

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

FAO No.3986 of 2009 (O&M)

Date of Decision: September 19, 2019

Shanti Devi and others

...Appellants

Versus

Gurmeet Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Satbir Gill, Advocate
for the appellants.

Mr. Radhey Shyam Sharma, Advocate
for respondent No.3.

JAISHREE THAKUR, J. (Oral)

1. This is an appeal that has been filed seeking to challenge the award dated 16.04.2009 passed by the Motor Accident Claims Tribunal, Sirsa whereby, the claim petition filed by the appellants-claimants under Section 163-A of the Motor Vehicles Act (for short 'the Act) stood dismissed on the ground that initially the appellants had filed a claim petition under Section 166 of the Act, but got it dismissed as withdrawn, without liberty to file a fresh one under Section 163-A of the Act.

2. In brief, the facts are that an accident took place on 18.10.2006 when a truck bearing registration No.HR57-6381, being driven by its driver in a rash and negligent manner turned turtle and as a result of which, Venus Kumar (deceased) received multiple injuries and died on the spot. FIR

No.177 dated 18.10.2006 came to lodged at Police Station, Rajbagh against respondent No.1-driver. It is appropriate to note that Venus Kumar was travelling in the truck along with respondent No.1, the driver. The deceased was, in fact, working as a cleaner in the truck bearing registration No.HR57-6381 and used to earn ₹ 3000/- per month.

3. The claim petition was contested by the respondents by filing their written statement, while *inter alia* taking preliminary objections as to maintainability, cause of action, locus standi etc. Thereafter, issues were framed and evidence was led by both the parties. The Tribunal came to hold that deceased Venus Kumar died in the accident by the use of the truck in question, however, dismissed the claim petition filed under Section 163-A of the Act on the ground that the same is not maintainable, since the earlier petition filed under Section 166 of the Act was withdrawn without permission of the court.

4. It would be pertinent to mention herein that initially a claim petition was filed by the appellants under Section 166 of the Act, which was sought to be converted into a petition under Section 163-A of the Act, by way of amendment through an application. On the said application, statement of advocate for the appellants was noted that he wanted to withdraw the claim petition on account of technical defect. The Tribunal allowed the withdrawal of the said claim petition filed under Section 166 of the Act, without taking into account that the application was actually for conversion of the said petition to a petition under Section 163-A of the Act. Thereafter, the appellants filed a petition under Section 163-A of the Act and evidence was led and a finding was returned that Venus Kumar died in

the accident in question, however, the Tribunal dismissed the claim petition on the ground that no permission had been allowed to the appellants to file a fresh one. Aggrieved, the instant appeal has been filed.

5. Learned counsel appearing on behalf of the appellants-claimants herein would contend that a perusal of the application filed shows that it was for conversion of the very petition filed under Section 166 of the Act to a petition under Section 163-A of the Act and, therefore, even if the matter had been dismissed as withdrawn, it would not operate as res judicata under Order 2 Rule 2 CPC, as held by the Tribunal. To substantiate his arguments, he places reliance upon judgment rendered in ***Hemlata & others vs. Vipin Kumar and others, 2012(23) RCR (Civil) 135*** wherein, when earlier petition under Section 166 was dismissed for want of proof of negligence on part of alleged tort-feasor, it was held that subsequent petition under Section 163-A of Act would not be barred under Order 2 Rule 2. The High Court further held that finding in earlier petition, would not be res judicata against claimant, unless vehicle was not involved in accident. The amendment of petition to one under Section 163-A was held to be permissible. Counsel further places reliance upon judgment rendered in ***Prem Devi & others vs. Jagdish Kumar and others, 2012(27) RCR (Civil) 229***.

6. Per contra, learned counsel appearing on behalf of respondent No.3-Insurance Company vehemently opposes the appeal by contending that once a petition has been filed under Section 166 of the Act and the same has been withdrawn, the same could not be entertained under Section 163-A of the Act.

7. I have heard learned counsel for the parties and find that the ratio of law as laid down in *Hemlata & others vs. Vipin Kumar and others* and *Prem Devi & others vs. Jagdish Kumar and others (supra)* would be applicable in the present case. Both the judgments, as relied upon by counsel for the appellant, clearly held that a subsequent petition would not be barred under Order 2 Rule 2 CPC as there was no finding in the earlier petition regarding involvement of a vehicle. Therefore, this court is of the opinion that the Tribunal erred in dismissing the claim petition only on the ground that the same would be hit by the principles of res judicata. This court cannot lose sight of the fact that the appellants, in fact, had preferred an application seeking amendment of the claim petition, which unfortunately got dismissed as withdrawn, instead of an amendment having been allowed as prayed for.

8. The Motor Vehicles Act is a beneficial legislation. The provisions of payment of prompt and immediate compensation in respect of no fault liability is in the spirit of social welfare legislation and should be interpreted beneficially in favour of the claimant and in such a manner, the technicalities of law should not be allowed to have any upper hand and crush the spirit of legislation for social justice. The very fact that the Legislature decided to get the amount paid even without ascertaining any fault, prima facie, goes to show that the object is that the claimant should not be allowed to go high and dry for long and they must get immediate relief.

9. As the factum of accident stands established, the only question remains is regarding the quantum of compensation that is to be allowed to

the appellants. Counsel for the appellants would contend that deceased was working as a cleaner and he was earning ₹ 3000/- per month. Shanti Devi PW1 and Gurmeet Singh RW1 have deposed to this effect during their evidence. On the other hand, counsel for respondent No.3 submits that since there is no documentary evidence that the deceased was working as a cleaner and earning ₹ 3000/- per month, therefore, compensation should be assessed as per second schedule under Section 163-A of the Act, at clause 6 which refers to notional income for compensation to those persons who had no income prior to accident. Counsel for respondent No.3 relies upon judgment rendered in **Kishan Gopal and another vs. Lala and others, 2013 (4) RCR (Civil) 276** to contend that notional income of ₹30,000/- ought to have been taken of a non-earning person and since the deceased was 16 years of age, multiplier of 16 has to be applied, apart from awarding ₹ 50,000/- under the conventional heads.

10. There is no documentary evidence available on the record which substantiate the fact that the deceased was working as cleaner and earning ₹ 3000/- per month, therefore, this court finds force in the argument advanced by counsel for respondent No.3. As such, by relying upon the judgment rendered by the Apex Court in **Kishan Gopal's case**, in the case in hand, the notional income of the deceased is taken as ₹ 30,000/- per annum and after applying the multiplier of 16, the compensation comes to ₹ 4,80,000/- and after adding ₹ 50,000/- towards conventional heads (i.e. loss of love and affection, funeral expenses, last rites etc.), the total compensation comes to ₹ 5,30,000/-. Appellant No.1 Shanti Devi is the mother whereas, appellants No.2 Meenu Rani and appellant No.3 Poonam

are sisters of the deceased. Out of the total compensation, appellant No.1 shall be entitled to ₹ 4,80,000/- whereas, appellants No.2 and 3 shall be entitled to ₹ 50,000/- in equal share. The awarded amount shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till realization.

11. The appeal stands allowed accordingly.

September 19, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No