
(1991) 05 P&H CK 0106
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 333 of 1991

Mosmi and Another

APPELLANT

Vs

Ram Kumar and Others

RESPONDENT

Date of Decision : 30-05-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 144

Citation : (1992) 1 ACC 187 : (1992) ACJ 192

Hon'ble Judges : S.S. Rathor, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Ashit Malik, for the Appellant; Ravinder Arora, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : State of Punjab and Others Vs. Bhajan Kaur and Others, AIR 2008 SC 2276 : (2008) CLT 915 : (2008) 8 SCALE 475 : (2008) 12 SCC 112 : (2008) AIRSCW 4073 : (2008) 3 Supreme 724

Ashok Bhan and S.S. Rathor, JJ.—Admitted.

2. Since the point involved in this appeal is a very limited one, we intend disposing of the appeal at the preliminary stage itself.

3. Rinku, a minor child, aged five years died in a road accident on 16.5.1989, the offending vehicle being a four wheeler bearing registration No. HNL 8847 which was being driven by Ram Kumar, respondent No. 1. The parents of the deceased filed a claim petition before the Motor Accidents Claims Tribunal, Karnal, and limited the compensation to one u/s 92-A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the 1939 Act") which deals with the liability without fault in certain cases and the maximum amount which could be awarded under this provision was Rs. 15,000/-.

4. The 1939 Act has been replaced by the Motor Vehicles Act, 1988 (hereinafter referred to as "the 1988 Act"). Corresponding provision to Section 92-A of 1939

Act is Section 140 in 1988 Act. Under the 1988 Act, the liability without fault has been fixed at Rs. 25,000/- 1988 Act came into force with effect from 1.7.1989.

5. Since the 1988 Act came into force after the date of accident, the Tribunal held that the claimant-appellants shall be entitled to the compensation of Rs. 15,000/- only under the old Act. The claimants have come in appeal to this Court on the plea that although the accident had taken place prior to the coming into force of 1988 Act yet under the no fault liability, the claimants are entitled to Rs. 25,000/- as has been provided under the 1988 Act. The plea taken by the counsel appearing for the insurance company is that the provisions of 1988 Act are prospective and not retrospective in nature. We do not find any substance in the submission made by the counsel appearing for the respondents. Section 144 of the 1988 Act provides that all other provisions of 1988 Act or any other law must yield to the provisions contained in Chapter X of the 1988 Act. The matter has been considered at length by a Division Bench of Kerala High Court in *United India Insurance Co. Ltd. Vs. Padmavathy and Others*, and it has been held therein that award for no fault liability in a motor accident which occurred prior to the coming into force of 1988 Act should be in tune with the amount fixed by the 1988 Act. We are in respectful agreement with the reasoning given by the Kerala High Court and adopt the same.

6. For the foregoing discussion, this appeal is accepted and it is held that the claimant-appellants shall be entitled to a sum of Rs. 25,000/- under "no fault liability" clause of 1988 Act. The impugned award of the Motor Accidents Claims Tribunal, Karnal, is accordingly modified and the compensation is enhanced to Rs. 25,000/-. No costs.