

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 3773 of 2013 (O&M)

Date of Decision: 6.11.2017

Ishwar @ Gandhir Yadav

.....Appellant

Versus

Vijay Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Bhavna Grewal, Advocate for
Mr. S.K. Yadav, Advocate
for the appellant.

Ms. Vandana Malhotra, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.

The present appeal involves the issue "whether the claimant had discharged the onus under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') of the involvement of the vehicle and rash and negligent driving of the offending vehicle?"

The legal aspect with regard to this issue has been dealt with by Hon'ble the Apex Court in **Reshma Kumari and others Versus Madan Mohan and another**, 2013 (9) SCC 65, 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."

In the above decision, it has been held that in proceedings under Section 166 of the Act, the onus is on the claimants to prove the involvement of the offending vehicle and its rash and negligent driving, whereas under section 163-A of the Act, the compensation is awarded by a fixed formula but there is no onus to be discharged regarding rash and negligent driving.

The Motor Accidents Claims Tribunal, Narnaul (for short 'the Tribunal') vide its award dated 13.5.2013 dismissed the claim petition holding that it has not been proved that the offending motor cycle bearing registration No.HR-35-F-1184 was involved in the accident.

Ishwar @ Gandhir Yadav suffered injuries in a motor vehicular accident on 12.6.2010. According to the claim petition he along with Rajbir were going on a motor cycle and one Jitender was coming behind on another motor cycle. It was alleged that the accident was caused by the offending vehicle as a result of which the appellant suffered injuries and he was taken to Government Hospital, Narnaul. From the Government Hospital

his family members took him to Getwell Hospital, Narnaul. He remained admitted there for two days. Thereafter he was taken to Jaipur Hospital where he remained admitted upto 29.6.2010. FIR No. 150 dated 28.7.2010 was registered at Police Station Narnaul.

The claim petition under Section 166 of the Act was filed. But the same was dismissed.

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

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

The appellant in order to substantiate his claim himself stepped into the witness box. His claim was supported by PW3 Jitender and PW4 Rajbir, the alleged eye witnesses to the accident. PW2 Head Constable Karan Singh also deposed before the Tribunal. He proved the FIR and stated that after investigation it was found that respondent No.1 was driving the offending vehicle and accident had taken place due to his negligence. Doctors were also examined to prove the injury.

At this stage, since the dispute is at the threshold of the claim so it would not be appropriate to go into the statement of Doctor or the medical aspect.

The main basis for dismissal of the claim petition were two fold: firstly that there was MLR prepared in the Jaipur Hospital in which the family members of the appellant stated that the injuries occurred as the motor cycle of the appellant skidded and moreover the MLR of the appellant in the Government Hospital where he was taken first after the accident was not proved. Secondly, the FIR was lodged after 45 days of the accident.

Learned counsel for the appellant contended that the accident and rash and negligent driving was duly proved by the statements of PW2 to PW4 and the Tribunal erred in dismissing the claim petition. She further contended that it was only when the appellant fully recovered, that information was given to the police.

Learned counsel for the Insurance Company on the other hand argued that there was delay in lodging the FIR. The MLR was not proved and the admission of the appellant has come on record that his parents got him admitted in Jaipur Hospital stating that his motor cycle had skidded and he suffered injuries. The contradiction in the contents of the FIR and the Jaipur Hospital record could have been ignored if it was a case where immediately after the accident, the appellant was taken to that hospital. Usually the attendant of the injured in order to avoid complication of the police case, do make such statement in order to get timely medical treatment.

In the present case, the appellant was taken to the Government Hospital, Narnaul, as per his own claim, even the MLR of that hospital was not proved. From the Government Hospital he was shifted to Getwell Hospital, Narnaul, he remained admitted for two days. Thereafter, he was shifted to Jaipur Hospital. The reasoning mentioned in the above para will not apply in the facts of the present case as there was sufficient time between the accident and his admission in the Jaipur Hospital.

Though the injury and the accident, both are not in dispute but what is to be seen is the involvement of the offending vehicle. As per PW3 and PW4 they were eye witnesses to the accident. They deposed before the Tribunal but the reliability of their statement has to be tested. They may

have supported the contention raised in the claim petition but the question which remains to be answered is that there was a delay of 45 days in lodging the FIR. The contention raised by learned counsel for the appellant that it was only when the appellant recovered, that FIR was registered. This could have been acceptable explanation if these two eye witnesses were not there. Once these two persons claimed to be eye witnesses, there was no occasion to wait for 45 days in lodging the FIR.

Even PW2 Head Constable Karan Singh who appeared before the Tribunal and stated that during the investigation the police has found that the offending vehicle was being driven by respondent No.1 and it was because of his rash and negligent driving that the accident took place, is not worth reliance. No details or reasons have been mentioned to state on what basis it was found that the said offending vehicle was involved in the accident and that it was being driven in rash and negligent manner.

Apart from all above mentioned reasons, the appellant himself admitted before the Tribunal that in the treatment record of Jaipur Hospital, his family members stated that he suffered injuries as his motor cycle skidded. This coupled with the fact that the treatment record of Jaipur Hospital to this aspect was intentionally withheld by the appellant, says much about his conduct.

For the reasons mentioned above, no fault can be found with the award passed by the Tribunal.

The appeal, being without any merits, is hereby dismissed.

(AVNEESH JHINGAN)
JUDGE

6.11.2017
reema

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No