
(2015) 02 P&H CK 0329

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order Nos. 741 and 5131 of 2012 (O&M)

National Insurance Company Ltd.

APPELLANT

Vs

Nagina Devi and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 161, 163-A, 166

Citation : (2016) 1 ACC 672 : (2016) ACJ 176 : (2015) 179 PLR 1

Hon'ble Judges : Navita Singh, J

Bench : Single Bench

Advocate : V. Ramswaroop, for the Appellant; Shashi Kant Gupta for L.M. Gulati, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Navita Singh, J.

1. The above appeals were filed against the award dated 26.11.2011 passed by the Motor Accident Claims Tribunal, Amritsar (Tribunal for short), vide which the Tribunal awarded compensation to the tune of Rs. 7,29,000/- to the appellants in FAO No. 5131 of 2012. Those appellants i.e. claimants filed the appeal for enhancement while the Insurance Company filed the appeal for setting aside the award for dismissal of the claim. Om Parkash had met with an accident on 20.10.2010. The petition was filed under Section 163-A of the Motor Vehicles Act ("Act" for short) but the income of the deceased was stated to be between Rs. 7000/- and Rs. 8000/- per month. Also it was pleaded that the life of Madheshar Mehta was terminated at a young age on account of the accident which was caused by the driver of the offending vehicle i.e. Satnam Singh while driving the truck in a rash and negligent manner.

2. Counsel for the Insurance Company argued that the claim was preferred by the claimants under Section 163-A of the Act but inspite of that the Tribunal did not adhere to the second schedule. Rather the income of the deceased having

been pleaded to be more than Rs. 40,000/- per annum and evidence also having been led by the claimants to that effect, the appeal was not maintainable under Section 163-A of the Act.

3. It would also be seen that despite the fact that the petition was brought under Section 163-A of the Act and that the Tribunal framed an issued on 14.6.2011 regarding the accident having arisen out of the use of the truck in question, it amended the issue suo motu on 23.11.2011 mentioning that issue No. 1 was wrongly framed qua petition under Section 163-A of the Motor Vehicles Act where it should have been framed under Section 161 of the Act. Section 161 relates to a situation where the case was of a hit and run as identity of the motor vehicle is not ascertained in such cases. The present one was not a hit and run case and, therefore, it is not understood as to how the Tribunal proceeded to frame issue under the said provisions of law.

4. A perusal of the issue framed later on shows that the Tribunal cast onus on the appellant to prove that the accident had occurred due to rash and negligent driving of the truck, the number of which was given. In a petition under Section 163-A of the Act why negligence was to be proved remained unexplained. Also the Tribunal held under issue No. 1 that accident had been caused on account of rash and negligent driving of truck No.PB-10-B-9816 by the then respondent No. 1 i.e. Satnam Singh.

5. The claim came to be laid under Section 163-A of the Act and, therefore, the Tribunal had no authority to suo motu convert it as the one under Section 166 of the Act calling upon the claimants to prove negligence and also to hold that the accident had taken place due to rash and negligent driving of the driver of the truck. Since the claimants despite filing the petition under Section 163-A of the Act, pleaded and also tried to prove that the income of the deceased was more than Rs. 7000/- per month, the claim should have been rejected on that score alone.

6. The Tribunal either did not take note of the fact that the petition was filed under Section 163-A of the Act or did not know the law regarding the limit of income provided for such claims. The petition was treated as one under Section 166 of the Act and compensation awarded accordingly after holding negligence on the part of Satnam Singh. The Tribunal thus overstepped its jurisdiction. The Officer concerned is advised to read the Motor Vehicles Act carefully.

7. The consistent stand of the claimants was that the income of the deceased was more than Rs. 7000/- per month and they brought the petition under Section 163-A of the Act making it absolutely not maintainable but the Tribunal proceeded to decide the claim in the manner which was unheard of.

8. The appeal filed by the Insurance Company is, therefore, allowed. The impugned award is set aside and the claim petition is dismissed.

9. In view of the result as above in FAO No. 741 of 2012, the appeal filed by the

claimants i.e. FAO No. 5131 of 2012 has become infructuous and is dismissed accordingly. Copy of this order be sent to Mr. Parminder Pal Singh, Motor Accident Claims Tribunal, Amritsar.