



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

203

FAO-4708-2004

Decided on : 13.08.2024

Vijay Kumar Goyal

... Appellant(s)

Versus

Pankaj Kumar and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Amarpreet Singh, Advocate and
Mr. Binderjit Singh, Advocate
for the appellant(s).

Mr. Karminder Singh, Advocate
for respondent No.2 – NIC.

SANJAY VASHISTH, J. (Oral)

1. Injured – Vijay Kumar Goyal has filed the instant appeal by challenging the award dated 19.07.2004, passed by the Motor Accident Claims Tribunal, Bathinda (for brevity, 'Ld. Tribunal'), whereby, claim petition i.e. MACT No.34 of 24.12.2001, filed by the appellant/claimant – Vijay Kumar Goyal, has been dismissed, by holding the same to be meritless.

2. In the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (in short, 'MV Act'), appellant-claimant prayed for grant of compensation of Rs.10.00 lakhs, on account of the injuries suffered by him in a motor vehicular accident on 28.05.2001, when he was pillion rider on the scooter, which was being driven by respondent No.1 – Pankaj Kumar.

At the time of accident, appellant-claimant was 45 years of age, and said



accident took place near Gurdwara on Bathinda Kotshamir road at Village Katar Singh Wala in the area of Police Station, Sadar Bathinda. The factum of accident was registered vide DDR No.7, dated 01.06.2001.

Appellant-applicant pleaded that because of the said accident, he suffered multiple fractures of left and right bones, fracture on thigh leg, pelvis dislocation, injury of lever, fracture of ribs both sides and head injury. Initially the appellant-claimant was treated at Civil Hospital, Bathinda, and thereafter, referred to Dayanand Medical College (DMC), Ludhiana. He remained admitted in DMC, Ludhiana from 29.05.2001 to 29.06.2001 and again from 30.07.2001 to 11.08.2001 with followup instructions.

3. Appellant-claimant further pleaded that he is still under regular treatment with Doctor and huge amount of Rs.3.00 lakhs, has been spent. Injured appellant-claimant was a pillion rider of Scooter bearing registration No. PB-03F-2787, which was owned and driven by respondent No.1 – Pankaj Kumar.

While filing the claim petition before Ld. Tribunal, under Section 166 of the MV Act, appellant-claimant pleaded that the scooter was being driven rashly and negligently by respondent No.1 and at about 8.00 P.M., due to excessive speed, respondent No.1 lost his control and scooter fell down, resulting into grievous injuries on the vital parts of the body of the appellant-claimant.

4. In the written statement filed by the respondents; including the Insurance Company (respondent No.2 herein), the happening of the accident was denied by pleading that the registration of DDR is a farce and in fact, by concocting the story, the claim petition has been filed.



5. Learned Tribunal framed following issues on 06.09.2002:-

- “1. Whether claimant received injuries in scooter accident which was being driven by respondent No.1 as alleged ? OPA.
2. Whether claimant is entitled for compensation, if so to what extent and from whom ? OPA
3. Whether the claimant has no locus-standi to file the petition ? OPR
4. Whether the petition is not maintainable in the present form ? OPR
5. Whether petition has no cause of action to file the petition against respondent No.2 as alleged ? OPR
6. Whether the insured has violated the terms and conditions of policy. If any, if so to what effect? OPR
7. Whether the application is bad for non-joinder or mis-joinder of necessary parties ? OPR
8. Whether claim petition is filed by the claimant in connivance with respondent No.1. If so to what effect? OPR.”

6. While deciding issues No.1, 2 and 8, Ld. Tribunal noticed certain injuries in its paragraph Nos. 8 & 9 of the impugned award, but at last, gave the observation that *“Insurance company succeeded in proving that the petition has been filed by the claimant in connivance with respondent No.1 and due to the non-proving of rash and negligent driving the claimant is not entitled for any compensation.”*

7. Learned counsel appearing on behalf of respondent No.2 – Insurance Company, reiterates his submissions and while defending the impugned award passed by the Ld. Tribunal submits that once the claim petition is filed itself under Section 166 of the MV Act and claimant himself



failed in proving the rash and negligent driving of its driver, rightly, the claimant petition was dismissed, as the injured-claimant (appellant herein) is not entitled for any amount of compensation, as per law.

