

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. FAO No.1184 of 2004 (O&M)
Date of Decision: 07.03.2019

M/s The New India Assurance Company Ltd.

Appellant

Versus

Vijay Thakre and others

Respondents

2. FAO No.4144 of 2003 (O&M)

Vijay Thakare and others

Appellants

Versus

Munay Lal and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.K. Bashamboo, Advocate
for the appellant [in FAO No. 1184 of 2004]
for respondent No. 3 [in FAO No.4144 of 2003].

Mr. R.P.S. Ahluwalia, Advocate
for the appellants [in FAO No.4144 of 2003]
for respondents No. 1 to 3 [in FAO No.1184 of 2004].

AVNEESH JHINGAN, J (Oral):

The award dated 03.03.2003 passed by the Motor Accident Claims Tribunal, Panchkula [for brevity 'the Tribunal'] has been assailed by filing two separate appeals, one by the insurer of Truck bearing registration No. HR-03-6187 [hereinafter referred to as 'offending vehicle'] and another by the legal heirs of Deepak

Vasudev Rao Thakare. Since both the appeals arise from same award, these are being disposed of by a common order.

The grievance raised by learned counsel for the insurer is that the claim petition was originally filed by the legal heirs of Deepak Vasudev Rao Thakare under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] and when the claimants failed to establish the fact that the accident was caused due to the rash and negligent driving of the offending vehicle, the Tribunal erred in converting the claim petition under Section 163-A of the Act.

The claimants have filed appeal seeking enhancement of compensation.

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

Brief facts of the case are that on 31.12.1998, Deepak Vasudev Rao Thakare (deceased) was going on his bicycle, on the way, he was struck by the offending vehicle. As a result of the impact, he sustained injuries and was taken to Command Hospital, Chandimandir, where he succumbed to the injuries. FIR was registered.

A claim petition was filed by the claimants under Section 166 of the Act. In the claim petition filed, though the claimants were able to prove involvement of the offending vehicle, but failed to prove the rash and negligent driving of the offending vehicle, the Tribunal

converted the claim petition under Section 163-A of the Act and awarded compensation of ₹9,70,000/- alongwith 9% interest per annum. The Tribunal considered the salary of the deceased as ₹7,524/- per month.

Learned counsel for the insurer contends that on having failed to prove rash & negligent driving of the offending vehicle, at that stage, the claim petition cannot be converted under Section 163-A of the Act.

The contention raised by learned counsel for the insurer deserves acceptance. The issue that once failed under Section 166 of the Act, petition cannot be converted under Section 163-A of the Act is no longer *res-integra*.

The Supreme Court in Deepal Girishbhai Soni and others Versus United India Insurance Co. Ltd., Baroda (2004) 5 SCC 385, held as under:

"52. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.

53. In Kodala (supra) the contention of the claimant that right to get compensation is in addition to the no-fault liability was, thus, rightly rejected. In agreement with Kodala (supra) we are also of the opinion that unlike Sections 140 and 141 of the Act the Parliament did not want to provide additional compensation in terms of Section 163-A of the Act.

54. *The question may be considered from different angles. As for example, if in the proceedings under Section 166 of the Act, after obtaining compensation under Section 163-A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefor as a consequence where to the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, would it be at liberty to award compensation in terms of Section 163-A thereof.*

55. The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under Section 163-A of the Act is interim in nature."

(emphasis supplied)

The Tribunal erred in converting the claim petition under Section 163-A of the Act especially after holding that the claimants failed to prove rash and negligent driving of the offending vehicle.

Learned counsel for the claimants contends that the fact that FIR was registered against the driver of the offending vehicle has to be considered while deciding the issue of rash and negligent driving of the offending vehicle. He states that even a charge-sheet was filed against the driver of the offending vehicle.

Without expressing any opinion on the merits of the case,

the issue with regard to rash and negligent driving of the offending vehicle is remitted back to the Tribunal to be decided afresh after considering in accordance with law the effect of the criminal proceedings, if any.

Both the appeals are disposed of.

[AVNEESH JHINGAN]
JUDGE

March 07, 2019
pankaj baweja

1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

:

No