

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

**F.A.O. No. 6167 of 2013 (O&M)
DATE OF DECISION :- November 13, 2019**

Rajbir

...Appellant

Versus

Smt. Sanju and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Sanjay Majithia, Senior Advocate
with Mr. Inderjeet Singh, Advocate for the appellant.

None for respondents No. 1 and 2.

C.M. No.25429-CII of 2013

The appeal has been filed belatedly by 25 days. An application seeking condonation of delay in filing of the appeal has been moved. Considering the fact that the delay is not on very high side and it is always desirable to decide a lis on merits rather than shutting the doors of contest on a particular party, the application is accepted and delay in filing of the appeal stands condoned.

F.A.O. No. 6167 of 2013

Briefly stated the facts of the case are that on 5.1.2008 at about 8.00 P.M., Bhim Singh (deceased) was travelling in Car No. DNB-1761 being driven by respondent No. 1 Rajbir and owned by respondent No. 2 Kailash Kumar. The car was going from Hisar towards village Durjanpur.

When the Car reached near Airport Chowk, Hisar then an unknown truck came from Hisar side and by going on wrong side struck against the Car. Resultantly occupants of the Car including Bhim Singh suffered grievous and serious injuries. Bhim Singh was shifted to Metro hospital, Hisar and subsequently shifted to Neuro Care Hospital, Hisar, however, he succumbed to injuries on 11.1.2008. Post mortem examination on his dead body was conducted at General Hospital, Hisar. F.I.R. No. 16 dated 6.1.2008 for offences under Sections 279, 337 and 427 IPC was registered against the driver of the unknown truck with Police Station City Hisar. Smt. Sanju, widow and master Vivek-minor son of Sh. Bhim Singh deceased had brought a claim petition under Section 163-A of the Motor Vehicles Act, 1988 against the respondents i.e. Rajbir driver-cum-owner and Kailash Kumar registered owner of Car bearing registration No. DNB-1761.

On notice, only respondent No. 1 put in appearance and filed written reply contesting the claim petition denying the material assertions in the petition stating that the accident had taken place due to rash and negligent driving of an unknown truck by its driver and for that reason F.I.R. had been registered against the driver of the offending truck; that the claim petition was not maintainable because a similar claim petition filed by the claimants was dismissed as withdrawn on 19.3.2012; that the claim petition was bad for mis-joinder and non-joinder of necessary parties because the driver, owner and Insurer of the truck in question had not been impleaded though they were necessary parties; that claimant-respondent No. 1 was not dependent upon deceased since she had remarried with one Baljit of Village Kharak Ramji. Refuting remaining assertions, such respondent

prayed for dismissal of the claim petition. Respondent no. 2 had not appeared despite service as such they were proceeded against ex-parte. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

The Motor Accidents Claims Tribunal, Jind vide award dated 5.2.2013 accepted the claim petition and awarded compensation of Rs.5,00,000/- to the claimants payable by both the respondents jointly and severally with interest at the rate of 9% per annum from the date of filing of claim petition till actual realization. The amount of compensation awarded was ordered to be apportioned equally amongst the claimants. The share of the minor claimant was ordered to be deposited in the form of FDR with some nationalized bank till he attains majority. 25% out of share of claimant No. 1 was ordered to be paid in cash to her whereas remaining 75% was ordered to be deposited in the form of FDR with a nationalized bank for a period of ten years though she was allowed to receive periodical interest thereon.

Respondent No. 1 Rajbir then aggrieved by the Award has approached this Court by way of filing an appeal, notice of which was given to the respondents-claimants who have put in appearance through counsel but there was no representation on behalf of such respondents-claimants on the previous date of hearing and even today nobody has appeared for them.

I have heard learned counsel for the appellant besides going through the record.

The first and foremost argument advanced by learned counsel for the appellant was that the very definition of Section 163-A of the Motor

Vehicles Act, 1988 goes to show that under such provision the liability to pay compensation can be fastened upon owner and authorized insurer of the vehicle involved in the accident and not the driver. The appellant happen to be just a driver but even then he was made liable to pay compensation to the claimants jointly and severally with respondent no. 2 and such wrong be set aside by exonerating him by way of acceptances of the appeal. However, I do not find much force in this contention. The claimants had instituted the claim petition against Rajbir and Kailash Kumar. Rajbir was mentioned as driver-cum-owner of the offending Car whereas Kailas Kumar was mentioned to be registered owner of the Car. In his written statement appearing respondent had taken up various legal objections but not the one now sought to be raised. During the course of arguments before the Tribunal this plea had been taken which was dealt with by the Tribunal in a very proper and appropriate manner, in para Nos. 23 and 24 of the Award which for ready reference are reproduced as under :-

“23. So far as the submission of learned counsel for the respondent no. 1 that driver of a vehicle cannot be held liable to pay compensation under the provision of Section 163-A of the Act is concerned, again I find the same completely devoid of any merit, because in the instant case the car in question was not insured on the date of accident. The Insured/owner i.e. Respondent No. 2 had got himself proceeded ex-parte, whereas respondent no. 1 was driving it at the time of accident resulting into the death of Bhim Singh. Non-mentioning of word 'driver' in Section 163A of the Act does not ipso facto mean that he was exonerated of his liability under this Section in case of death or permanent disablement of a person. Even otherwise it does not appeal to reason that intention of the Legislature was

to exonerate a tort-feasor with whose negligence a human life is lost or permanent disablement is suffered by any person. It is needless to mention here that the Motor Vehicles Act is a Social beneficial legislation and the procedure under it is summary in nature. By inserting the special provisions of Section 163-A in the Motor Vehicles Act, 1955, the intention of the Legislature is to give immediate relief to the legal heirs or the victim as the case may be. Since in the instant case, the impugned accident had occurred due to involvement of car bearing registration No. DNB-1761 driven by respondent no. 1, therefore, by any stretch imagination, he cannot be exonerated of his liability.

24. The car in question was not insured with any Insurance Company at the relevant time. Registration certificate Ex.R3 shows that respondent No. 2 was its registered owner at the time of impugned accident. Hence respondents No. 1 and 2 being driver and owner of the car in question shall be jointly and severally liable to pay the aforesaid amount. The issue is accordingly decided in favour of the claimants and against the respondents.”

Therefore, such argument by learned counsel for the appellant cannot be accepted. The Tribunal has dealt with various other objections raised before it on behalf of answering respondent. With regard to earlier claim petition no. 20 of 2008 filed by claimants which had been allowed ex-parte vide Award dated 18.4.2009 against respondent No. 1 which was later on set aside on an application having been filed by respondent No. 1 but was later on withdrawn, the withdrawal had been allowed granting permission to the claimant to file fresh petition vide order dated 19.3.2012. Therefore, the withdrawal of the earlier petition will certainly not provide any legal hurdle to the claimants in proceeding with the subsequent claim

petition filed by them. As rightly observed by the tribunal keeping in view the nature of claim petition to be under Section 163-A of the Motor Vehicles Act, 1988 the claimants were not required or plead or prove any rash or negligent act on the part of anyone and were simply to establish that the deceased had died due to accident arising out of use of a motor vehicle. The argument of claimant No. 1 having been performed second marriage with one Baljit of Village Kharak Ramji was also discussed by the Tribunal and she was rightly found entitled to compensation.

The Award is well reasoned, based on proper appraisal, appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein which might have called for interference by this Court while exercising jurisdiction in appeal. The appeal is without merit and is dismissed accordingly.

(H.S. MADAAN)
JUDGE

November 13, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No