



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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1. FAO-1607-2004
Decided on : 19.09.2024

Kavita Devi and others ... Appellant(s)
Versus

Ranbir Singh and others ... Respondent(s)

2. FAO-1608-2004 (O&M)

Smt. Khushi Devi and another ... Appellant(s)
Versus

Ranbir Singh and others ... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. R.S. Mamli, Advocate
for the appellant(s).

Mr. Sandeep Suri, Advocate
for respondent No.4 – Insurance Company.

SANJAY VASHISTH, J. (Oral)

1. This one order shall dispose of aforementioned two appeals i.e. FAO-1607-2004 and FAO-1608-2004 (O&M), filed by the appellants/claimants, as both the appeals are interconnected, and have arisen out of the same and common award.

2. FAO-1607-2004 has been preferred by the appellants/claimants i.e. (1) Kavita Devi widow of Anil Kumar along with other appellants/claimants (2) Mohit Kumar (minor son of the deceased), (3) Shivani Devi (minor daughter of the deceased) & (4) Smt. Darshani Devi



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w/o Pritam Lal and mother of deceased Anil Kumar, for enhancement of the amount of compensation, ordered vide award dated 04.03.2004, passed by the Motor Accident Claims Tribunal, Jagadhri (for brevity, 'Ld. Tribunal'), whereby, claim petition i.e. MACT Case No.83 of 2002, under Section 163-A of the Motor Vehicles Act, 1988 (in short, 'MV Act'), had been partly allowed by the Ld. Tribunal in death case.

FAO-1608-2004 has been preferred by the appellants/claimants i.e. (1) Smt. Khushi Devi w/o Jai Pal (mother of the deceased Vinod Kumar), and (2) Jai Pal (father of the deceased Vinod Kumar) for enhancement of the amount of compensation, ordered vide award dated 04.03.2004, passed by the Ld. Tribunal, whereby, claim petition i.e. MACT Case No.122 of 2002, under Section 163-A of the MV Act, had been partly allowed by the Ld. Tribunal in death case.

3. Few facts necessary for adjudication and extracted from FAO-1607-2004 are noticed and detailed hereafter:-

On 03.02.2002 at about 7:00 P.M., Anil Kumar s/o Pritam Lal was coming from Village Jubbal along with his brother-in-law Vinod Kumar s/o Jai Pal on a motor cycle bearing registration No. HR-02A-1606. When they reached near to Bus Stand Damla, a bus bearing registration No. HR-37A-2383, which was being driven in rash and negligent manner and without blowing any horn by respondent No.1 (driver herein), came from behind and hit the motorcycle. Due to the impact, the motorcycle fell down and both Anil Kumar and Vinod Kumar, were crushed under the tyres of the offending bus and died on the spot.



4. Two separate claim petitions were filed before the Ld. Tribunal for awarding of compensation to the appellants/claimants. In response thereto, respondents have filed their respective replies, wherein, respondent No.1 – driver, denied the factum of accident by pleading that no such accident ever took place with the offending bus, at any time driven by him.

Respondents No.2 and 3, while taking preliminary objections, had taken the stand that no accident had taken place on 03.02.2002 by the offending bus, and thus, they are not liable to pay any amount of compensation.

Respondent No.4 – Insurance Company, in written statement had raised preliminary objections by denying the factum of accident and also challenged the maintainability of the claim petitions. In alternative, the insurance company also pleaded that driver of the offending bus was not possessed with the valid and effective driving licence at the time of accident in question, which in result, is violation of the terms & conditions of the MV Act and the Insurance Policy. The Insurance Company also stated that the claimants have placed a false and concocted story before the Ld. Tribunal just to receive compensation from the respondent – Insurance Company.

5. From the pleadings of the parties, Ld. Tribunal vide its order dated 23.05.2003 framed the issues. However, issue No.1 was re-framed vide order dated 16.02.2004, the details of which are as under:-

“1. Whether the accident dt. 3.2.2002 took place due to the involvement of bus no. HR-37-A-2383 by respondent no.1 Ranbir Singh, causing death of Anil Kumar s/o Pritam and Vinod Kumar s/o jaipal ? OPP



2. *If issue no.1 is proved in affirmative, whether the claimants are entitled to compensation, if so as to what amount and from whom ? OPP*
3. *Whether the petitions are not maintainable ? OPR.*
4. *Whether the respondent no.1 was not holding valid any effective driving licence at the time of accident? OPR.*
5. *Relief.”*

6. After appreciating the evidences led by the parties and the documents placed by them on record, the Ld. Tribunal, while deciding issue No.1, in favour of the appellants/claimants, had made following observations:-

“Issue No.1

13. *The burden of proving this issue was upon the claimants. To prove this issue, the claimants have examined PW2 Chander Gupta. Crl. Ahlmad of Ms. Ritu Y.K. Bahl, learned Judicial Magistrate Ist Class, Jagadhri, who has categorically deposed that criminal case bearing no. 72/A of 26.2.2003 titled State Vs. Ranbeer Singh, bearing FIR No.13 dt. 3.2.03 under Sections 279, 304-A IPC police-station Sadar, Yamuna-Nagar, has been registered against Ranbir Singh/respondent No.1.*

