

(2019) 03 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 45 Of 2013

National Insurance Company Ltd

APPELLANT

Vs

Indu Devi And Others

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2019) 03 SHI CK 0013

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Devyani Sharma, Anand Sharma

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The Insurer of the offending vehicle, has, instituted the instant appeal before this Court, where through, it, casts, a, challenge, upon, the award pronounced by the learned Motor Accident Claims Tribunal, Fast Track Court, Chamba, upon, MAC Petition No. 66/12/11, as stood, cast therebefore, under, the provisions of Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act), (i) where under, compensation amount comprised, in, a sum of Rs.4,83,024/-, along with interest accrued thereon, at the rate of 7.5% per annum, and, commencing from, the date of petition till realization thereof, stood, assessed, vis-a-vis, claimants, (ii) and, the apposite indemnificatory liability thereof, was, fastened upon the insurer/appellant herein.

2. The learned counsel appearing, for, the appellant/insurer, of, the offending vehicle concerned, has, contended with much vigour (a) that with evidence comprised in FIR, borne in Ex.PW1/A, and, in the statement of PW-1, rather amplifyingly, evidencing, the, factum of deceased Suresh Kumar, suffering his demise, on account of his negligence, in driving the vehicle concerned, (b) hence, when his fault or tort of negligence rather stood proven, (c) there upon,

no compensation was payable to the petitioners, in a petition cast under the provisions of Section 163-A of the Act, (d) and, significantly when the afore statutory mechanism is available only, when, the vehicle concerned, is used in a public place, and, when no negligence or fault, is ascribed, to the driver concerned.

3. The afore submission is rejected, given (a) the claimants pleading qua the relevant mishap being a sequel, of, a latent mechanical defect rather erupting in the offending vehicle, (b) and, with Indu Devi (PW-4), in her cross- examination conducted by the counsel for respondent No.2, meteing, an, answer in the dis-affirmative, vis-a-vis, a suggestion thereat put to her, qua, no mechanical defect rather erupting in the offending vehicle concerned, (c) thereupon, even if, FIR, borne in Ex.PW1/A, ascribes negligence, vis-a-vis, the driver concerned, yet, the afore ascription, does not, attain any formidability, (d) prominently when the FIR, is, lodged at the instance of one Bhagat Ram, who, however, remained unexamined in the Court, (e) and, when PW-1, the police official concerned, who proved the afore FIR, was not, the investigating officer concerned, (f) and, when only, upon, report of the Investigating Officer, standing, placed on record, and, it carrying clear echoings qua the relevant investigations, precluding formation of any inference, qua the afore pleaded ground, being unavailable for espousal by the successors-in-interest, of, the deceased concerned, (g) whereas, the afore report rather not existing on record, thereupon, the afore defence reared by the insurer, is, unespousable.

4. Be that as it may, given the afore pleaded factum, existing in the petition, cast under the provisions of Section 163-A of the Act, and, it making palpable unfoldings qua no ascription, of, negligence being made, vis-a-vis, the deceased, by his successors-in-interest, (a) and, when hence a petition, cast under the provisions of Section 163-A, of the Act, was hence maintainable, (b) besides preeminently with the afore mechanism being recourseable only in a scenario where, as extantly, fault, is, not ascribed, vis-a-vis, the driver of the offending vehicle concerned, (c) besides with the Hon'ble Apex Court in a case titled as United India Insurance Co. Ltd. vs. Sunil Kumar and another, reported in 2018 ACJ 1, and, further with the Hon'ble Apex Court in a verdict rendered in a case titled as Shivaji and another vs. Divisional Manager, United India Insurance Co. Ltd., and, others, reported in 2018 ACJ 2161, (d) maintaining a consistent stand, qua the insurer, being, hence barred, to, upon a petition cast under the provisions of Section 163-A of the Act, rather raise defence of negligence, (d) given thereupon, the, holistic purpose behind the engraftment of the afore statutory provisions, being defeated, and, further that hence it would be self contradictory, and, would also defeat the very legislative intent behind its engraftment. Consequently, the afore rearing, by the insurer, of the defence of negligence, vis-a-vis, the deceased driver, is, unespousable in the extant petition. Consequently, the instant petition is held to be maintainable, and, findings, vis-a-vis, the issue appertaining to the maintainability of the claim petition, as, rendered by the learned tribunal are upheld.

5. The learned counsel appearing for the insurer, further contends with much vigour (a) that with a specific statutory mechanism rather standing contemplated in the Act, for assessing compensation, vis-a-vis, the disabled claimants or vis-a-vis the successors-in-interest, of, the deceased concerned, (b) thereupon, the adoption by the learned tribunal, of, the multiplier method was legally unbecoming. However, the learned counsel, appearing for the parties, fairly submitted at bar, that the compensation amount, as determined by the learned tribunal concerned, upon, its adopting the multiplier method, is, almost at par with, the, compensation as would be assessable, upon, adoption of the statutory formula, contemplated in the Act, (c) thereupon, the afore ground, for the afore reasons, cannot constrain, this Court to interfere with the compensation amount as stood assessed by the learned tribunal, vis-a-vis, the claimants.

6. For the foregoing reasons, there is no merit in the instant appeal, and, it is dismissed accordingly. The award impugned before this Court is maintained and affirmed. All pending applications also stand disposed of. Records be sent back forthwith.