
(2002) 10 P&H CK 0092
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4159 of 2000

Mrs. Kamlesh Chaudhary and Others	Vs	APPELLANT
Kanwar Bhan and Others		RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2003) 1 ACC 245 : (2003) ACJ 1032 : (2003) 133 PLR 619

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Rakesh Gaur and Rajinder Singla, for the Appellant; K.K. Saini, for the Respondent

Judgement

M.M. Kumar, J.—This petition filed under Article 227 of the Constitution read with Section 115 of the Code of Civil Procedure, 1908 (for brevity "the Code") challenges order dated 11.8.2000 passed by the Motor Accident Claims Tribunal, Hisar (for brevity, "The Tribunal"). The Tribunal has declined the application filed by the claimant-petitioners seeking amendment of the claim petition under Order VI Rule 17 of the Code for incorporating the additional plea to claim compensation u/s 163A of the Motor Vehicles Act, 1988 (for brevity, "the Act").

2. Few facts necessary for deciding the legal controversy raised in the present petition may first be noticed. On 3.3.1995, an accident took place between Maruti car No. DL-2C-9186 and tractor No. HYF-2084, belonging to respondent No. 2. The tractor was driven by respondent No. 1 and alleged to have been insured with respondent No. 3. The husband of petitioner No. 1 and father of petitioner No. 2, 3 and 4 was travelling in the Maruti car. On account of the accident, Parkashbir Chaudhary died and a claim petition has been filed by the dependant-petitioners 1 to 4 u/s 166 read with Section 168 of the Act. Three other claims petitions arising out of the same accident titled as "Rupa Girdhar v. Kanwar Bhan", "Krishana Devi v. Kalu Ram" and "Hans Raj v. Kanwar Bhan" have also been filed. Civil Revision No. 376 of 2002 has arisen out of the claim

petition filed by Rupa Girdhar and others on account of death of Dr. Ravi Kant Girdhar, During the pendency of the claim petition, MRs. Kamlesh Chaudhary and others who have filed separate claim petition u/s 166 of the Act, filed an application seeking amendment of the claim petition to add additional plea to claim compensation u/s 163A of the Act on the basis of structured formula as given in the Schedule. The application was contested by respondent No. 1--driver of the offending vehicle raising the objection that the same was not maintainable especially when detailed evidence had already been led by the parties. The tribunal dismissed the application by observing that such an amendment is not permissible u/s 163B of the Act which prohibits filing of a claim petition under both the sections. The operative part of the order dated 11.8.2000 passed by the Tribunal reads as under:-

"The applicant filed the claim petition u/s 166 of the Motor Vehicles Act, 1988 and u/s 140 of Motor Vehicles Act, 1988, as is evident from the petition filed on 3.11.95. Now the present application under Order 6 Rule 17 C.P.C, has been filed seeking permission to add additional plea of Section 163A of Motor Vehicles Act, which is not permissible under the law in view of Section 163B of the Act, which provides that "where a person is entitled to claim compensation u/s 140 and Section 163A, he shall file the claim under either the said sections and not under both." Since, the applicant has already filed petition u/s 140 of the Motor Vehicles Act, so he cannot be permitted to file another claim u/s 183A and therefore, the present application is hereby dismissed,"

3. After hearing learned counsel for the parties, I am of the considered view that the order passed by the Tribunal does not suffer from any legal infirmity warranting interference of this Court under Article 227 of the Constitution. There is no jurisdictional error in the impugned order. The question whether claim on the basis of structured formula can be in addition to determination of compensation u/s 166 read with Section 168 of the Act came up for consideration before the Supreme Court in the case of *The Oriental Insurance Co. Ltd. v. Hansraj bhai V. Kodala* (2001)128 P.L.R. 663 (S.C.). Their Lordships observed that plea u/s 163A of the Act has been incorporated in 1988 Act with the object of paying compensation without there being any long drawn litigation on the predetermined formula known as structured formula basis which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away. Hence, the compensation amount is paid away without pleading or proof of fault on the principle of social justice as social security measure because of ever increasing trauma of motor vehicle accidents in a fast moving society. Various reasons to conclude that Section 163A of the Act is an alternative to determine the compensation payable u/s 166 read with Section 168 of the Act given by their Lordships read as under:-

