

(2006) 12 P&H CK 0071
In the Punjab And Haryana At Chandigarh

United India Insurance Company Limited	APPELLANT
Vs	
Sheela Devi and Others	RESPONDENT

Date of Decision : 14-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2007) 1 ACC 599

Hon'ble Judges : Mahesh Grover, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

1. This appeal has been preferred by the Insurance Company against the award of the Motor Accident Claims Tribunal (for short, "the Tribunal") awarding Rs. 2,50,000 to the heirs of the deceased Pal.

2. Case of the claimants is that the deceased Pal boarded bus No. HR-46-2264 on 25.10.2002 at 10.30 a.m. from Village Julana for going to Khanda Kheri. The bus was fully loaded with the passengers and was being driven by Rajbir, driver, rashly and negligently, on account which, the deceased fell down from the window of the bus, but the driver continued to drive the bus in spite of alarm raised by the passengers. The matter was reported to the police. The post-mortem of the deceased was conducted.

3. The driver, owner and the Insurance Company contested the claim. The stand of the driver was that the deceased did not die due to injuries sustained in the accident, but he died by suffering heart attack. Following issues were framed:

1. Whether the accident in question resulting in the death of Pal son of Sh. Lal Chand was caused on account of rash/negligent driving of bus No. HR-46-2264 by respondent No. 1 Rajbir?

-OPP

2. If issue No. 1 is proved, what is the amount of compensation to which the petitioners are entitled and from whom?

-OPP

3. Whether the respondent No. 1 had no valid licence to drive the vehicle at the time of this accident? If so, to what effect?

-OPP-4

4. Relief.

4. Under issue No. 1, the Tribunal held that the deceased died on account of rash and negligent driving by the driver of the bus. Reliance was placed on the evidence of PW 5, Yashpal, who was travelling in the same bus, which was corroborated by the FIR Exh. P2 and report u/s 173 of the Code of Criminal Procedure Exh. P3. Medical evidence showed that the deceased had suffered injuries on the back side of the head which could be on account of fall from the window of the bus. The Tribunal held that the deceased was having income of Rs. 3,000 per month, as he was working as Mechanic and after deducting 1/3rd share of the income for his own expenses, dependency was worked out at Rs. 2,000 per month. Thus, by applying multiplier of 10, compensation was worked out at Rs. 2,50,000 after adding a sum of Rs. 10,000 towards expenses for performing last rites.

5. Learned Counsel for the Insurance Company submitted that the claim petition was filed u/s 163A of the Motor Vehicles Act, 1988 (for short, "the Act"), wherein, the income of the deceased was alleged to be more than Rs. 40,000, which could not be scaled down in view of judgment of this Court in Himachal Road Transport Corporation and Another Vs. Baldev Kumar Nayyer and Others, , which also refers to a judgment of Hon''ble Supreme Court i.e. Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, .

6. We are unable to accept the submissions made. The Tribunal has distinguished the judgment relied upon and instead relied upon the judgment reported in Sharabai and Anr. v. P. Sahebkhani and Ors. 2006 ACJ 229 by assuming that the said judgment was also a judgment of this Court. In fact, the said judgment has been rendered by Karnataka High Court. Even if we proceed on the basis that the judgment of this Court in Himachal Road Transport Corporation's case (supra) is applicable, the result remains the same. The judgment relied upon after holding that the petition u/s 163A of the Act was not maintainable, the matter was remanded for fresh decision by treating that application to be u/s 166 of the Act. In the present case, the Tribunal has already followed the said procedure and recorded a finding that death took place on account of rash and negligent driving. A specific issue was framed and evidence was led. The Tribunal has not proceeded on no fault basis.

7. We may also notice the judgment of the Hon''ble Supreme Court in Deepal Girish Bhai Soni's case (supra), wherein, the question involved was whether proceedings u/s 163A of the Act were final proceedings or interim proceedings. It was held that proceedings u/s 163A were not interim proceedings, but final

proceedings and once a trial takes place on merits, a different proceeding could not be instituted. Where only one petition is filed u/s 163A, but procedure of Section 166 of the Act is followed after framing the issue of negligence, if plea of non-applicability of procedure of Section 163A of the Act is to be upheld, claimant cannot be deprived of compensation u/s 166 of the Act. It may, however, be noted that a claimant cannot pursue his remedy simultaneously under both the provisions. Both the provisions are distinct and separate in nature.

8. In view of above, we affirm the finding of the Tribunal that accident took place on account of rash and negligent driving of the driver and, as such, the claimants were entitled to compensation, which has been awarded by the Tribunal.

9. In view of above, the appeal is dismissed.