

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

**FAO No. 10184 of 2014
DECIDED ON: MAY 08, 2019**

PINKY DEVI AND OTHERS

.....APPELLANTS

VERSUS

M/S SATISH AGGARWAL AND COMPANY & ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Shubham Mehta, Advocate for
Mr. Vivek Salathia, Advocate
for the appellants.

Ms. Manpreet Ghuman, Advocate
for respondent No.3.

Mr. Suvir Dewan, Advocate
for respondent No.4.

AVNEESH JHINGAN, J (ORAL):

The award dated 14.08.2014 passed by the Motor Accident Claims Tribunal, Tarn Taran (for brevity 'the Tribunal') in MACT Case No.54 of 04.08.2011/04.10.2011 has been assailed in appeal by the legal heirs of Om Parkash (deceased) being aggrieved of dismissal of claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The facts emanating from the record are that on 01.06.2011,

Om Parkash (deceased) was repairing Apolo Tewar by placing a jack below the machine. Suddenly the jack slipped and Om Parkash got crushed and died at the spot. DDR No. 38, dated 01.06.2011 was lodged at Police Station Tarn Taran.

Though a claim petition under Sections 166 and 163-A of the Act was filed but the claim petition under Section 166 of the Act was withdrawn during the proceedings. The claim petition under Section 163-A of the Act was pressed by the claimants. The said petition was dismissed by the Tribunal on the ground that the claimants failed to prove that the deceased died in a road side accident.

Learned counsel for the appellants argues that the deceased was repairing the Apolo Tewar, the engine was started and suddenly the jack slipped. His grievance is that he Tribunal erred in dismissing the claim petition.

Learned counsel for the respondents argue that the evidence produced by the claimants was beyond the pleadings.

In the present case, Bodh Raj-PW-4 was an eye witness to the accident. He has specifically stated that the deceased was repairing the Apolo Tewar in his presence which was in starting condition. A jack was placed and the deceased was lying beneath the Apolo Tevar. Suddently, the jack slipped down and Om Parkash died at the spot.

From the deposition the involvement of the vehicle and the fact that the vehicle was in starting condition was duly proved. The Act is a welfare legislation. In the claim proceedings under Section 163-A of the Act, the onus on the claimant(s) is only to prove that the “accident occurred

out of the use of the motor vehicle”. There is no need to establish the rash and negligent driving of the offending vehicle. The proceedings being under the welfare legislation the technicalities should not come in the way for awarding compensation.

The Tribunal while passing the award has considered that eye witness had proved the involvement of the vehicle. The reason for not accepting the same was that the evidence produced was beyond pleadings, the view cannot be sustained being highly technical. It was further held that the claimants failed to prove that the deceased died in a road side accident.

There is no requirement under Section 163-A of the Act to show that there was a road side accident. As discussed above, the only requirment is to establish that the accident occured out of the use of the motor vehicle, which is duly proved by the claimants.

In view of above discussion, the matter is remitted back to the Tribunal to decide the entire matter afresh.

The parties are directed to appear before the Tribunal on 11.07.2019.

The present appeal is disposed of, accordingly.

(AVNEESH JHINGAN)
JUDGE

MAY 08, 2019
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Whether speaking/ reasoned : Yes
Whether reportable : No