
(2019) 05 UK CK 0313
In the Uttarakhand High Court
Case No : Appeal From Order No. 472 Of 2018

Sudarshan

APPELLANT

Vs

Mangatram (Major) & Others

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 158(6), 163A, 165(1), 166

Citation : (2019) 05 UK CK 0313

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Girish Chandra Lakhchaura, Deepak Rawat

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. Before answering the argument as extended by the learned counsel for the parties, it is essential to make reference to the provisions contained under Section 166 of the Motor Vehicle Act, which deals with the circumstances and conditions under which the claimants would be entitled to claim for the compensation on occurrence of an accident, resulting to injuries or death. Section 166 of the Motor Vehicle Act is quoted hereunder.

"166. Application for compensation.-

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal

representatives of the deceased, as the case may be: Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. 1[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed: Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.] 2[***] 3[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]"

2. Whereas, on the other hand, the provisions as provided under the Motor Vehicle Act under Section 163-A, it altogether contemplates to deal with a different situation for the purposes of determination of the compensation. Although that may not a bone of contention for considered at this stage when the counsels are being heard against the impugned award dated 05.10.2018 where the claim petition preferred by the appellant, has been decided under Section 166 of the Motor Vehicle Act has been rejected in toto.

3. Leaned counsel for the appellant has argued that in order to prove his case before the court below that the accident has occurred on account of rash and negligent driving of the offending vehicle, was sought to be prove, the same by producing an oral testimony of the witnesses adduced by the claimant to show that accident caused was due to rash and negligent driving of the vehicle, but the Motor Accident Claim Tribunal in order to come to a conclusion with regard to the factum of rash and negligent driving, has held that the theory of rash and negligent driving since was not referred to or mentioned in paper no. 9ga, which was the FIR lodged on 13.09.2015, hence no claim could be granted with regards to the accident. This Court is of the view that under no stretch of application of law the contents of the FIR, could be taken as to be the basis to derive the logic of non pleading of rash and negligent driving, there in the FIR, to deny claim under Section 166 of Motor Vehicle Act, which has resulted into the accident. Even otherwise also, if the language of Section 166 is taken into consideration, it does not contemplate that for availing a claim, an establishment of pleading by facts to the effect that the accident was caused on account of rash and negligent driving of the vehicle is not an essential ingredient for considering of the claim under Section 166 of the Motor Vehicle Act, because that would be an aspect, which is required to be considered by the Tribunal at the time when the case itself is being adjudicated on merits. Even the ratio, which has now been propounded by the Hon'ble Apex Court, as far as the issue pertaining to the

establishment of rash and negligent driving is concerned, was the aspect pertaining to the cause of accident or being the cause due to an act of God, has now been diluted by the judgments of various courts, and it has been held that, each case has to be considered on its own merits and under the circumstances of its own which was prevalent and involved at the time of the accident, which is to be proved by the claimant by bringing evidence on record.

4. However, in the case at hand since the logic which has been derived by the Motor Accident Claim Tribunal, that from the contents of the FIR, it is not proved, nor it was complaint of in the FIR that the accident was caused, due to the rash and negligent driving of the Vehicle it cannot be derived from the FIR, for the purposes of rejecting the claim under Section 166 of the Motor Vehicle Act.

5. The contents of the FIR, and the allegations as set out in it or the language used there in it, its absolutely for different set of proceedings to be held on the criminal side. Its contents will and should not have any bearing on the proceedings of claim under the Motor Vehicle Act, which is independent to the proceedings under the Code of Criminal Procedure.

6. Learned counsel for the respondent has made a reference to a judgment reported in 2012(4) SCC 532 'Surendra Kumar Arora & Another vs. Manoj Bisla & Others', which has also been considered by the Tribunal, while rejecting the claim to the effect that the pleading pertaining to the rash and negligent driving is one of the factors, which is to be taken into consideration for determining the compensation under Section 166 of the Motor Vehicle Act, the said ratio is not disputed. But as far as this aspect pertaining to their being a distinct proceedings under Section 163-A and 166 and as to whether the claim raised by the claimant falls to be under Section 166 or 163-A are the facts which are to be established or settled by the parties by leading their respective evidences and the reasons which are to be derived by the Motor Accident Claim Tribunal, by reading the terms of the FIR paper no. 9ga to conclude that there was no plea of rash and negligent driving, cannot be borrowed for the purposes of dealing with the proceedings under Section 166 or under Section 163-A of the Motor Vehicle Act for the purposes of rejecting the claim petition.

7. At this stage it would be also relevant to take into consideration a judgment reported in 2001(2)SCC 9 'Kaushnuma Begum vs. New India Insurance Company Ltd.', wherein, the Hon'ble Apex Court has held that the jurisdiction of the Tribunal is not restricted for deciding the claim based on the plea of negligence of the driving the vehicle by offending vehicle. Paragraphs 11 & 12 are quoted hereunder:

"11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action.

12. Like any other common law principle, which is acceptable to our jurisprudence, the Rule in Rylands vs. Fletcher can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents."

8. When as per the aforesaid ratio when the pleading of rash and negligent driving has no bearing over the proceedings of claim, in these circumstances, the judgment cannot be sustained and deserves to be quashed.

9. In that view of the matter, since the rationale which has been applied by the Motor Accident Claim Tribunal for rejecting the claim is based on the interpretation of the contents of the FIR, which was outside the ambit of Section 166 and cannot be derived or extracted from the FIR to reject the claim raised under Section 166 of the Motor Vehicle Act, the Appeal from Order is allowed. The impugned award dated 05.10.2018 is quashed. The matter is remanded back to the Motor Accident Claim Tribunal to decide the claim petition afresh on its merits, in accordance with law.