IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

205 **FAO-3731-2007(O&M)**
Date of Decision: 13.03.2024

Madan Vaid & anr.

..... Appellants

Versus

Shimla Chandigarh Dicese Society
Catholic Churche & anr.

..... Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Ekta Thakur, Advocate, and
Ms. Smriti Aggarwal, Advocate,
for the appellants.

Mr. Pardeep Goyal, Advocate,
for respondent No.2-Insurance Company.

SUDEEPTI SHARMA, J.

The appellants in the present appeal have challenged award dated 04.06.2007 passed by the Motor Accidents Claim Tribunal, Chandigarh.

Brief facts of the case are that a claim petition was filed before the Tribunal by husband (Madan Vaid) and daughter (Devika) of the deceased under Section 163-A of Motor Vehicles Act on the averments that on 05.10.2005, Neelam Vaid since deceased while driving her kinetic Honda Scooter No.CH-03-A-3686 was coming from the side of AP Chowk and was going towards Sector 24 Chandigarh on correct left side of the road at normal speed. When she reached near Government Press Chowk, Sector 18, Chandigarh, her scooter has developed sudden mechanical defect and due to which she lost control over the scooter and fell down on the road and suffered multiple injuries, which proved fatal for her. The deceased, who was 49 years of age, at the time of the accident, was social worker and her monthly income was Rs.3200/- per month. The matter was reported to the police vide FIR No.234, dated 06.10.2005. Assessing loss at Rs.10,00,000/- the claimant has asked for being compensated by respondent No.1, being owner and respondent No.2 being insurer of the offending scooter No.CH-03-A-3686.

Upon notice, respondent No.1 was duly served but none appeared on its behalf and as such, respondent No.1 was proceeded against ex parte on 09.02.2006.

Respondent No.2 in its written statement took the preliminary objections of maintainability of the claim petition and that the deceased was not holding a valid and effective driving licence at the time of the accident. On merits, the other averments of the claim petition have been denied and a prayer to dismiss the petition has been made.

On pleading of the parties, the learned Tribunal framed the following issues on 13.05.2006:-

1. Whether Neelam Vaid died on 5.10.2005 while driving kinetic Honda No.CH-03-A-3686 in the area of Government Press Chowk Sector 18, Chandigarh due to sudden mechanical defect in the scooter? OPP

2. Whether the claimants being the legal heirs of the deceased Neelam Vaid are entitled to receive compensation, if any, how much and from whom? OPP

3. Whether the deceased was not holding a valid driving licence to drive the above said scooter at the time of occurrence? OPR-2

4. Relief.

Issues No.1 and 2 were decided against the claimant and in favour of the respondents. Issue No.3 is decided against respondent No.2. The claim petition filed by the claimants was dismissed. Aggrieved against the same, the appellants have approached this Court through present appeal.

Learned counsel for the appellants submits that she restricts her prayer to the extent of "no fault compensation" under Section 140 (2) of the Motor Vehicles Act, 1988 (for short 'the Act').

Learned counsel for respondent No.2-Insurance Company vehemently argues that the claim petition of the appellant was dismissed. Therefore, the appellant is not entitled for any compensation.

I have heard learned counsel for the parties and perused the whole record with their able assistance.

The Hon'ble Supreme Court in **Eshwarappa @ Maheshwarappa and anr. Vs. C.S. Gurushanthappa and anr.,** 2010 AIR (Supreme Court) 2907, held as under:-

> *"12. Coming back to the order passed by the Tribunal, we are completely unable to appreciate the reasons assigned for denying the appellants the 'no fault compensation' as provided under section 140 of the Act. The Tribunal was gravely in error in taking the view that a claim for compensation under section 140 of the Act can succeed only in case it is raised at*

the initial stage of the proceedings and further that the claim must fail if the accident had taken place by using the car without the consent or knowledge of its owner. Section 140 is the first section of chapter X of the Act. It is a small chapter consisting of only five sections (from 140 to 144) and has the marginal heading "Liability without Fault in Certain Cases". Section 140 reads as under:

"140. Liability to pay compensation in certain cases on the principle of no fault.

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

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

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act,

neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A."

