
(2021) 03 P&H CK 0356

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 1900 Of 2018 (O&M)

New India Assurance Co. Ltd.

APPELLANT

Vs

Seema Gandhi And Others

RESPONDENT

Date of Decision : 26-03-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141, 163A, 163, 165, 166

Citation : (2021) 03 P&H CK 0356

Hon'ble Judges : Sudhir Mittal

Bench : Single Bench

Advocate : Radhika Suri, Neeraj Khanna, Manpreet Kanda, Ashwani Arora

Final Decision : Dismissed

Judgement

Sudhir Mittal, J

The Insurance Company is in appeal against award dated 07.12.2017 passed by the Motor Accident Claims Tribunal, Chandigarh awarding compensation of Rs. 2,99,839/- to the claimant alongwith interest @ 7% p.a. from the date of filing of the claim petition till realization.

The facts in brief are that a motor accident took place on 14.10.2011. The claimant - Seema Gandhi was riding an Activa scooter which was hit by Honda City car near House No. 3062, Sector 20-D, Chandigarh. As a result, claimant sustained injuries. No FIR was registered against driver of the vehicle, however, DDR dated 16.10.2011 Ex. P-53 was recorded. The claimant filed a petition under Section 163-A of the Motor Vehicles Act 1988 (hereinafter referred to as 'the Act') wherein compensation of Rs. 1,09,000/- was awarded vide award dated 19.11.2013. The same was challenged in FAO No. 1815 of 2014 which was allowed vide judgment dated 06.04.2015 on the ground that the claim petition under Section 163-A of the Act was not maintainable as income of the claimant was much more than Rs. 40,000/- p.a. Consequently, the present petition was filed under Section 166 of the Act and the same has been allowed vide award

dated 7.12.2017. Finding of rash and negligent driving has been returned and compensation as aforementioned has been awarded.

Two submissions have been raised on behalf of the appellant i.e. -

(a) Petition under Section 166 of the Act was not maintainable after dismissal of the earlier petition under Section 163-A of the Act.

(b) Finding of rash and negligent driving was erroneous in view of DDR Ex. P-53.

In support of the first proposition that the present petition was not maintainable as an earlier petition under Section 163-A of the Act had been dismissed, reliance has been placed upon *Deepal Girishbhai Soni and others vs. United India Insurance Co. Ltd., Baroda*, AIR 2004 SC 2107 and *Oriental Insurance Company Limited vs. Dhanbai Kanji Gadhvi and others*, (2011) 11 Supreme Court Cases 513. The specific argument is that remedies under Sections 163-A and Section 166 of the Act are distinct and separate and a person can elect either of them. Once he has selected the remedy under Section 163-A of the Act, he can not take re-course to the other remedy.

In response, learned counsel for the claimant has submitted that no doubt, the remedies under Sections 163-A and 166 of the Act are independent and the claimant can not take benefit of both, however, since the petition under Section 163-A of the Act was held to be not maintainable, the petition under Section 166 of the Act was maintainable. The judgment in *Deepal Girishbhai Soni (supra)* is not attracted to the facts of this case.

In *Deepal Girishbhai Soni (supra)* a reference was made to a three Judge bench as Division Bench doubted two Judge Bench decision in *Oriental Insurance Co. Ltd. vs. Hansrajibhai V. Kodala and others*, 2001(2) SCR 999 wherein it had been held that proceedings under Section 163 of the Act were final and barred proceedings under Section 165 of the Act. After going through the legislative history of Section 163-A and after interpreting the statutory provisions the Larger Bench in *Deepal Girishbhai Soni (supra)* held that the claimant could not prefer a petition under Section 163-A as well as another one under Section 166 of the Act. Findings are reproduced below for ready reference :-

"57. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.

58. In *Kodala (supra)* the contention of the claimant that right to get compensation is in addition to the no-fault liability was, thus, rightly rejected. In agreement with *Kodala (supra)* we are also of the opinion that unlike Sections 140 and 141 of the Act the Parliament did not want to provide additional compensation in terms of Section 163-A of the Act.

59. The question may be considered from different angles. As for example, if in the proceedings under Section 166 of the Act, after obtaining compensation under Section 163-A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefor as a consequence whereunto the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula?

Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, would it be at liberty to award compensation in terms of Section 163-A thereof.

60. The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under Section 163-A of the Act is interim in nature."

The finding is that proceedings under Section 163-A and 166 of the Act are independent in nature and can not be pursued simultaneously and that proceedings under Section 163-A of the Act are not interim in nature.

In *Dhanbai Kanji Gadhvi* (supra) the legal heirs of one Kanji Bhai filed a petition under Section 166 of Act claiming compensation of Rs. 7,50,000/- and thereafter filed an application under Section 163-A of the Act claiming compensation of Rs. 3,93,500/- on the basis of no-fault liability. The Tribunal partly allowed the petition under Section 163-A of the Act and awarded compensation of Rs. 2,65,500/- along with interest which was paid by Insurer. An application was filed by it praying that the petition under Section 166 of the Act be rejected in view of *Hansrajbhai V. Kodala* (supra). The Tribunal stayed further proceedings. Thereafter, an appeal was filed against the award under Section 163-A of the Act which was dismissed on the grounds of limitation. The claimant then filed an application in the petition under Section 166 for revival of the proceedings and the same were permitted to continue. The order was upheld by the High Court resulting in filing of the aforementioned case. It was held that a petition under Section 166 of the Act could be converted into one under Section 163-A of the Act and by placing reliance upon *Deepal Girishbhai Soni* (supra), it was held that a claimant can not pursue both the remedies provided under Section 163-A and 166 of the Act.

The law, thus, is that simultaneous proceedings under Section 163-A and Section 166 of the Act can not be undertaken as the remedies therein are separate and independent. The remedy provided under Section 163-A is on the basis of no-fault liability and has been inserted to cater for a claimant who is earning less than Rs. 40,000/- p.a. The said proceedings are final in nature unlike those under Section 140 of the Act.

In the instant case, although the claimant's petition under Section 163-A of the Act was allowed by the Tribunal, in appeal, the award was set aside and a finding was returned that the said petition was not maintainable as income of the claimant was much more than Rs. 40,000/- p.a. Under the circumstances, there was no bar upon the claimant to file a petition under Section 166 of the Act on the basis of fault liability. The same does not amount to taking benefit of two separate and independent provisions. If the claimant had taken benefit of the award passed on the petition under Section 163-A of the Act and had then filed a petition under Section 166 of the Act, the appellant would be right in contending that the petition under Section 166 of the Act was barred. That not being the case, the contention of learned senior counsel for the appellant has to be rejected. The second contention is based on Ex. P-53, the DDR. Although I have read the same, I am unable to reproduce it in this judgment as it is in Devnagri Script. All that has been stated in the said DDR is that the accident took place suddenly and by chance and that the claimant did not want to initiate any criminal proceedings. She did not say that there was no rash and negligent driving. The words used are 'achanak' and 'itafaq', which respectively mean 'suddenly ' and 'by chance'. In her affidavit submitted by way of affirmative evidence in the claim petition, allegations of rash and negligent driving have specifically been made and in cross-examination, all that has been stated is that an FIR was not lodged and that no representation was given for registration of an FIR. The same was explained by the respondent by stating that she did not want to register a criminal case against a lady. Thus, the learned Tribunal was correct in concluding that rash and negligent driving stood proved.

In view of the aforementioned reasons, the appeal has no merit and is dismissed.