
(2009) 03 SHI CK 0043
In the High Court Of Himachal Pradesh

Sohan Singh and Another

APPELLANT

Vs

National Insurance Co.

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2009) ACJ 2869 : AIR 2009 HP 62 : (2011) 7 RCR(Civil) 1346 :
(2009) 1 ShimLC 529

Hon'ble Judges : Surjit Singh, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—The present appeal was required to be heard by a Single Bench of this Court, according to the rules of business. It was adjourned sine-die, with the observation that the same be listed for hearing only after FAO No. 410/2002 (which had been referred to a larger Bench) is decided, because common question of law which was not settled by any judicial precedent of the Apex Court were involved in both the matters. FAO No. 410/2002 stands disposed of. However, the question which was referred to the larger Bench in the said appeal was not determined, with the observation that the same did not arise in that appeal.

2. We have heard the counsel for the parties and gone through the record. Relevant facts are that appellants, who are the parents of late Parveen Kumar, filed a petition u/s 163-A of the Motor Vehicles Act, claiming compensation for the death of said Parveen Kumar in a vehicular accident involving Jeep No. HP-08-0014 belonging to one of the claimants namely Sunita Kimta mother of the deceased. Vehicle in question was being driven by Parveen Kumar deceased himself when the accident took place. Learned Accident Claims Tribunal dismissed the petition, holding that the sole respondent i.e. National Insurance Company was not liable to pay compensation and the petitioners were not competent to maintain the petition u/s 163-A of the said Act.

3. A Division Bench of this Court in Smt. Kokla Dev v. Chet Ram and Anr. 2002 (1) Shim. L.C. 204 held that a petition u/s 163-A is maintainable by the dependents of a deceased person who himself is responsible for causing the accident resulting in his death. However, a learned Single Judge of this Court in FAO (MVA) 410/2002 took a different view and held that if a person himself is responsible for causing the accident, his dependents cannot claim compensation u/s 163-A of the Motor Vehicles Act. A review petition was filed and the learned Single Judge (Hon''ble Chief Justice Sh. V.K. Gupta, as he then was allowed the review petition and recalled the order and directed that the matter be heard by Division Bench.

4. Hon''ble Supreme Court in Oriental Insurance Company Ltd. v. Rajni Devi and Ors. (1) 2009 ACC 297 (SC) has set the controversy at rest. It has been held that the liability u/s 163-A of the Act is on the owner of the vehicle and a person cannot be both a claimant as also a respondent. In the case before Hon''ble Supreme Court, one Janak Raj, owner of a two wheeled vehicle, who was riding the pillion, had died. His dependents claimed compensation u/s 163-A from the insurer of the vehicle. Hon''ble Supreme Court held that the heirs of Janak Raj could not have maintained a claim in terms of Section 163-A of the Motor Vehicles Act.

In view of above stated legal position, we find no merit in the present appeal because one of the claimants is the owner of the vehicle and the deceased was himself responsible for causing the accident. The same is, therefore, dismissed.