,000/-. This issue stands settled by the Apex Court in Deepal Girish's case (supra). Accordingly, we set aside the impugned award dated 6.11.2003 and direct the Motor Accident Claims Tribunal, Panchkula to decide the petition filed under Section 166 of the Act in accordance with law."

On perusal of the above decisions position of law that emerges is that the claimant cannot move the claim petition simultaneously under both the Sections. The claimant has to proceed under one of the Section. Further it is also clear from the decisions that having failed under Section 166 of the Act to prove rash and negligent driving, the claim petition, at that stage, cannot be converted under Section 163-A of the Act.

In the present case, though the Tribunal has decided issue No.1 of rash and negligent driving. But a perusal of the findings recorded would show that the issue has been decided mainly relying upon the fact that the claimant was not able to produce any evidence or material with

regard to rash and negligent driving of the offending vehicle. It has

further been stated that it was not proved that the offending vehicle was coming on a high speed.

After recording this finding, the Tribunal decided issue No.4 by stating that since the claim petition had been moved under Section 163-A as well as under Section 166 of the Act and no option had been made that under which Section the claim petition is to be pursued, hence, petition dismissed as not maintainable.

The award passed by the Tribunal cannot be upheld for the reasons that the Tribunal before deciding the other issues should have decided the maintainability issue. Had the maintainability issue decided first, the claimant would have got an opportunity to choose as to under which section the claim is to be pursued. In case of claim under Section 163-A of the Act, rash and negligent driving was not to be proved.

This is not a case where after having failed to prove rash and negligent driving, thereafter, the claimant has converted his claim petition under Section 163-A of the Act. Rather it appears a case of confusion as a single claim petition was filed and in its heading 'Section 166/163-A of the Act' was mentioned. It appears, that under this confusion no evidence or material with regard to Section 166 was produced.

Be that as it may, without expressing any opinion on the merit of the case, the matter is remanded back to the Tribunal to decide afresh in either of the one Section as opted by the claimant. Three

effective opportunities be provided to each of the parties to support their case.

The appeal is accordingly disposed of.

Parties are directed to appear before the Tribunal on 24.10.2017.

15.09.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No