On a plain reading of the provisions it is evident that all that is required to attract the liability under section 140 is an accident arising out of the use of a motor vehicle(s) leading to the death or permanent disablement of any person. Sub-section (2) provides for a fixed amount as compensation. [In case of death, currently it is rupees fifty thousand (Rs.50,000.00) only; at the time the accident from which the appeal arises took place the fixed amount in case of death was rupees twenty five thousand (Rs.25,000.00) only]. Sub-section (3) provides that even though the death or permanent disablement resulting from the motor accident might not be due to any wrongful act, neglect or default of the owner of the vehicle, it would have no effect either on his liability or on the amount of compensation. Sub-section (4) conversely provides that the motor *accident resulting in the death or permanent disablement might be entirely due to the wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim is made but that too would have no effect either on the right to receive the compensation or the amount of compensation. Sub-section (5) which begins with a non obstante clause makes it further clear that the liability under section 140 is independent of the liability of the owner of the vehicle to pay compensation under any other law for the time being in force. The proviso to sub-section (5), of course, provides that the amount of compensation under any other law would be reduced from the amount of compensation payable under section 140 or under section 163A of the Act.*

13. Then there is section 141 which reads as under:

"141. Provisions as to other right to claim compensation for death or permanent disablement.

(1) The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in section 163A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement

under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and-

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation."

Sub-section (1) of section 141 makes the compensation under section 140 independent of any claim of compensation based on the principle of fault under any other provision of the Motor Vehicles Act or under any other law but subject to any claim of compensation under section 163A of the Act. Sub-sections (2) and (3) further provide that even while claiming compensation under the principle of fault (under section 166) one may claim no fault compensation under section 140 and in that case the claim of no fault compensation shall be disposed of in the first place and the amount of compensation paid *under section 140 would be later adjusted if the amount payable as compensation on the principle of fault is higher than it.*

14. Finally, section 144 gives overriding effect to the provisions of Chapter X. Section 144 reads as follows:

"144. Overriding effect- The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force."

15. Seen in isolation the above provisions might appear harsh, unreasonable and arbitrary in as much as these create the liability of the vehicle(s) owner(s) even where the accident did not take place due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned but entirely due to the wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made but the above provisions must be seen along with certain provisions of Chapter XI. Section 146 forbids the use of the vehicle in a public place unless there is in force, in relation to the use of the vehicle, a policy of insurance complying with the provisions of that chapter. Section 147 contains the provisions that are commonly referred to as 'Act only insurance'. The provisions of sections 146 and 147 are meant to create the large pool of money for making payments of no fault compensation. Thus the liability arising from section 140 would almost invariably be passed on to the insurer to be paid off from the vast fund created by virtue of sections 146 and 147 of the Act unless the owner of the vehicle causing accident is guilty of some flagrant violation of the law.

16. Seen thus, the provisions of chapter X together with sections 146 and 147 would appear to be in furtherance of the public policy that in case of death or permanent disablement of any person resulting from a motor accident a minimum amount must be paid to the injured or the heirs of the deceased, as the case may be, without any questions being asked and independently of the compensation on the principle of fault.

17. The provisions of section 140 are indeed intended to provide immediate succour to the injured or the heirs and legal representatives of the deceased. Hence, normally a claim under section 140 is made at the threshold of the proceeding and the payment of compensation under section 140 is directed to be made by an interim award of the Tribunal which may be adjusted if in the final award the claimants are held entitled to any larger amounts. But that does not mean, that in case a claim under section 140 was not made at the beginning of the proceedings due to the ignorance of the claimant or no direction to make payment of the compensation under section 140 was issued due to the over-sight of the Tribunal, the door would be permanently closed. Such a view would be contrary to the legal provisions and would be opposed to the public policy.

18. In light of the discussions made above, we are unhesitatingly of the view, that the Tribunal was completely wrong in denying to the appellant, the compensation in terms of section 140 of the Act. We find and hold that the appellant (as well as the other 3 claimants) were fully entitled to no fault compensation under section 140 of the Act. We, accordingly, direct the insurance company to pay to

> *the appellant Rs.25,000/- along with simple interest @ 6% p.a. from the date of the order of the Tribunal till the date of payment. The other 3 claimants are not before this Court, but that is presumably because they are too poor to come to this Court. Since, we have allowed the claim of the appellants, there is no reason why this order should not be extended to the other 3 claimants as well. We, accordingly, do so. The insurance company is directed to make the payment as directed in this judgment within 3 months."*

In view of the above, the present appeal is allowed to the extent of "no fault compensation" under Section 140 (2) of the Act. The Insurance Company-respondent No.2 is directed to pay to the appellants an amount to the tune of Rs.50,000/- along with simple interest @ 6% per annum from the date of filing of the claim petition till the date of payment, within a period of three months.

13.03.2024 **(SUDEEPTI SHARMA)**
monika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No