14. *Likewise, one Mahender s/o Amar Singh, when appeared in the witness-box as PW6, deposed that on 3.2.02, at about 7.30 p.m. he was present on his shop at bus stop Damla. This witness has categorically deposed that he was present outside his shop and was standing. He saw a bus coming from the side of Radaur, in a rash and high speed by its driver. Two persons were going ahead of this bus. The motor cycle was on its correct left side. The bus struck against the motor cycle and ran over the occupants of the motor cycle. After causing the accident, the driver of the bus stopped the bus for a while, but thereafter he fled away from the place of accident. This*



witness further deposed that he noted down the number of the bus and the same is HR-37-A-2383. This witness has specifically deposed that the accident took place due to the rash and negligent driving on the part of the driver of the bus. He had lodged the FIR and has proved certified copy of the same as Ex.P14. In his cross-examination he has deposed that there was a street light at the place of accident. This witness has even been denied the suggestion put to him by the learned counsel for the respondents that he has not seen the accident, and also denied the suggestion that the accident had taken place due to the negligence of the motor cyclist.

15. After hearing both the parties, I am of the considered view that the accident took place on 3.2.2002, due to the involvement of bus no.HR-37A-2383 being driven by respondent no.1 on 3.2.2002 causing death of Anil Kumar and Vinod Kumar. Although, respondent no.1 has denied the said accident and his involvement as driver of bus no.HR-37-A-2383, but this denial of respondent no.1 is falsified from the copy of FIR Ex.P14 from which, it is clear that a criminal case under Sections 279/304-A IPC is registered against him regarding the same incident at P.S. Sadar Yamuna Nagar. Similarly, there is no reason to disbelieve the version of eye-witness PW-6 Mahender s/o Amar Singh regarding the said accident involving the bus no.HR-37-A-2383 being driven by respondent no.1 at the relevant time.

16. In the light of the discussion foregoing, issue no.1 is decided in favour of the claimants and against the respondents.”

7. From the facts recorded in the reproduced paragraph, this Court also notices that denial of respondent No.1 in regard to the happening of any accident, stands falsified from the copy of FIR (Ex.P14). Even, the



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statement of PW-6 Mahender s/o Amar Singh, regarding the said accident involving the offending bus, being driven by respondent No.1, also substantiate the factum of happening of accident and death of Anil Kumar and Vinod Kumar due to the use of vehicle driven by respondent No.1.

8. The Insurance Company is not in a position to refute the fact that against the driver of the offending bus namely; Ranbir Singh (respondent No.1 herein), challan under Section 173 Cr.P.C. was prepared and same was filed before the Court of Illaqa Magistrate, which is available on record of the Tribunal as Ex.P2.

9. Learned counsel for the appellants/claimants further submits that in view of the amended provision of the Act, i.e. Section 164 of the MV Act (un-amended Section 163-A of the MV Act), the appellants/claimants are entitled to the minimum compensation amount of Rs.5.00 lakhs. To substantiate his plea, counsel relies upon the judgment of this Court passed in FAO-4708-2004, titled as, “Vijay Kumar Goyal vs. Pankaj Kumar and others”, decided on 13.08.2024.

10. I have heard learned counsel for the parties and carefully perused the record of the case.

This Court has no hesitation in holding that the death of Anil Kumar and Vinod Kumar, was the result of the use of vehicle and the claim petition arising from such an accident, is maintainable under Section 163-A of the MV Act and now, under Section 164 of the MV Act. This Court, in Vijay Kumar Goyal’s case (supra), has specifically observed as under:-

“8. While dealing with the argument of respondent No.2 – Insurance Company, this Court is guided with the judgment of Hon’ble Apex Court rendered in Ningamma v. United India



Insurance Co. Ltd., 2009 (13) SCC 710 : Law Finder Doc Id # 197440, wherein, the observations were made by the Hon'ble Apex Court regarding the aims and objects purposes of the beneficial legislation to safeguard the interests of the victims due to the vehicular accidents. The relevant observation recorded therein, is reproduced here-below:-

“25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court.

26. While entertaining the appeal, no effort was made by the High Court to deal with the aforesaid issues, and therefore, we are of the considered opinion that the present case should be remanded back to the High Court to give its decision on the aforesaid issues. The High Court was required to consider the aforesaid issues even if it found that the provision of Section 163A of MVA was not applicable to the facts and circumstances of the present case. Since all the aforesaid issues are purely questions of fact, we do not propose to deal with these issues and we send the matter back to the High Court for dealing with the said issues and to render its decision in accordance with law. The High Court will also consider the question of quantum of compensation, if any, to which the claimants might be entitled to, having regard to the earning capacity of the deceased and "Just Compensation", if any. Since the claim is a very old claim, we request the High Court to consider the matter as expeditiously as possible.

27. In terms of the aforesaid order, we remand back both the matters to the High Court to dispose of the same. The appeals are disposed of in terms of the aforesaid order.”

Thus, by following the dictum of Hon'ble Apex Court for the purpose of following the aims and objects of the MV Act, 1988, there is no negative law, to curtail the power of this Court, to convert the claim petition filed by the claimant under Section 166 of the MV



Act, 1988 to Section 164 of the MV Act, 1988, wherein, proving of rash and negligent driving is not required to be pleaded and proved.

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11. *Learned counsel for the appellant-claimant further submits that since the MV Act, 1988, is beneficial in nature, the amended provision of the said Act would be applicable for the pending proceedings also before the Courts. Therefore, he submits that in the present case, appellant-claimant is entitled to receive compensation in view of Section 164 of the MV Act, 1988, wherein, the claimant is not required to prove the rash and negligent driving of anyone. The only requirement is the happening of death or suffering of grievous hurt etc. due to any accident arising out of the use of motor vehicle.*

Again, for reference, provision of Section 164 of the MV Act, 1988, is reproduced here-under:-

“164. Payment of compensation in case of death or grievous hurt, etc.- (1) *Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.*

(2) *In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.*

(3) *Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.”*

12. *For strengthening his submissions, learned counsel for the appellant also relies upon the judgment of Hon’ble Apex Court rendered in Ram Murti and others v. Punjab State Electricity Board, 2023 ACJ 631 : Law Finder Doc id # 2091451, and submits that for the accident took place on 12th April, 1994, the amended provision of Section 164 of the MV Act, 1988, has been invoked by the Hon’ble Apex Court, wherein, there is a provision of awarding of compensation amount of Rs.5.00 lakhs in case of death and in case of grievous hurt, the compensation amount is fixed as Rs.2.5 lakhs.*



*For consideration, the relevant part of the judgment passed by the Hon'ble Apex Court in **Ram Murti's case (supra)**, is reproduced here-under:-*

"Leave granted.

2. The appeal has arisen from a judgment of a Single Judge of the High Court of Punjab & Haryana dated 10 March 2009 in FAO No 1461 of 1994.

3. The High Court was considering an appeal arising from an award of the Motor Accident Claims Tribunal, Bhatinda dated 12 April 1994. The Tribunal dismissed the application filed by the appellants under section 166 of the Motor Vehicles Act, 1988. However, the claim under Section 140 was allowed and the appellants were held entitled to receive an amount of Rs 25,000 on account of the death of Ved Parkash.

4. The High Court has affirmed the judgment of the Tribunal in regard to the dismissal of the claim under section 166 of the Motor Vehicles Act, 1988. However, having due regard to the amendment of the provisions of Section 140 in 1994, the amount payable has been enhanced from Rs 25,000 to Rs 50,000.

5. We have heard Mr Narender Singh Yadav, counsel appearing on behalf of the appellants and Ms Uttara Babbar, counsel for the respondent.

6. There is no cogent basis for this Court to entertain the challenge against the findings of fact which have been recorded concurrently by the Tribunal and by the High Court while dismissing the claim under section 166 of the Motor Vehicles Act, 1988.

7. The provisions of Section 140 which formed a part of Chapter 10 of the Motor Vehicles Act 1988 were omitted by Act 32 of 2019. Simultaneously, Chapter 11 was substituted of which Section 164 provides for payment of compensation in the case of death in the amount of Rs 5 lakhs and in the case of grievous hurt of Rs 2.5 lakhs.

8. We are inclined to give the appellants the benefit of the beneficial provisions which have been enacted by Parliament. Hence, in modification of the order of the High Court, we direct that the appellants shall be entitled to an amount of Rs 5 lakhs as compensation. However, if the amount of Rs.50,000 which has been awarded by the High Court has already been paid over; the balance (or the entirety of Rs.5 lakhs if no amount has been paid) shall be paid over to the appellants by 30 November 2022.

9. The appeal is accordingly disposed of.

10. Pending applications, if any, stand disposed of."

11. In view of the aforementioned reasons, the present appeals are

allowed. Consequently, the impugned award dated 4.3.2004 is hereby

modified to the extent that appellants/claimants are entitled to a



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compensation amount of **Rs.5.00 lakhs each (Rupees Five Lacs only)**, in view of amended provision of law i.e. Section 164 of the MV Act, 1988.

12. Let the awarded amount of Rs.5.00 lakhs (each) be paid to the appellants/claimants (in both the appeals) within a period of three months from today by respondent No.4 – Insurance Company.

At this stage, learned counsel for the appellants/claimants urges for granting interest @ 9% per annum, in case of default of payment of compensation amount by respondent No.4 – Insurance Company.

13. I have considered the cited judgments and find that they are silent about the interest part. However, considering the date of accident and amended provision of law, it is directed and made clear that in case, the respondent No.4 – Insurance Company does not pay the compensation amount within the stipulated period, as recorded above, in that eventuality, respondent No.4 – Insurance Company would be liable to pay the compensation amount along with interest @ 7.5% per annum, from the date of passing of this order till its final payment/realization.

Thus with aforesaid modifications, both appeals stand disposed of.

Misc. application(s), if any, also stands disposed of.

A photocopy of this order be placed on the file of other connected case.

(SANJAY VASHISTH)
JUDGE

September 19, 2024
J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*