

(2019) 09 SHI CK 0125

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 100 Of 2012

Sarita Devi & Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. & Others

RESPONDENT

Date of Decision : 30-09-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2019) 09 SHI CK 0125

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Megha Kapur Gautam, G.C. Gupta, Meera Devi, Vijay Bhatia, Vikas Rajput

Final Decision : Allowed

Judgement

Sureshwar Thakur, J

1. The instant appeal is directed, by, the aggrieved predecessor-in-interests, of, the deceased claimant, and, against, the dismissal, of, the apposite claim petition, by, the learned Motor Accident Claims Tribunal-II, Mandi, District Mandi, H.P.

2. Though, the, apposite claim petition was cast, under, the provisions, of, Section 163-A, of, the Motor Vehicles Act, and, when hence the learned Tribunal, rather, without, determining, the, commission, of, tort of negligence, if any, of the deceased, or, of, respondent No.1, was, hence enjoined, to, make determination of compensation, in, accordance, with, the schedule appended, with, the Motor Vehicles Act, (i) rather, it proceeded to make, an, order of dismissal, upon, Claim Petition No. 74 of 2006, through, its, meteing fallacious reasons, (a) and also, it, misbefittingly not only struck issues, with, respect to deceased Krishan Lal, suffering his end, by, the rash, and, negligent manner, of, parking, of, the offending truck, (b) also it struck, an, issue, vis-a-vis, the relevant mishap, in sequel whereto, deceased Krishan Lal, met his end, rather,

happening from, a, tort of negligence, becoming committed, by, the afore deceased Krishan Lal, (c) also, it erringly proceeded to receive evidence thereon, and, thereafter concluded, through, placing reliance, upon, a verdict, rendered by the Apex Court, in, Oriental Insurance company vs. Prem Lata Shukla, 2007 (13) SCC 476, and, upon, a, verdict of this Court, rendered, in, case titled, Ginni Devi, vs. Union of India & others, 2008 (1) SLJ P&H 152, and, upon, a, verdict titled Shashikali Swain vs. Khairuddin, and, another, reported, in, AIR 2000 Orissa 52, quaeven, vis-a-vis, a, claim petition cast, under, Section 163-A, of, the Motor Vehicles Act, it being amenable to determine, fault if any, of, the aforestated, and, visibly also it proceeded, to, return findings against, the, deceased.

3. The afore assigned reasons, are grossly, unmeritworthy, and, are, amenable, for, rejection given, (i) only upon, a, claim petition cast under Section 166, of, the Motor Vehicles Act, rather enjoining, the, determination(s), of fault if any, or dereliction(s), if any, of the, driver(s) concerned, in, driving the vehicle(s) concerned, (ii) and rather, the, fault of the driver(s) concerned, being not adjudicable, vis-a-vis, a petition cast, under, Section 163-A, of, the Motor Vehicles Act, (iii) also the learned MACT concerned, has not only, mis-understood, the, afore cited judgments, also has mis-applied, the, afore judgments, vis-a-vis, a claim petition, cast under Section 163- A, (iv) significantly, when the afore judgments, are, rendered, upon, a, petition cast, under, Section 166 of the Motor Vehicles Act, and, when only, vis-a-vis, a petition cast, under, Section 166, hence fault is required, to, be determined, (v) and, when hence, the, afore judgments were inapplicable, rather renders, the placing(s), of, reliance thereon(s), by, the learned Tribunal, being construable, to be, an obviously mis-befitting, and, also, a, fallacious recouring.

4. Furthermore, also hence none, of, the afore fault issues were required, to be, struck, nor, any evidence was enjoined to be adduced thereon, and, contrarily, the learned Tribunal was enjoined, to, without determination, of fault, if any, of, the purported tortfeasor(s) concerned, rather make determination, of, compensation, in consonance, with, the schedule, appended with the Motor Vehicles Act, (i) and, thereafter, it was incumbent, upon, the learned Tribunal, to, on evidence being adduced, vis-a-vis, the driver, of, the offending truck, holding, a, valid and effective driving license, and, also evidence being adduced, vis-a-vis, the offending vehicle, standing, validly insured with the insurer, to, thereafter, in accordance with law, fasten the apposite indemnificatory liability(ies), upon, the insurer, or, upon the registered owner, of, the offending vehicle. However, visibly, rather, findings, upon, the afore issues, remain unreturned, merely, upon, the, aforestated fallacious reasons, vis-a-vis, the deceased committing, the, tort of negligence.

5. The sequel of the above discussion, is, that the instant appeal, is, meritworthy, and, is allowed. Consequently, after allowing the appeal, the, impugned award is set aside, and, the learned Tribunal, is, directed, to, on

remand, of, the lis qua it, hence determine, within three months hereinafter, hence compensation, vis-a-vis, the claimants, in consonance with the schedule, appended, to the Motor Vehicles Act, and, thereafter, in accordance with law, saddle the apposite indemnificatory liabilities, upon, the insurer, or, upon the registered owner, of, the offending vehicle. All pending applications also stand disposed of. Records be sent back forthwith.