

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

422

[1] **FAO No.4693 of 2002 (O&M)**
Date of Decision : 28.02.2019

DARSHAN KAUR AND OTHERS

....APPELALNTS

V/S

HARBANS SINGH AND OTHERS

....RESPONDENTS

[2] **FAO No.5353 of 2002 (O&M)**

THE ORIENTAL INSURANCE COMPANY LTD.

....APPELALNT

V/S

DARSHAN KAUR AND OTHERSH

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Ms. Amandeep Kaur, Advocate for
Mr. Ashwani Arora, Advocate
for the appellants in **FAO-4693-2002** and
for the respondents in **FAO-5353-2002**.

Mr. V. Ram Swaroop, Advocate
for respondent No.3/*Insurance Company*
in **FAO-4693-2002** and
for the appellant in **FAO-5353-2002**.

B.S. WALIA, J. (ORAL)

[1] This order shall decide FAO No. 4693 of 2002 filed by the
claimants as well as FAO No.5353 of 2002 filed by the Insurance Company

against award dated 24.07.2002 passed by the learned Motor Accidents Claims Tribunal, Chandigarh.

[2] Learned counsel for the claimants at the very outset contended that although the claim petition had been filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') and the appellants had been awarded Rs.5,46,000/- by taking into account monthly income of the deceased at Rs.10,000/-, yet the prayer in appeal was for remand of the case with liberty to the appellants to convert the claim petition from one under Section 163-A of the Act to one under Section 166 of the Act especially in view of the fact that award has not been got executed till date.

[3] Learned counsel for the respondents states that he has no objection, subject to the award being set aside, the matter being remanded to the learned Tribunal and the procedure as is required to be followed in respect of claim petition under Section 166 of the Act being followed.

[4] I have considered the submissions of learned counsel for the parties.

[5] Hon'ble the Jharkhand High Court in case '**Dr. Gauri Shankar Prasad Verma** versus **Presiding Officer, Motor Accidents Claims Tribunal, Ranchi**' 2011 ACJ 297, allowed the petitioners therein to carry out necessary amendments in the claim petition filed under Section 163 A of the Act for converting it to one under Section 166 of the Act. Relevant paragraph Nos.13 to 17 of aforesaid decision are reproduced as under :-

“13. No doubt, provisions of section 163A of the Act and section 166 of the Act operate entirely in different, distinct

and independent fields. The claimant has therefore to opt either of the two provisions.

It follows therefore that even if, the claim petition under section 163A of the Act is dismissed on the ground of non-maintainability, the claimants can resort to the provisions of section 166 of the Act. If this is acceptable in the law, then I see no reason as to why the Tribunal cannot exercise its power to allow conversion of claim petition under section 163A into a claim petition under section 166 of the Act. Such power is vested with the Tribunal by way of a discretionary power which may be exercised judiciously.

14. As observed in the instant case, the claimants had filed this case in the year 1995 on the basis of their understanding of law relating to the provisions of section 163A of the Act and upon such legal advice received by them. The conduct of the claimants in opting for invoking the provisions of section 163A of the Act, is apparently bonafide. By the exposition of law, as declared in the Deep Pal Girishdhai Soni (Supra), the petitioners' claim under section 163A of the Act cannot succeed basically on account of the fact that the annual income of the deceased was admittedly more than Rs. 2,37,000/- per annum. Under such circumstances, should the claimant suffer detriment because they had wrongly opted for invoking the provisions of section 163A of the Act under improper legal advice?

15. The Tribunal has certainly the discretionary power to allow conversion of the claim petition under section 163A of the Act into a claim petition under section 166 of the Act. After all, the above provisions of the Act are by way of beneficial legislation which provides compensation to the legal representatives of the victims of the motor vehicle accident. To use the oft repeated phrase, the procedure is always a hand maid of justice. The Tribunal does have the

discretionary power which albeit has to be exercised judiciously.

16. No doubt, as the facts would indicate, the prayer for conversion has been made at a very belated stage, but this in itself, should not be taken as a ground to reject the prayer for conversion. When the circumstances indicate that the claimants have all along acted bonafidely, the mere conversion would certainly not affect the merit of the claim petition under section 166 of the Act. The same line of defence which would have been available to the respondents / defendants, had the claim petition been filed separately under section 166 of the Act, would certainly be available to them even after allowing the conversion.

17. In the light of the above discussion, this application is allowed with the following directions:

1. The impugned order dated 30.7.2004 passed by the Presiding Officer, Motor Vehicle Accident Claims Tribunal, Ranchi in Comp. Case No. 77 of 1995, is hereby quashed and set aside.

2. The Tribunal will allow the petitioners / claimants to carry out necessary amendments in their claim petition filed under section 163A of the Motor Vehicle Act for converting it into section 166 of the Motor Vehicle Act.

3. It would be open to the respondents in the claim petition to file written statement / supplementary written statement.”

