
(2002) 10 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1232 of 2001

National Insurance Co.

APPELLANT

Vs

Tula Ram and Others

RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2004) ACJ 741 : (2003) 134 PLR 300 : (2003) 2 RCR(Civil) 18

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

Bench : Single Bench

Advocate : Suman Jain, for the Appellant; Kuldeep Singh, for the Respondent

Judgement

M.M. Kumar, J.—This revision petition filed under Article 227 of the Constitution is directed against the order dated November 20, 2000 passed by the Motor Accident Claims Tribunal, Sirsa, dismissing the objection of the petitioner with regard to framing of an issue regarding the liability of insurance company on the basis of objection raised by it in its written statement.

2. Brief facts of the case are that the claimant-respondents has filed a claim petition u/s 163-A of the Motor Vehicles Act, 1988 (for brevity the "1988 Act") in order to make a claim on the basis of structured formula given in Schedule 2 of the Motor Vehicles Act, 1988 as amended in 1994, which is aimed at expeditious and quick relief to the claimants so that the long drawn procedure on the basis of the detailed evidence is avoided. The basic object of incorporating Section 163-A appears to be that the claimant-respondent would not be required to furnish proof with regard to committing any fault. It is also clear that on the basis of the structured formula envisages u/s 163-A read with Schedule 2, the claimants would be able to avoid long drawn litigation and consequent delay in payment of compensation, Therefore, no specific issues is required to be framed because the scheme of Section 163-A is an alternative to determination of compensation on no fault basis.

3. The proposition of law which falls for the consideration of this Court is covered by the judgment of the Supreme Court in the case of *Oriental Insurance Company Limited v. Hans Raj Bhai V. Kodala* (2001)128 P.L.R. 663 (S.C.). Their Lordships of the Supreme Court in *Hans Raj Bhai V. Kodala*'s case after detailed discussion has laid down the following principles applicable to cases where compensation is claimed u/s 163-A.

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

(2) In case where compensation is paid on 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 the case where compensation is determined and payable under the award on the basis of fault liability 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 163-A.

(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 provision of this Act".

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

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

(6) Award of compensation u/s 163-A is on a 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."

4. When the above mentioned principles laid down by the Supreme Court are applied to the facts of the present case, it becomes evident that the Tribunal has not acted in accordance with the provisions of Section 163-A because the claimant-respondents are not required to prove rash and negligent driving as is directed to be done by the Tribunal by framing issue No. 1. The requirement of law u/s 163-A would be that there should be admission with regard to an accident arising out of the use of Motor Vehicle which should result into death or permanent disablement, then on the basis of the calculation given in second schedule, compensation is to be awarded.

5. The issues, No. 1 and 2 framed by the Tribunal are also not in accordance with the provisions of Section 163-A. A perusal of the issues framed by the Tribunal creates an impression as if the petition had been filed u/s 166 of the 1988 Act. Therefore, the order of the Tribunal dated November 20, 2000 is set-aside and a direction is issued to proceed with the framing of issues in accordance with the provisions of Section 163-A of the Act and the law laid down in Hans Raj Bhai v. Kodala's case (supra).

The revision petition stands disposed of in the above terms.