
(2014) 10 P&H CK 0114
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 1267 of 2014 (O and M)

Subhash	Vs	APPELLANT
Sarjit and Others		RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 167

Citation : (2015) 2 ACC 942

Hon'ble Judges : Rekha Mittal, J.

Bench : Single Bench

Advocate : Arun Yadav, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Rekha Mittal, J.?The present appeal has been directed against the award dated 15.11.2013 passed by the Motor Accident Claims Tribunal, Rewari (in short, "the Tribunal") whereby the application filed by the claimant for grant of compensation under Section 166 of the Motor Vehicles Act, 1988 (in short, "the Act") has been dismissed. Subhash, the injured victim, preferred an application for grant of compensation on the premise that on 26.12.2010 at about 11.00 a.m., he was supplying Bajra Pooli to the thresher attached with tractor No. HR-36-M 0575 owned by his father and his left hand got entangled in the thresher (machine). He was immediately taken to Dr. Atam Parkash Hospital, Rewari where he was operated upon for traumatic amputation of the hand at wrist level.

2. The learned Tribunal while deciding issue Nos. 2 to 4 rejected claim of the applicant/appellant for the reasons recorded in paras 19 to 26. A relevant extract from paras 19 to 26 is reproduced hereunder for ready reference:

"19. This is a petition under Section 166 of the Motor Vehicles Act which pre-supposes a vehicular accident due to fault/negligence of a person other than the claimant himself. The case of the petitioner is that while he was operating the

thresher, attached to the tractor, his hand got entangled therein as a result of which it had to be amputated. No negligence is attributed to any body. Hence, the question is as to whether the petitioner under Section 166 of the Motor Vehicles Act is maintainable?

20. To bring his case within the provisions under Section 166 of the Act, learned Counsel for the petitioner places reliance upon *New India Assurance Co. Ltd. Vs. Gulab Chand Chorasya and Others*, ; *Oriental Insurance Company Ltd. Vs. Smt. Manorama Devi and Others*, and *National Insurance Company Limited v. Meera and Others*, I (2010) ACC 333 : 2010 ACJ 2272.

21. I have gone through these pronouncements carefully. In *New India Assurance Company Limited v. Gulab Chand Chorasya's* case (supra), it was held that if a driver makes a claim against the owner who was insured, then the entitlement of proceed against his owner through the provisions of Section 166 of the Motor Vehicles Act will not extended to a situation where the driver himself was tortfeasor. However, if the accident arises out of a situation where the driver himself was not at fault and he could not be said to be a tortfeasor, then the proceedings against his own employer would not be barred under the provisions of Section 166 of the Motor Vehicles Act. This judgment will not be applicable to the facts in hand. In that case, the driver of the truck was an employee of the insured. He was found to be not at a fault as the accident had arisen when a cow had darted across the road and when the driver tried to save the cow by taking a turn, the vehicle fell outside the road and capsized. The Hon'ble High Court held that the representatives of the driver had, by virtue of Section 167 of the Motor Vehicles Act, option to claim compensation either under the Motor Vehicles Act or Workmen's Compensation Act. In the instant case, the petitioner is not an employee of the insured. He is his son. Therefore, option under Section 167 of the Motor Vehicles Act is not available to him.

22. In *Oriental Insurance Company Limited v. Manorama Devi's* case (supra), the driver, due to his rash driving, lost control of the truck and it hit against a tree resulting in his death. His legal heirs filed a claim petition under Section 166 of the Motor Vehicles Act. Since, additional premium had been paid covering the risk of driver, the Insurance Company was held liable to indemnify the insured against his legal liability under the Workmen's Compensation Act or Fatal Accidents Act or common law. This judgment of Hon'ble High Court of Chhattisgarh is not applicable to the case in hand in view of the law laid down by our own Hon'ble High Court in *New India Assurance Company Limited v. Gulab Chand Chorasya's* case (supra), for the sole reason that the truck driver himself was tortfeasor and, hence, could not maintain petition under Section 166 of the Act.

23. In *National Insurance Company Limited v. Meera's* case (supra), the deceased was employed with the insured as agricultural labour. In the process of thrashings of the crop he got entangled in the thresher as a result of which he died. It was held that where the tractor is insured and victim is a third party, the

Insurance Company could not escape its liability. In the instant case, the victim is not a third party, but the son of the insured himself.

24. The fact remains that the petitioner herein is the son of the insured. He cannot be treated as an employee as admitted by RW1 Sarjeet. Therefore, it is not a third party. He stepped into the shoes of the owner/insured. Therefore, option under Section 167 of the Motor Vehicles Act is not available to him and as such, the petition under Section 166 of the Motor Vehicles Act is not maintainable.

25. The Tribunal could have suo motu treated the petitioner to be one under Section 163A of the Motor Vehicles Act had the petitioner been a third party, but he being the son of the insured even that may not be possible.

26. In view of the law laid down by the Hon"ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others, , Section 163A of the Motor Vehicles Act cannot be said to have any applicability in regard to the accident where the owner of the motor vehicle himself is involved and the accident did not involve the motor vehicle other than the one which he was driving/using."

3. Counsel for the appellant contends that even if the appellant was a tortfeasor, it cannot be said that the claim is not maintainable. For this purpose, he has referred to judgment of this Court in New India Assurance Co. Ltd. Vs. Gulab Chand Chorasya and Others, .

4. Another submission made by Counsel is that if the application under Section 166 of the Act is not maintainable, the Tribunal should have treated the petition to be one under Section 163A of the Act and award compensation.

5. I have heard Counsel for the appellant and perused the records particularly the award passed by the learned Tribunal.

6. The plea of the appellant that the appellant is entitled to compensation even if he happens to be a tortfeasor while relying upon judgment of this Court in New India Assurance Co. Limited's case (supra) is misconceived and merits outright rejection. In the referred authority, it has been held that if the accident has arisen out of a situation where the driver himself was not at fault and he could not be said to be a tortfeasor, then a proceeding against his own employer and the insurer is not barred under the provisions of Section 166 of the Motor Vehicles Act. It could include situations when there is a mechanical failure or when accident has been on account of instances of vis major. In this case, the accident has arisen in a situation where a cow had darted across the road and when the driver tried to save the cow by taking a turn, the vehicle fell out of the road and capsized. The Tribunal had found that the accident had taken place without any fault on the part of the driver and hence even the proceedings of a criminal complaint had been dropped. If there was no negligence on the part of the driver, then there is no merit in the contention that the proceedings could not be taken under the Motor Vehicles Act.

7. With regard to plea of the appellant that compensation could be granted by

treating the petition under Section 163A of the Act, the learned Tribunal has dealt with this aspect in paras 25 and 26 quoted hereinbefore and rejected plea of the appellant. This apart, Counsel for the appellant is fair enough to concede that as per the case set up by the claimant, he was earning Rs. 7,000 per month and an application for grant of compensation under Section 163A of the Act can be maintained where the gross income of the victim is less than Rs. 40,000 per annum.

8. Taken from any angle, there is no merit in the contention of the appellant and as a result I do not find any error much less illegality in the findings recorded by the learned Tribunal. Dismissed in limine.