

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2991 of 2006 (O&M)

Date of Decision:13.09.2017

National Insurance Company Limited

.....Appellant

Versus

Madhu and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. D.P. Gupta, Advocate
for the appellant.

Mr. S.S. Behl, Advocate
for respondents No. 1 to 3.

Mr. Vipin Sharma, Advocate for
Mr. S.M. Sharma, Advocate
for respondent No.6.

AVNEESH JHINGAN, J.

The present appeal has been filed by the Insurance Company against the award dated 18.3.2006 passed by the Motor Accidents Claims Tribunal, Ambala (for short 'the Tribunal').

The grievance is that claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was converted as claim under Section 163-A of the Act by the Tribunal.

The bare facts required for adjudication of the present appeal are noted below:

An accident occurred on 3.7.2002 between Maruti Car bearing registration No. HR-01-J-1101 and a truck. As a result of the accident Gautam aged 21 years lost his life. The claim petition was filed under Section 166 of the Act. During the proceedings, an application was moved

by the claimants for conversion of the claim petition from Section 166 to 163-A of the Act. Learned counsel for the Insurance Company never objected to the conversion application. The Tribunal disposed of the claim petition under Section 163-A of the Act, awarding compensation of ₹1,80,000/- along with interest at the rate of 7.5% per annum.

Heard learned counsel for the parties and perused the paper book.

Relying upon decision of Hon'ble the Supreme Court in **Deepal Girishbhai Soni and others Versus United India Insurance Co. Ltd., Baroda**, (2004) 2 RCR (Civil) 466 and decision of this Court in **Himachal Road Transport Corporation and another Versus Baldev Kumar Nayyer and others**, (2006) 2 RCR (civil) 682, learned counsel for the appellant contended that the matter could have been considered only under Section 166 of the Act as it will not come within ambit of Section 163-A.

Learned counsel for the respondents had no serious objection that claim was to be considered under Section 166 of the Act, but he argued that since the entire matter has been decided under Section 163-A of the Act, if matter is to be considered under Section 166 of the Act, he should be granted reasonable opportunity to support his claim by bringing the material on record and by leading evidence.

In view of the contentions raised by learned counsel for the parties, it would be appropriate if the matter is remanded back to the Tribunal to decide afresh by treating the claim petition under Section 166 of the Act.

Ordered accordingly.

Both the parties would be given reasonable opportunity to lead

their evidence. The accident is of the year 2002 keeping in view this fact, it would be desirable if the said petition is decided expeditiously.

Parties are directed to appear before the Tribunal on 10.10.2017.

At this stage it may be pointed out that there was an interim order dated July 11,2006, which is reproduced below:

"Notice of motion for 11th September, 2006.

Operation of the impugned award to remain stayed on appellant's depositing 50% of the compensation amount within a period of four weeks."

The amount deposited by the Insurance Company would be subject to the final outcome of the claim petition.

13.09.2017

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No