Further, Hon’ble the Karnataka High Court in case **‘Divisional Manager, United India Insurance Co. Ltd., Belgaum** versus **Smt. Sunita and others**’ 2017 (179) AIC 716, held that conversion of a claim petition in genuine cases from Section 163-A of

M.V. Act to Section 166 of the same Act is permissible. Relevant paragraph Nos.14 to 19 are reproduced as under:-

“14. From this, it cannot be inferred that there is prohibition for conversion of a claim petition from Section 163-A of M.V.Act to Section 166 of the same Act. Under Deepal's case (supra), merely because it speaks as to who are eligible to file claim petition under Section 163-A of M.V.Act, it cannot be inferred that a claim petition filed under Section 163-A of M.V.Act cannot be converted to be the one filed under Section 166 of the same Act. As already observed above, in a claim petition filed under Section 166 of the M.V.Act, the claimant is required to plead and establish negligence on the part of the driver of the offending vehicle. Section 163-A of M.V.Act which is stated to be a social security provision was brought on the MFA No.21666/2009 (MV) statute book which creates an exception to the requirement of Section 166. If the claimant chooses to take the burden of pleading and proving the negligence on the part of the driver of the offending vehicle, he cannot be prevented. As such, I am of the view that the power of the Tribunal or this Court to allow conversion of the claim petition is discretionary, which power the Tribunal or Court is expected to exercise taking into consideration the facts of the case before it including the conduct of the claimants. Thus, there is no bar in granting permission to convert a petition filed under Section 163-A of M.V.Act to the one under Section 166 of the same Act in genuine cases.

15. A similar view has been taken by the High Court of Judicature at Bombay, Aurangabad Bench in the case of New India Assurance Co.Ltd., Vs. Ashabai and Others reported in 2009 ACJ 163; The High Court of Jharkhand at Ranchi in its order in W.P.(C) No.4850 of MFA No.21666/2009 (MV) 2004 in the case of Dr.Gauri

Shankar Prasad Verma and Another Vs. The Presiding Officer, Motor Vehicle Accident Claims Tribunal, Ranchi and Others, dated 06.08.2009; and by Sikkim High Court in the case of Branch Manager, National Insurance Company Limited Vs. Master Suraj Subba and Another reported in (2014) Acci.C.R. 482 (Sikk.).

16. The learned counsel for the appellant in his argument pointed out that, if the conversion is allowed and the claim petition is taken as the one filed under Section 166 of M.V.Act, then the appellant will be unnecessarily burdened with interest from the date of filing of the petition under Section 163-A of M.V.Act till the date of conversion of the petition under Section 166 of M.V.Act.

17. The interest payable under Section 171 of M.V.Act is at the discretion of the Tribunal. No doubt in a case like the one on hand where the negligence has not MFA No.21666/2009 (MV) been specifically contended initially and the claim petition was filed under Section 163-A of M.V.Act, the opposite parties proceed in the matter without bothering about the concept of negligence alleged in the occurrence of the accident. Once the claim petition is converted to Section 166 of M.V.Act, the aspect of 'negligence' peeps in about which both the parties to the petition are required to deal with. Thus, for the first time, not only the claimants, but also the opposite parties may be required to do something in support of their pleadings regarding 'negligence'.

18. Thus, the time elapsed in the matter when it was pending under Section 163-A of M.V.Act and the burden lying upon the parties by conversion of the claim petition into the one under Section 166 of M.V.Act cannot be ignored. The Tribunal below will certainly note that claimants had originally filed a petition which was not

maintainable and subsequently the said petition came to be converted into the one under Section 166 of M.V.Act.

19. With this, I am of the view that a conversion of claim petition in genuine cases from Section 163-A of M.V.Act to Section 166 of the same Act is permissible. The present case is of one such matter. Accordingly, I.A.No.1/2017 deserves to be allowed and the claimants are required to be permitted to amend the provision of law mentioned in their claim petition from Section 163-A of M.V.Act to Section 166 of the same Act.”

[6] In view of the position as noted above, the plea of the appellants for remand of the case and for permission to amend the claim petition from Section 163-A to Section 166 of the Act is allowed. Consequently, impugned award dated 24.07.2002 passed by the learned Motor Accidents Claims Tribunal, Chandigarh is set aside, matter is remanded to the learned Tribunal, Chandigarh which on receipt of orders would issue notice to the parties for further proceedings in accordance with law. Learned Tribunal, Chandigarh will permit the appellants to carry out the necessary amendments in the claim petition under Section 163-A of the Act for converting it into a claim petition under Section 166 of the Act. It would be open to the respondents in the claim petition to file the written statement/supplementary written statement. Thereafter proceedings would be taken out by the learned Tribunal, Chandigarh in accordance with law for considering the claim of the appellants and their entitlement if any, to award of compensation.

[7] In view of the setting aside of award dated 24.07.2002 passed by the learned Tribunal, Chandigarh and remand of the matter back to it, FAO Nos.4693 and 5353 of 2002 are disposed of as such. Since the accident

is of the year 2001, the learned Tribunal shall endeavour to conclude the proceedings as expeditiously as possible, preferably within a period of six months from the date, the parties put in appearance before the learned Tribunal. Needless to mention the period from date of filing of claim petition under Section 163-A of the Act till date would be excluded while computing the liability of interest if any, under Section 171 of the Act in the eventuality of the claim petition under Section 166 of the Act being filed and **allowed**. Record be remitted back to the learned Tribunal.

(B.S. WALIA)
JUDGE

February 28, 2019
‘Rajneesh’

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No