

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

653

FAO No.356 of 2013

Decided on : 02.11.2017

Ranjit Kaur and another

... Appellants

Versus

Balkar Singh and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Ishaan Cooner, Advocate for
Mr.J.S.Cooner, Advocate
for the appellant.

Mr.Harsh Aggarwal, Advocate for respondent No.3.

Avneesh Jhingan, J. (Oral)

The present appeal has been filed by the claimants being aggrieved of dismissal of their claim petition by Motor Accidents Claims Tribunal, Tarn Taran (for short 'the Tribunal').

2 The claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') was dismissed by the Tribunal vide award dated 1.10.2012 holding that claimants have not been able to prove involvement of the offending vehicle.

3 The factual matrix necessary for adjudication of the present appeal are that on 6.7.2003 near Satluj Palace, Harike at Harike-Amritsar road, Partap Singh aged 22 years lost his life in an alleged motor vehicular accident. It was alleged that he was driving a jeep bearing registration No.PB-02T-2494. It was the case of the complainants that the said vehicle banged into bullock cart as a result of which, he received injuries and lost his life. It is pertinent to note here that DDR was registered on 6.9.2003.

4. Learned counsel for the appellants argues that the Tribunal erred in dismissing the claim petition. The claim petition under Section 163-A of the Act was filed, therefore, no rash and negligent driving was required to be proved. He further contended that accident was duly proved by relying upon DDR and statement of PW03 Gurmukh Singh.

5 Learned counsel for the respondent on the other hand, defended the award and stated that the claimants have miserably failed to establish that any accident had taken place, even the deceased was driving the said vehicle at the relevant time was not proved. He further argues that dead body was cremated without post mortem. Even it is not proved that the death was result of a motor vehicular accident.

6. Hon'ble Apex Court in case **Reshma Kumari & Ors vs Madan Mohan & Anr, 2013(9) SCC 65**. It has been held as under:-

“10. The 1988 Act gives choice to the claimants to seek compensation on structured formula basis as provided in Section 163A or make an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 under Section 166. The claimants have to elect one of the two remedies provided in Section 163A and Section 166. The remedy provided in Section 163A is not a remedy in addition to the remedy provided in Section 166 but it provides for an alternative course to Section 166. By incorporating Section 163A in the 1988 Act, the Parliament has provided the remedy for payment of compensation notwithstanding anything contained in the 1988 Act or in any other law for the time being in force or instrument having the force of law, that the owner of a motor vehicle or authorised insurer shall be liable to pay compensation on structured formula basis as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of motor vehicle. The peculiar feature of Section 163A is that for a claim made thereunder, the claimants are not required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner or owners of the vehicle concerned. The scheme of Section 163A is a departure from the general principle of law of tort that the liability of the owner of the vehicle to compensate the victim or his heirs in a motor accident arises only on the proof of negligence on the part of the driver. Section 163A has done away with the requirement of the proof of negligence on the part of the driver of the vehicle where the victim of an accident or his dependants elect to apply for

compensation under Section 163A. When an application for compensation is made under Section 163A the compensation is paid as indicated in the Second Schedule. The table in the Second Schedule has been found by this Court to be defective to which we shall refer at a little later stage.

11. On the other hand, by making an application for compensation arising out of an accident under Section 166 it is necessary for a claimant to prove negligence on the part of the driver or owner of the vehicle. The burden is on the claimant to establish the negligence on the part of the driver or owner of the vehicle and on proof thereof, the claimant is entitled to compensation. We are confronted with the question, whether while considering an application for compensation made under Section 166, the multiplier specified in the Second Schedule can be taken to be guide for determination of amount of the compensation.”

7 From the above decisions, it is evident that under Section 166 of the Act, the claimants have to prove the involvement of the vehicle and the rash and negligent driving of the vehicle. Under Section 163-A of the Act though rash and negligent driving of the vehicle is not one of the requirement but involvement of motor vehicle in the accident is required to be proved.

8 The issue which requires to be adjudicated in the present appeal is whether the claimants were able to discharge their onus that the death of Pardeep Singh occurred in a motor vehicular accident involving jeep bearing registration No. PB-02T-2494.

9 In the present case, the reliance placed upon by the claimants is on the contents of the DDR and the statement of PW-3, Gurmukh Singh. It would be relevant to note here that the accident occurred on 6.7.2003 whereas the DDR was registered on 6.9.2003 that is exactly after two months of the accident. The other angle which needs consideration is that DDR was recorded on the statement of Gurmukh Singh, father of the deceased, who also appeared as PW-3. The appellants could not prove that Gurmukh Singh was present at the time of the

accident.

10 Perusal of the DDR would show that it is based on some compromise arrived at between the owner of the bullock cart and the family members of the deceased. This itself shows that the person who had registered the DDR was not present at the time of accident. The onus with regard to involvement of the vehicle in question cannot be said to be discharged on the basis of the DDR and the statement of PW-3.

11 In the case in hand, there is another hurdle which claimants were required to cross was to establish the fact that the death was result of the accident. In absence of any eye witness or the post-mortem even it cannot be said that the deceased lost his life in a motor vehicular accident. It is not evident what was the reason of death. The claimants failed to prove the accident and the fact that the loss of life was because of injuries suffered in the accident.

Apart from that, owner of the jeep Balkar Singh stated that the deceased was never employed by him nor the co-owner Charanjit Singh employed him. It is still a question to be answered that how the deceased came in possession of the vehicle, if at all he was driving a jeep at the time of accident.

The appeal is without any merits, and the same is dismissed.

[Avneesh Jhingan]
Judge

02.11.2017

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Whether speaking/reasoned

: Yes/No

Whether Reportable

: Yes/No