"(1) There is no specific provision in the Act to the effect that such compensation is in addition to the compensation payable under the Act. Where ever the

Legislature wanted to provide additional compensation, it has done so. (Sections 140 and 141)

(2) in case where compensation is paid in no fault liability under Sections 140 and 161 in case of hit and run motor accidents, the Legislature has provided adjustment or refund of the said compensation in case where compensation is determined and payable u/s 168 of the Act. There is no such procedure for refund or adjustment of compensation paid where the compensation is paid u/s 163A.

(3) The words "under any other law for the time being in force" would certainly have different meaning from the words "under this Act" or "under any other provisions of this Act".

(4) In view of the non-obstante clause "notwithstanding anything contained in this Act" the provisions of Section 163A would exclude determination of compensation on the principle of fault liability.

(5) The procedure of giving compensation u/s 163A is inconsistent with the procedure prescribed for awarding compensation on fault liability. u/s 163A compensation is awarded without proof of any fault while for getting compensation on the basis of fault liability claimant is required to prove wrongful act, neglect or default of the owner of the vehicle or vehicles concerned.

(6) Award of compensation u/s 163A is on predetermined formula for payment of compensation to road accident victims and that formula itself is based on criteria similar to determining the compensation u/s 168. The object was to avoid delay in determination of compensation."

In *Hansrajbhai V. Kodala's* case (supra) the facts were also somewhat similar. The claimants had filed an application u/s 166 of the Act and in that application, an application u/s 163A of the Act for interim compensation on structured formula basis was also filed. In the present case, the claimant-petitioners have filed an application u/s 163A of the Act presuming the nature of the application as an additional plea. Such a course has not been approved by the Supreme Court in *Hansrajbhai V. Kodala's* case (supra). The following observations indicating the disapproval of their Lordships of the Supreme Court to the adoption of such a course read as under :-

".....However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs. 40,000/- which is the highest slab in the Second Schedule which indicates that the legislature, wanted to give benefit of no fault liability to a certain limit. This would clearly indicate that the scheme is in alternative to the determination of compensation on fault basis under the Act. The object under-lining the said amendment is to pay compensation without there being any long drawn litigation on an predetermined formula, which is known as constructed formula basis which itself is based on relevant criteria for determining compensation and the procedure of paying

compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever increasing motor vehicles accidents in a fast moving society. Further, the law before insertion of Section 163A was giving limited benefit to the extent provided u/s 140 for no fault liability and determination of compensation amount on fault liability was taking long time. That mischief is sought to be remedied by introducing Section 163A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured formula basis. Further, if the question of determining compensation of fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles."

4. The above principles enunciated by their Lordships in Hansrajbhai V. Kodala's case (supra) do not leave any manner of doubt that a claimant can either make a claim u/s 166 or 163-A of the Act and cannot pursue both the remedies because both are substantive remedies. Furthermore, the basic object of incorporating Section 163A of the Act for providing social security and speedy remedy to the claimants would be defeated. Therefore, the present petition revision petition along with Civil Revision No. 376 of 2002 are disposed of by issuing following directions:-

(a) all claim petitions arising out of the accident which had taken place on 3.3.1995 shall be taken up and disposed of expeditiously without any further delay within a period of six months from the date of this order; and

(b) the claimant-petitioners shall be entitled to the claim made u/s 166 and 140/141 of the Act and shall not be entitled to make a claim u/s 163A of the Act.

A copy of this order be sent to the Presiding Officer, Motor Accident claims Tribunal, Hisar.