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.

9. It is admitted fact before this Court that in DDR No.7, dated 01.06.2001, there is mention of the registration number of the scooter and from the findings recorded or from any other evidence available on record, counsel representing respondent No.2 – Insurance Company, could not point out any acceptable evidence to say that injuries have not been suffered due to the accident in question and the claim petition has been filed in



connivance with the scooter's driver/owner. Even otherwise also, there is no finding given by the Ld. Tribunal to say that the injuries suffered by the appellant-claimant are for some other reason than the accident pleaded by him in the claim petition.

10. Thus, the finding in regard to the aforesaid issues i.e. issues No.1, 2 and 8, are reversed in view of the observations recorded here-in-above, and it is held that the accident had taken place, wherein, the appellant-claimant while being pillion rider, suffered the injuries, which have been noticed in paragraphs No.8 and 9 of the impugned award.

For reference, the findings recorded in paragraphs No.8 and 9 of the impugned award, are reproduced as under:-

“8. *In support of these issues the claimant examined Dr. Nitin Mittal Senior Resident, Department of Orthopaedic D.M.C. & H., Ludhiana who as AWI stated that the claimant was admitted in the Hospital on 29-5-2001 vide admission No. 4407 and CR No. 17348 as a case of head injury with hemorrhagic contusion Bilateral parietal region and closed fracture tibia segmental right side with segmental fracture fibula right side with fracture proximal 4" toe left side with closed fracture head of first metatarsal left side with fracture pelvis with pubic symphysis diastasis with blunt trauma abdomen with liver hemotoma. He further testified that the patient was operated for CRIF public symphysis with RC Plate on 13-6-2001 and CRIF of fracture tibia right sid with UTN on 16-6-2001 and he was discharged on 27-6-2001*

A.W. 2 Gurtej Singh brought on record copy of D.D.R No. 7 of 1-6-2001 as Ex. A1. A.W.3 Dr. Rajesh Badyal stated that Vijay Kumar claimant was admitted in his hospital on 22-2-2002 and was discharged on 23-2-2002. He was operated for infaction in hip joint. He had earlier taken



treatment from D.M.C. for his injury which occurred in May 2001. In between the patient came to him as OPD patient for dressing and physiotherapy. The patient again remained admitted in his hospital from 4-6-2003 to 7-6-2003 and was operated for removal of implant (D.H.S.) and then the complainant was treated on OPD basis for dressings and physiotherapy. On both the occasions in she charged Rs. 1200/- as his fee which is exclusive of medicines and this witness issued bill Ex. A2 and relevant pages of the register as Ex A3/to A3/4. Vijay Kumar was having stiffness of knee. He had injury in the month of September 2003 and he had fracture of lower end of thigh of femur bone for which he was operated again.

9. *Claimant Vijay Kumar made his own statement as A.W.4 and in his statement also brought on record documents EXs. AW4/1 to AW4/190 and further stated that due to injuries of this accident he has become disabled upto 65% and brought on record disability certificate as Ex. AW4/191 and has prayed for compensation as pleaded in the application. He also tendered into evidence copy of his Income Tax return for the year 2000-2001 as Ex.A 192.”*

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.”

13. Since, there is no denial to the pleaded case of the appellant-claimant and also looking at the medical evidence available on record, that the injuries had been suffered by him, I deem it appropriate to allow present appeal, and thus, hold that the appellant-claimant is entitled for compensation amount of Rs.2.5 lakhs, in view of amended provision of law i.e. Section 164 of the MV Act, 1988.

Thus, Appeal stands partly allowed.

14. Let the awarded amount of Rs.2.5 lakhs be paid to the appellant-claimant within a period of three months from today by respondent No.2 – Insurance Company.

At this stage, learned counsel for the appellant-claimant urges for granting interest @ 9% per annum, in case of default of payment of



compensation amount by respondent No.2 – Insurance Company.

16. I have considered the cited judgments and finds that it is silent about 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.2 – Insurance Company does not pay the compensation amount within the stipulated period, as recorded above, in that eventuality, respondent No.2 – 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**

August 13, 2024

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No