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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.1353 of 2015 (O&M)
Date of Decision : 04.04.2019

National Insurance Company Ltd.

Appellant

Versus

Juber and others

Respondents

FAO No.485 of 2016 (O&M)

Juber

Appellant

Versus

Rafiq and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Suri, Advocate
for the appellant [in FAO No.1353 of 2015]
for respondent No.2 [in FAO No.485 of 2016].

Mr. Johan Kumar, Advocate
for the appellant [in FAO No.485 of 2016]
for respondent No.1 [in FAO No.1353 of 2015].

Mr. M.B. Jain, Advocate
for respondent No.4 [in both the appeals].

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AVNEESH JHINGAN, J (Oral)

The award dated 26.09.2014 passed by the Motor Accident Claims Tribunal, Mewat [for brevity 'the Tribunal'] has been assailed by filing two appeals. One appeal has been filed by the insurer of motorcycle bearing registration No.HR-27C-9842 [hereinafter referred to as 'offending motorcycle'] and another by the claimant. Since both the appeals arise from same accident and one award, these are being disposed of by a common order.

The brief facts necessary for adjudication of the present appeals are that on 05.03.2012, Juber (claimant) was riding motorcycle bearing registration No. HR-28D-0545. On the way, there was an accident involving the offending motorcycle. As a result of the accident, Mursheed died and the claimant sustained injuries. FIR was registered and was exhibited as P-17 before the Tribunal.

A claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act']. The involvement of offending motorcycle and the motorcycle being driven by claimant was proved. The Tribunal awarded ₹3,61,000/- alongwith interest @ 7% per annum. The owner and insurer of the offending motorcycle were held jointly and severally liable to pay the compensation.

Heard learned counsel for the parties, perused the paper book and record.

Learned counsel for the insurer argues that the accident was result of rash and negligent driving of the claimant himself and FIR was also registered against him. The claimant himself is the wrong doer and hence no compensation can be awarded under Section 163-A of the Act.

Learned counsel for the claimant argues that no negligence is required to be proved under Section 163-A of the Act.

The contention raised by learned counsel for the insurer is not well founded. The present case is not a case where wrong doer is claiming the compensation from insurer of his vehicle. Admittedly, there is involvement of two vehicles and claim has been made against other vehicle referred to as offending motorcycle in the present case.

The claim petition under Section 163-A of the Act is not maintainable where the owner himself is claiming compensation against his own insurer as it results into receiving compensation for which he is himself was liable to pay. Whereas in the present case, claim is against the other vehicle involved in the accident.

If the contention of the insurer is taken to a logical end, it would result in incorporating the requirement of proving rash and negligent driving of the offending vehicle in the provisions of Section 163-A of the Act. Section 163-A(2) of the Act specifically excludes the requirement to prove rash and negligent driving of the offending vehicle under Section 163-A of the Act.

The Supreme Court in ***United India Insurance Co. Ltd. Vs. Sunil Kumar and another, AIR 2017 SC 5710,*** held as under:-

> *"8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction to Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.*
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> *9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim."*

The contention raised by learned counsel for the insurer is rejected.

The second issue is challenge to the quantum of compensation by the claimant as well as insurer. Learned counsel for the parties have not been able to make out any case with regard to interference in the quantum of compensation awarded by the Tribunal. There was 35% disability, apart from compensation given for disability, major amount awarded is for medical expenses, keeping in view that the claim petition was under Section 163-A of the Act, there is no scope for further enhancement.

Both the appeals are dismissed.

[AVNEESH JHINGAN]
JUDGE

April 04, 2019

pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes