



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-2713-2004
Decided on : 11.09.2024

Narinder Kaur and others
Versus
Chander Mohan and others
... Appellant(s)
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Kapish Singla, Advocate for
Mr. Ashit Malik, Advocate
for the appellant(s).

Mr. R.C. Gupta, Advocate
for respondent No.3 – Insurance Co.

SANJAY VASHISTH, J. (Oral)

1. Instant appeal has been preferred by the appellants/claimants i.e. (1) Narinder Kaur widow of Ravinder Singh alias Raju, along with other appellants/claimants (2) Sartinderpal Singh (minor son of the deceased), (3) Navneet Kaur (minor daughter of the deceased) & (4) Kajoj (minor daughter of the deceased), and (5) Satwant Kaur w/o Ajit Singh and mother of deceased Ravinder Singh alias Raju, by challenging the award dated 10.01.2004, passed by the Motor Accident Claims Tribunal, Patiala (for brevity, 'Ld. Tribunal'), whereby, claim petition i.e. MAC Petition No.75 of 29.10.2002, under Section 163-A of the Motor Vehicles Act, 1988 (in short, 'MV Act'), had been dismissed by the Ld. Tribunal.
2. While arguing the appeal, learned counsel for the appellants/claimants submits that from the facts available on record, there



cannot be any dispute that the deceased Ravinder Singh @ Raju, who was of the age of 35 years at the time of his death, was working as a Truck driver. At the time of accident, he was sleeping in the Ambuja Cement Factory, Dabur Ji, after parking his truck there. Ravinder Singh @ Raju went to sleep on the floor adjacent to the truck no. HR-46A/1453, and at about 11:00 a.m., Chander Mohan (respondent No.1 herein), suddenly drove the truck. Due to this, Ravinder Singh @ Raju was run over by the truck driven by its driver – Chander Mohan (respondent No.1).

3. Ld. Tribunal has noticed the fact that, as per the case of PW3 – Sahib Singh, deceased was crushed under the rear tyre of the truck. However, as per the postmortem report (Ex.P5), there were no crush injuries on the body of deceased Ravinder Singh @ Raju. Therefore, Tribunal suspected whether the death of Ravinder Singh @ Raju was caused by the use of the vehicle ?

4. Learned counsel for the appellants/claimants submits that the said observation is not sustainable, and same shall be ignored, as the FIR (Ex.P3) was registered, and after completion of investigation by a Competent Agency, challan under Section 173 Cr.P.C. (Ex.P4) was submitted against Chander Mohan (respondent No.1). Thus, even if rash and negligent driving is not proved, there cannot be any doubt that the death of Ravinder Singh @ Raju was caused by the use of the vehicle, and thus, the claim petition filed by the appellants/claimants under Section 163-A of the MV Act is very much maintainable.

5. Learned counsel for the appellants/claimants further argues that the Ld. Tribunal has itself considered the case of the appellants/claimants



from a different angle also. However, the claim has been declined for the reason that Ravinder Singh @ Raju could have chosen to sleep somewhere safer, or even he could sleep inside the truck, or the area ear-marked by the factory owners.

Therefore, 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.

6. On the other hand, Mr. R.C. Gupta, learned counsel representing respondent No.3 – Insurance Company, submits that the impugned award passed by the Ld. Tribunal, is perfectly legal, and no interference is called for therein. He also submits that the first option available to the appellants/claimants was to file an application under the Employees Compensation Act against the owner of the truck No.HR-46-A/1453, as the accident occurred during the course of employment.

However, on being asked, learned counsel for respondent No.3 – Insurance Company, is unable to substantiate his plea with the support of any law or binding judgment of the Apex Court.

7. I have heard learned counsel for the parties and carefully perused the record of the case. From the facts narrated above and noticed by the Ld. Tribunal in the impugned award, more particularly the fact that the FIR (Ex.P3) was registered against respondent No.1 – Chander Mohan and said driver was subsequently challaned under Section 173 Cr.P.C. (Ex.P4), it



is clear that *prima facie* respondent No.1 was involved in a rash and negligent act of causing vehicular accident. Therefore, plea raised by the Insurance Company is not tenable. It has been so observed by the Apex Court in '**Girdhari Lal Vs. Radhey Sham,1993 (2) PLR 109**', that *when the driver of the offending vehicle is facing Criminal trial for causing the accident, it is prima facie safe to conclude that the accident had been caused by rash and negligent driving on his part.*

The said judgment was also followed by this Court in FAO-85 of 2017, titled as '**United India Insurance Co. Ltd. V. Jagbir Singh & others**', Law Finder Doc Id # 205610.

Therefore, this Court has no hesitation in holding that the death of Ravinder Singh @ Raju, 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.”

8. In view of the aforementioned reasons, **the present appeal is allowed.** Consequently, the impugned order dated 10.01.2004 is hereby set-aside. This Court holds that the appellants/claimants are entitled to a compensation amount of **Rs.5.00 lakhs(Rupees Five Lacs only)**, in view of amended provision of law i.e. Section 164 of the MV Act, 1988.

9. Let the awarded amount of Rs.5.00 lakhs be paid to the appellants/claimants within a period of three months from today by respondent No.3 – 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.3 – Insurance Company.

10. 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.3 – Insurance Company does not pay the compensation amount within the stipulated period, as recorded above, in that eventuality, respondent No.3 – 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 by recording aforesaid terms, appeal stands disposed of.

**(SANJAY VASHISTH)
JUDGE**

September 11, 2024
J.Ram

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