
(2014) 07 P&H CK 0180
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 672 of 2009 (O&M)

Rahul	Vs	APPELLANT
Satbir Singh		RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141, 163, 163A, 163-A

Citation : (2016) 1 ACC 151 : (2015) ACJ 2299 : (2014) 176 PLR 112

Hon'ble Judges : Lisa Gill, J

Bench : Single Bench

Advocate : Sagar Aggarwal, Advocate for Ashit Malik, Advocate for the Appellant; Akshay Jindal, Advocate and N.K. Malhotra, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Lisa Gill, J.—The appellants being aggrieved of the dismissal of their petition u/s 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") vide award dated 19.08.2008 passed by the Motor Accidents Claim Tribunal, Karnal (hereinafter referred to as the "Tribunal") have filed the present appeal challenging the said award.

2. The appellants alongwith respondent No. 1--Satbir Singh had earlier filed separate petitions u/s 166 of the Act claiming compensation on account of the death of Mahavir (the present appellants claim to be the LRs of Mahavir) and injuries caused to Satbir Singh on account of an accident which was alleged to have been caused on 17.12.2002 by the rash and negligent driving of a bus bearing registration No. HR-45-6171. The said bus was averred to have overtaken the motorcycle and applied the brakes abruptly due to which there was a collision of the bus with the motorcycle. Mahavir and Satbir Singh both are stated to have fallen down and received serious injuries and later on, Mahavir succumbed to the injuries. The present appellants in the earlier petition u/s 166 of the Act had claimed a compensation of Rs. 15,00,000/- on account of the

death of Mahavir in the said accident. The deceased Mahavir was alleged to be 35 years old and earning Rs. 5,000/- per month.

3. The second claim petition had been filed by Satbir Singh for a compensation of Rs. 5,00,000/- on account of the injuries sustained by him in the said accident. Both the said claim petitions were dismissed vide award dated 10.12.2005 passed by the Tribunal on the ground that the petitioners therein had failed to prove that the death of Mahavir and the injuries to Satbir had been caused in an accident, which had allegedly occurred due to the rash and negligent driving of Bus No. HR45-6171 by one Nishan Singh, respondent therein. It was specifically held that in the FIR and in the earliest version, it had been alleged by them that the accident was caused by a car driven by some unnamed driver and the version had been changed subsequently. The said award dated 10.09.2009 which is on record has not been challenged either by the appellants or by Satbir Singh and has admittedly attained finality.

4. The present appellants i.e., LRs of deceased Mahavir, after the dismissal of their claim petition u/s 166 of the Act, filed the present claim petition u/s 163A of the Act on 23.12.2005 claiming compensation from respondent No. 1--Satbir Singh i.e., the owner and driver of the motorcycle and respondent No. 2, the insurer of the offending motorcycle. In the present petition it is stated that on 17.12.2002 Satbir Singh and deceased--Mahavir were going on a motorcycle. The deceased was the pillion rider and when they reached near bus stop of village Budhanpur on Karnal-Kaithal road, "a vehicle" hit the motorcycle. Both the occupants fell down and sustained grievous injuries and Mahavir succumbed to the injuries on 18.12.2002. The accident is alleged to have taken place on account of use of the motorcycle bearing registration No. HR-05L-3501 and compensation of Rs. 10,00,000/- has been claimed under the provisions of Section 163A of the Act and the income of the deceased Mahavir is claimed to be Rs. 40,000/- per annum. The Tribunal dismissed the petition holding that the present claim petition is barred by the principle of res judicata and is not maintainable.

5. Learned counsel for the appellants has vehemently argued that this petition cannot be barred by the principle of res judicata because Section 163A of the Act is a beneficial piece of legislation and on account of non-obstante clause contained therein, filing of the earlier claim petition u/s 166 of the Act does not bar the subsequent filing of the petition u/s 163A of the Act where the compensation is claimed on a structured basis and the claimant is not required to plead or establish that the death has occurred due to any wrongful act or negligence or default on the part of the owner/driver of the vehicle. Specific reliance is placed on a judgment by the Delhi High Court in case of Prem Devi and others v. Jagdish Kumar and others, 2012 (8) AD 9 (Delhi) 339, to say that dismissal of the petition u/s 166 of the Act cannot bar the filing of a petition u/s 163A of the Act.

6. Learned counsel for respondents have refuted the said plea and submits that

there is no ground, whatsoever, to assail the impugned award and prayed for upholding the same.

7. Having heard learned counsel for the parties and going through the available record, it is apparent that the appellants on earlier occasion had filed the petition u/s 166 of the Act. Having failed to prove any negligence on the part of driver/owner of the offending bus in that case, the appellants have filed this petition u/s 163A of the Act to claim compensation qua respondent No. 1--Satbir Singh and respondent No. 2. It is apparent from the perusal of award dated 10.09.2005 in a petition filed u/s 166 of the Act that it had been claimed that the income of deceased Mahavir was Rs. 9,000/- per month (i.e., Rs. 1,08,000/- per annum) and now in order to bring their claim within the ambit of Section 163A of the Act, the income of the deceased--Mahavir is claimed to be Rs. 40,000/- per annum. There is no mention of the accident having been caused by the bus in the present petition. The conduct of the appellants is clearly not above board.

8. The Hon"ble Supreme Court in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, , has held that the remedy for payment of compensation both under Sections 163A and 166 of the Act are final and independent of each other and the claimant must opt to go either for proceedings u/s 163A or for u/s 166 of the Act but not under the both. It is specifically been held as under:-

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 u/s 163-A or u/s 166 of the Act, but not under both.

58. In The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., 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 u/s 166 of the Act, after obtaining compensation u/s 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 where to 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 u/s 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.

9. The Hon''ble Supreme Court in Deepal Girishbhai Soni's case (supra) has also discussed the overriding effect of Section 163A of the Act specifically in view of the non obstante clause. The overriding effect is in relation to Section 140 of the Act and cannot be taken to mean that the claimant having once opted to seek the remedy u/s 166 of the Act and having failed therein, can thereafter file a petition u/s 163A of the Act and that too, by varying the material facts only with a view to come within the ambit of Section 163 of the Act. This would lead to complete misuse and abuse of the beneficial provision of Section 163 of the Act.

10. Therefore, keeping in view the decision of the Hon''ble Supreme Court in Deepal Girishbhai Soni's case (supra), the decision of the Delhi High Court in Prem Devi's case (supra) wherein the amendment of the petition u/s 166 of the Act had been permitted, converting it into a petition u/s 163A of the Act, can be of no avail to the appellants.

11. No other point has been urged.

12. Keeping in view the aforesaid, the impugned award dated 19.08.2008 passed by the Tribunal does not call for any interference by this Court.

13. Accordingly, this appeal is dismissed being devoid of merit with no order as to costs.