

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No.4364 of 2006(O&M)
Date of Decision:28.02.2018**

Arvind Kumar

...Appellant

Versus

M/s Sham Sunder Ravi Kumar and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Nitish Garg, Advocate for the appellant in
FAO No.4364 of 2006 and for respondent-Arvind Kumar
in FAO No.4168 to 4170 and 4396 to 4399 of 2006.

Mr.Paul S. Saini, Advocate with
Mr.Vipul Sharma, Advocate for the appellant/
Insurance Company in FAO Nos.4396 to 4399 of 2006
and for respondent-Insurance company in
FAO Nos.4168 to 4170 and 4364 of 2006.

Mr.Ashok Jindal, Advocate for the appellant(s) in
FAO No.4168 to 4170 of 2006 and for respondent No.1 in
FAO No.4396 to 4398 of 2006.

ANIL KSHETARPAL, J.

By this order, eight appeals bearing FAO Nos.4168 to 4170, 4364 and 4396 to 4399 of 2006 shall stand disposed of, as all these appeals are arising out of an accident which took place on 8.7.2003. Four appeals bearing FAO Nos.4396 to 4399 of 2006 have been filed by the Insurance Company, whereas remaining four appeals bearing FAO Nos. 4168 to 4170 and 4364 of 2006 have been filed by the claimants for enhancement of the compensation.

Claimants filed separate claim petitions under Section 163-A of the Motor Vehicles Act, 1988 ('the Act' for short), claiming that on 8.7.2003, they were travelling in a car bearing Registration No. PB-30-B-2821,

being driven by Arvind Kumar, one of the claimants. At 5.30 PM their vehicle met with an accident with one Tata Safari bearing Registration No.PB-10-BA-0200, coming from opposite side, being rashly and negligently driven by Major Singh.

In the case of Arvind Kumar-appellant in FAO No.4364 of 2006 and respondent in FAO No.4399 of 2006, it is claimed that Arvind Kumar was admitted in the hospital, i.e. Daya Nand, Medical College, Ludhiana on 8.7.2003 as he suffered multiple injuries and various surgeries had to be performed on him. Arvind Kumar also remained admitted up to 6.9.2003 and thereafter re-admitted on 10.10.2003 and discharged on 12.10.2003. As per the certificate issued by the Board of Doctors, Arvind Kumar suffered permanent disability to the extent of 35%.

The learned Motor Accident Claims Tribunal ('the Tribunal' for short) after finding that the medical expenses are to the extent of 2,52,118/- awarded a sum of Rs.4,71,118/- to Arvind Kumar-appellant along with interest @ 6% per annum.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the paper-book.

In the considered opinion of this Court, following issues need determination:-

(i) Whether a representative of the owner of the vehicle/borrower driving the motor vehicle at the time of accident is entitled to file a claim petition under Section 163-A of the Motor Vehicles Act, 1988?

(ii) Whether in absence of any permanent disability, the claim

petition under Section 163-A of the Act is maintainable?

It is not disputed that Arvind Kumar was driving the car which had met with an accident. The car is owned by M/s Sham Sunder Ravi Kumar, a proprietorship firm of Ravi Kumar. It is not the case of Arvind Kumar that he was employed as a driver. Arvind Kumar was a representative of the owner-borrower. He is son of Sham Sunder, which is the first name of the firm. In the claim petition, he claimed that the car he was driving met with an accident with a vehicle coming from the opposite side, driven by Major Singh. In the claim petition, only the firm i.e. M/s Sham Sunder Ravi Kumar and National Insurance Company Limited, the insurer of the vehicle, driven by Arvind Kumar, have been impleaded as party-respondent.

Learned counsel for the Insurance Company has vehemently argued that the claim petition under Section 163-A of the Act is not maintainable as Arvind Kumar was himself driving the vehicle and, therefore, he had stepped into the shoes of the owner.

