

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 7345 of 2015 (O&M)

Date of Decision: 30.10.2017

Smt.Mamta Devi and others

.....Appellants

Versus

Inderjeet Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Himanshu Puri, Advocate
for the appellants.

AVNEESH JHINGAN, J.

The grievance in the present appeal is against the dismissal of MACT Petition No. 13 of 11.3.2014 passed by the Motor Accidents Claims Tribunal, Gurgaon (for short 'the Tribunal').

In the alleged motor vehicular accident, which occurred on 16.11.2013, Ajay Kumar s/o Jeet Singh, lost his life. He was driving his motor cycle bearing registration No.HR-26-AM-1286 which was hit by the offending vehicle bearing registration No.HR-47-B-3243

The claim petition under section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the claimants.

The legal position with regard to claim petition filed under Section 166 of the Act has been duly settled by Hon'ble the Apex Court in

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.

In the present case, there was alleged accident for which FIR No.383 dated 17.11.2013 was registered at Police Station Bilaspur, Gurgaon, against an unknown vehicle. FIR was registered on the statement

months, the vehicle bearing registration No.HR-47-B-3243 was impounded by the police. The claim has been moved against the insurer of the said vehicle. The claimants in support of their case and to discharge their onus, produced Constable Sehdev as PW1 to prove FIR and Ahlmad Sandeep Kumar was examined as PW4 to prove that criminal proceedings were going on. In his cross-examination he deposed that FIR was recorded on the statement of Vijay. These were the two witnesses produced by the claimants to prove involvement of the offending vehicle.

It would be important to note that none of the witnesses produced was eye witness to the accident. The entire reliance is on the FIR Ex.P1. It would be pertinent to mention here that in FIR, neither any make of offending vehicle nor its registration number was mentioned. Vijay Kumar, brother of the deceased, on whose statement the FIR was registered, choose not to appear in the witness box. No explanation is forth coming that how and where-from after almost a lapse of two months, the said offending vehicle came into existence. The Investigating Officer also never stepped in the witness box. The father and brother of the deceased came to know about the accident on the same day, but the FIR was registered on the next day and that too without any detail of the offending vehicle.

Respondent No.2, driver of the alleged offending vehicle, was arrested on 10.1.2014 on a supplementary statement of Vijay. It would be important here to note that at the costs of repetition that Vijay was not examined before the Tribunal. Jeet Singh, father of the deceased, gave the testimony but the same is not worth reliance as admittedly he was not eye witness to the accident. The entire story projects a sketch picture which has number of missing links and the non-appearance of driver and owner of the

offending vehicle puts the entire case in grey that the offending vehicle was implanted lateron.

The Tribunal has rightly dismissed the claim petition observing that at the most it was a case of hit and run case and in order to get the claim under the Act, the alleged offending vehicle has been implanted.

The appeal, having no merit, is hereby dismissed.

30.10.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No