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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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Date of decision : 11.11.2024

Nisha Rani and others

... Appellants

Versus

Parminder Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms.Ekta Thakur, Advocate and
Ms.Archita Jain, Advocate
for the appellants.

Mr. Rajneesh Malhotra, Advocate and
Ms.Manvi Verma, Advocate
for respondent no.2.

VIKAS BAHL, J.(ORAL)

1. The widow and three minor children of deceased Balwinder Kumar have filed the present appeal in which challenge is made to the Award dated 30.08.2011, vide which the claim petition filed by the claimants has been dismissed.

2. Learned counsel for the appellants has submitted that in the present case, the fact that Balwinder Kumar had died in a road accident which took place on 02.07.2007 and in the said accident, the vehicle bearing no.PB18K-7129 being driven by Sukhwant Singh, husband of respondent no.1-Parminder Kaur was involved, is not in dispute. It is submitted that the

above said vehicle was insured by respondent no.2-Insurance Company and



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the said fact is not in dispute. It is submitted that although it is the case of the present appellants that it was the said Sukhwant Singh, who was driving the vehicle negligently, on account of which, the accident had taken place but the Motor Accident Claims Tribunal had come to the conclusion that said Sukhwant Singh was not negligent and had dismissed the claim petition filed by the claimants. It is submitted that even a perusal of the reply filed on behalf of the Insurance Company would show that it has been stated by them that an inference can be drawn from the present case that it is a case of contributory negligence on the part of the deceased and the husband of respondent no.1. It is further stated that even in case the said finding is taken on its face value, then also as per the provisions of Section 164 of the Motor Vehicles Act, 1988, the claimants are entitled to an amount of Rs.5,00,000/-. It is submitted that the Hon'ble Supreme Court in the case of **"Ram Murti and others Vs. Punjab State Electricity Board, reported as 2023 ACJ 631**, in similar facts and circumstances, was pleased to grant compensation of an amount of Rs.5,00,000/- in a case where the negligence of the driver of the offending vehicle was not proved. In the said case also, although the accident had taken place on 23.05.1991 and the award in the said case was passed on 12.04.1994, yet the Hon'ble Supreme Court had given the benefit of the beneficial provisions of Section 164 of the Motor Vehicles Act, 1988, which provision had been incorporated by the Act 32 of 2019. It is further submitted that in view of the same, the said amount be paid along with interest to the claimants from the date of the application till the date of the actual payment. It is also submitted that the present case be

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treated as a case under Section 164 of the Motor Vehicles Act, 1988 as amended.

3. Learned counsel for respondent no.2-Insurance Company has submitted that it has been stated in the reply that the accident had occurred on account of fault of the deceased i.e., the husband of appellant no.1 and it was further stated that the maximum inference that could be drawn was of contributory negligence. It is further submitted that the finding of the Motor Accident Claims Tribunal on the plea that husband of respondent no.1 was not negligent in the accident, is in accordance with law and deserves to be upheld. It is argued that in the present case, the accident had taken place on 02.07.2007 and even as per the provision of Section 140 of the Motor Vehicles Act, 1988 which was in force at that time, only an amount of Rs.50,000/- was payable on account of no fault liability and thus, at best, the claimants could claim Rs.50,000/- on account of no fault liability.

4. This Court has heard the learned counsel for the parties and has perused the paper book.

5. The fact that the deceased Balwinder Kumar died in the accident that took place on 02.07.2007 in which vehicle bearing no. PB18K-7129 was involved is not in dispute. It is also not in dispute that the said Tata Indigo car was owned by respondent no.1 and was insured with respondent no.2.

6. Section 140 of the Motor Vehicles Act 1988 initially provided that compensation to the extent of Rs.25,000/- would be payable in the case of death of a person and in such a situation, the claimant was not required to



plead and establish that the death or permanent disablement in respect of which the claim had been made was due to any wrongful act, negligence or default of the owner of the offending vehicle or vehicles concerned or any other person. The said Section 140 of the Motor Vehicles Act, 1988 was amended in the year 1994 and the amount payable in the case of death was enhanced to Rs.50,000/-. Thus, on the date, the accident had taken place i.e., 02.07.2007, the above said amended Section was in force. The relevant portion of amended Section 140 of the Motor Vehicles Act, 1988 is reproduced 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 vehicles 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.”

7. By virtue of Act 32 of 2019, the above-said provisions of Section 140 of the Motor Vehicles Act, 1988 were deleted and simultaneously Chapter XI was substituted and Section 164 of the said Chapter provided that a compensation of Rs.5,00,000/- in the case of death was to be provided and in such situation also, the claimant was not required to plead or establish that the death or grievous hurt in respect of which the claim had been made was due to any wrongful act or neglect or default of the owner of the vehicle or any other person. The said Section 164 of the Motor Vehicles Act, 1988 is reproduced herein below: -

“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



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being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.”

8. The Hon'ble Supreme Court in the case of **Ram Murti** (*supra*) had granted the benefit of the beneficial provisions which have been enacted by the Parliament and accordingly, granted the compensation of Rs.5,00,000/- to the claimants therein. In the said case also, the accident as well as the award were much prior to the coming in force of Section 164 of the Motor Vehicles Act, 1988 and the Hon'ble Supreme Court in view of the fact that it was a beneficial provision, applied the provisions of Section 164 of the Motor Vehicles Act, 1988. The relevant part of the said judgment is reproduced as under: -

“xxx xxx xxx

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.”*

9. Even the judgment of the High Court, passed in FAO No.1461 of 1994 decided on 10.03.2009, from which judgment the SLP was filed before the Hon'ble Supreme Court and the above-said judgment was rendered by the Hon'ble Supreme Court, has been referred to by the learned counsel for the appellants to highlight the fact that in the above-said case the accident had taken place on 23.05.1991, which was even prior to the



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amendment in Section 140 of the Motor Vehicles Act, 1988 and thus, the present case is squarely covered by the judgment of the Hon'ble Supreme Court.

10. Thus, keeping in view the above-said facts and circumstances, this Court is of the view that in the interest of justice, the present claim petition be treated as a claim petition under Section 164 of the Motor Vehicles Act, 1988 and by applying the ratio of law laid down by the Hon'ble Supreme Court in the above-said judgment, the present appeal is partly allowed and the award of the Motor Accident Claims Tribunal, Chandigarh dated 30.08.2011 is set aside and the respondent No.2 is directed to pay an amount of Rs.5,00,000/- to the present appellants/claimants along with interest @ 7.5% per annum from the date of the claim petition till the date of actual payment within a period of two months from today.

(VIKAS BAHL)
JUDGE

November 11, 2024.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No