On the other hand, learned counsel for the claimants have submitted that since the vehicle was not owned by Arvind Kumar, therefore, the claim petition is maintainable.

Before considering the arguments of the learned counsel for the Insurance Company, it will be appropriate to notice relevant statutory provisions. Sections 140 of the Act deals with the situation where death or a permanent disablement of any person has resulted from an accident arising out of the use of motor vehicle. Section 140 of the Act is reproduced as under:-

“140. Liability to pay compensation in certain cases on the principle of no fault. – (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under subsection (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty – five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. (5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of

compensation payable under this section or under section 163 – A.”

The claim petition was filed under Section 163-A of the Act, which is extracted as under:-

[163 – A. Special provisions as to payment of compensation on structured formula basis. – (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. – For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), the claimant shall not be 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 of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

On joint reading of Sections 140 and Section 163-A of the Act, it is clear that special provisions have been made for payment of compensation on structured formula basis. Section 163-A of the Act starts with non-obstante clause. Such claim petition under Section 163-A of the Act is maintainable against the owner of the motor vehicle or authorised insurer. Section 163-A of the Act has been added in the Act w.e.f.

14.11.1994. It is a special provision to give compensation to the legal heirs of the person, who has lost his life or the victim who has suffered permanent disability, expeditiously. If the person driving the vehicle which met with an accident is owner himself or he is driving the vehicle with the permission of the owner, the driver steps into the shoes of the owner. The claim petition under Section 163-A of the Act would not be maintainable. In Sections 140 and 163-A of the Act, the word used 'any person' has been interpreted by the Hon'ble Supreme Court to hold that any person means third party for the purpose of Section 163-A of the Act. Reference in this regard can be made to a judgment of Hon'ble Supreme Court in ***Ningamma and another Vs. United India Insurance Co.Ltd., 2009 (13) SCC 710.*** Hon'ble the Supreme Court after discussing the statutory provisions has held as under:-

“We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under

Section 163-A of the MVA.”

Once the judgment passed by the Hon'ble Supreme Court in the case of **Ningamma's** case (supra) is applied to the facts of the present case, it is clear that Arvind Kumar stepped into the shoes of owner of the vehicle. Although Arvind Kumar has claimed that he was working as an Accountant in the firm, however, he was not employed driver. Arvind Kumar is son of Sham Sunder. Name of the firm is M/s Sham Sunder Ravi Kumar.

It would be relevant to note here that on interpretation of Section 163-A of the Act, a larger Bench of Hon'ble the Supreme Court has now recently held in the case of ***United India Insurance Co. Ltd. Vs. Sunil Kumar and another, 2017 AIR (SC) 5710*** that the Insurance Company would not be entitled to raise any defence of negligence on the part of the victim or the deceased while defending petition filed under Section 163-A of the Act. Such being the position, Section 163-A of the Act has to be held applicable only in the cases where the victim or the deceased in case of death is a third party and not the owner himself or his representative or borrower.

In view of the observations made above, issue No.1 is answered in favour of the Insurance Company and the claim petition filed by Arvind Kumar is found to be not maintainable. The award of the Tribunal are set aside.

As far as issue No.2, reproduced hereinabove, it is not disputed that the other claimants namely Mukta, Sham Sunder, Urmila Garg had not suffered any permanent disablement due to accident arising out of a use of the motor vehicle. Section 163-A of the Act, which is a special provision,

provides that the application is maintainable under Section 163-A of the Act only in two cases; (i) in case of death and (ii) in permanent disablement. In all these appeals, no evidence has been led to prove permanent disablement.

In view thereof, the claim petitions filed by the claimants are found to be not maintainable. Resultantly, FAO Nos.4396 to 4399 of 2006 filed by the Insurance Company are allowed, whereas claim petitions bearing FAO Nos. 4168 to 4170 and 4364 of 2006 filed by the claimants shall stand dismissed. Pending application, if any, shall also stand disposed of.

28.02.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No