

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2240 of 2011 (O&M)

Date of Decision: 4.10.2017

Manjit Kaur and others

.....Appellants

Versus

Sant Baba Labh Singh, Qila Anandgarh Sahib,
Anandpur Sahib, Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. H.S. Batth, Advocate
for the appellants.

Mr. Vipul Sharma, Advocate
for respondent No.1.

Mr. Paul S. Saini, Advocate
for respondent No.2.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 5.8.2010 passed by the Motor Accidents Claims Tribunal, Tarn Taran (for short 'the Tribunal').

The brief facts necessary for adjudication of the present appeal are as under:

On 16.3.2006 Narinder Singh aged 50 years was coming back to his village on bicycle along with Amrik Singh and Mohinder Singh. Narinder Singh lost his life in the accident with truck bearing registration No. PAT-9074 (for short 'the offending vehicle'). Amrik Singh got registered DDR No.23 dated 16.3.2006 at Police Station Verowal.

The widow and two children of the deceased Narinder Singh filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). In support of their case, they examined AW1-Amrik Singh the alleged eye witness and also produced DDR Ex.A5.

The Tribunal after considering the witnesses and evidence, came to the conclusion that the claimants have failed to establish that accident occurred due to rash and negligent driving of the offending vehicle and consequently dismissed the claim petition with costs of ₹ 2000/-.

Aggrieved of the said award, the present appeal has been filed by the claimants.

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

Learned counsel for the appellants has raised two fold submissions. Firstly it was contended that the Tribunal should have ignored the contents of the DDR and should have relied upon the statement given by AW1-Amrik Singh. Secondly it was contended that in any case, the claim petition should be converted into under Section 163-A of the Act.

Learned counsel for respondents defended the award and stated that the claimants have failed to establish rash and negligent driving of the offending vehicle. It was further contended that at this stage the claim petition cannot be converted into under Section 163-A of the Act.

Before dealing with the first issue, it is important to note the decision of Hon'ble the Apex Court on the issue of onus.

Hon'ble the Apex Court in **Surender Kumar Arora and another Versus Dr. Manoj Bisla and others**, 2012 (4) SCC 552, has held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimants.

As per the above decision, the onus is on the claimants under Section 166 of the Act to prove that the accident was result of rash and

negligent driving of the offending vehicle.

In the present case only one alleged eye witness Amrik Singh deposed before the Tribunal stating that he alongwith Mohinder Singh and Narinder Singh (deceased) were going on separate bicycles to their village after performing their duties. According to him the offending vehicle was being driven rashly and negligently, as a result of which it struck Narinder Singh and he lost his life. It is noteworthy that this very person in DDR has given a statement that accident occurred as truck suddenly slipped and turned on its side in the wheat fields, in that process, the truck struck against the bicycle of Narinder Singh and he died on the spot. The contradiction is evident. The matter does not ends here. The second person i.e. Mohinder Singh who according to the statement of Amrik Singh was also accompanying them, never stepped into the witness box. In such circumstance, it cannot be held that claimants have discharged the onus of proving rash and negligent driving.

No fault can be pointed in the award of the Tribunal dismissing the claim petition.

With regard to second issue of converting the claim petition under Section 163-A of the Act, the said issue is no longer *res-integra* and is covered by the decision of Hon'ble the Apex Court in **Deepal Girishbhai Soni and others Versus United India Insurance Co. Ltd., Baroda** 2004(5) SCC 385, wherein it was 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 whereof 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."

In the above decision, it has been held that after having failed to establish a case under Section 166 of the Act, the proceedings cannot be converted under Section 163-A of the Act. In view of the settled proposition of law, this contention of learned counsel for appellants is also rejected.

As per Section 140 of the Act, the Tribunal should have granted an amount of ₹ 50,000/- under no fault liability.

Thus, an amount of ₹ 50,000/- is granted to the claimants under Section 140 of the Act.

The claimants shall be entitled to the said amount alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed and is disposed of accordingly.

4.10.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No