

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No.1037 of 1998 (O&M)
Date of Decision: May 31, 2017**

Baldev Kaur and others

..Appellant(s)

Versus

Om Parkash and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Neeraj Khanna, Advocate
for the appellants.

Mr. Kashish Garg, Advocate
for respondent no.1.

Mr. D.P. Gupta, Advocate
for respondent no.2-insurance company.

ANITA CHAUDHRY, J.

This is the claimants' appeal against the order of dismissal dated 12.03.1998, passed by the Motor Accident Claims Tribunal, Bathinda.

A petition under Section 163-A of the Motor Vehicle Act was filed by the legal heirs of Sukhdev Singh. He died in an accident which occurred on 07.04.1994. It was filed on 03.11.1995 and subsequently amended in 1997. The deceased was 35 years old and had a monthly income of Rs.2,000/-. A DDR was registered with respect to this accident on 08.04.1994.

Sukhdev Singh was returning from Ambala. His vehicle developed a snag and went out of order and struck against the tree as a result Sukhdev suffered injuries on his vital organs and died on the spot.

A number of objections were raised by the owner and the insurance company. It was pleaded that no accident had taken place and the Court had no territorial jurisdiction. Plea of limitation was taken. It was pleaded that a claim petition could be filed within six months of the accident and no application seeking condonation had been filed. It was pleaded that the claim could have been filed under the Women Compensation Act and that too if it was permissible under that Act. It was also pleaded that the driver was not having a valid licence or a road permit and the deceased himself had violated the terms of the policy. The following issues were framed:-

1. Whether claimants are legal heirs of Sukhdev Singh deceased? OPA
2. Whether Sukhdev Singh died on account of accident involving vehicle No.PAW-3882 in the revenue limits of Bhawanigarh Kanchian on 07-04-1994? OPA
3. Whether claimants are entitled to recover the amount of compensation, how much and from whom? OPA
4. Whether this Court has territorial jurisdiction to entertain the present application? OPA
5. Whether the application is maintainable in the present form in this Court? OPA

6. Whether the claim is preferred within time? OPA
7. Whether Sukhdev Singh did not have a valid driving licence at the time of accident took place? OPR-2
8. Whether respondent was not holding a valid registration certificate, fitness certificate at the time of accident? OPR-2
9. Relief

The Tribunal gave a finding only on issue nos. 4 to 6 holding that the claim was barred by limitation. It was held that the deceased was employed with Om Parkash-respondent no.1 and the claim could be filed only under the Workmen Compensation Act. The claim petition was rejected on the ground of limitation and maintainability, however, permitting the claimants to approach the Commissioner under the Workmen Compensation Act.

The submission on behalf of the appellants is that under the Motor Vehicles Act, 1988 limitation had been prescribed but after the deletion of Section 166(3) of the Motor Vehicle Act there was no limitation and the petition could not have been dismissed on the ground on delay. Reliance was placed upon ***Dhannalal Vs. D.P. Vijayvargiya 1996(3) RCR (Civil) 76***. It was urged that the Tribunal has rejected the petition on the ground of maintainability but workmen Compensation Act was not applicable and it is the choice of the claimants and they can approach under either of the Act. It was urged that the petition be remanded or a report from the Tribunal be called.

The submission on the other hand was that the law which was prevailing on the date of the accident has to apply and the provisions under Section 163-A of the Motor Vehicle Act, 1988 were not in the statute book and it is prospective in nature and the claim was not maintainable under Section 163-A of the Motor Vehicle Act, 1988 as that provision did not exist and though this aspect has not been dealt with but it is clear that the claim will not lie and therefore, the question of remand does not arise. It was urged that the Full Bench of Karnataka High Court had dealt with the issue in ***Guruanna Vadi and another Vs. The General Manager, Karnataka State Road Transport Corporation and another 2001 ACJ 1528*** and the question which was re-framed before the Full Bench was whether Section 163-A of the Motor Vehicle Act would be applicable to claims made in respect of accidents which took place prior to its introduction i.e. 14.11.1994. It was urged that the Division Bench of the Delhi High Court in ***Rattan Lal Mehta V. Rajinder Kapoor, 1996 ACC CJ 72*** had also taken a view in the matter which was accepted and it was held that Section 163-A is prospective in operation and would be applicable to accidents which occurred after the Section was added and not to accidents which took place prior to its introduction.

The Tribunal had formed a view that the claim petition was barred by limitation but this aspect had been settled by the Hon'ble Apex Court in ***Dhannalal's*** case (supra) and para nos.7 & 8

read as under:-

“In this background, now it has to be examined as to what is the effect of omission of sub-section (3) of [Section 166](#) of the Act. [From the Amending Act](#) it does not appear that the said sub-section (3) has been deleted retrospectively. But at the same time, there is nothing in the [Amending Act](#) to show that benefit of deletion of sub- section (3) of [Section 166](#) is not to be extended to pending claim petitions where a plea of limitation has been raised. The effect of deletion of sub-section (3) from [Section 166](#) of the Act can be tested by an illustration. Suppose an accident had taken place two years before 14.11.1994 when sub-section (3) was omitted from [Section 166](#). For one reason or the other no claim petition had been filed by the victim or the heirs of the victim till 14.11.1994. Can a claim petition be not filed after 14.11.1994 in respect of such accident? Whether a claim petition filed after 14.11.1994 can be rejected by the Tribunal on the ground of limitation saying that the period of twelve months which had been prescribed when sub-section (3) of [Section 166](#) was in force having expired the right to prefer the claim petition had been extinguished and shall not be revived after deletion of sub-section (3) of [Section 166](#) w.e.f. 14.11.1994? According to us, the answer should be in negative. When sub-section (3) of [Section 166](#) has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when sub-section (3) of [Section 166](#) was in force. It need not be impressed that Parliament from time to time has introduced amendments in the old Act as well as in the new Act in order to protect the interest of the

victims of the accidents and their heirs if the victims die. One such amendment has been introduced in the Act by the aforesaid [Amendment Act 54 of 1994](#) by substituting sub-section (6) of [Section 158](#) which provides:

"As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

In view of sub-section (6) of [Section 158](#) of the Act the officer incharge of the police station is enjoined to forward a copy of information/report regarding the accident to the Tribunal having jurisdiction. A copy whereof has also to be forwarded to the concerned Insurer. it also requires that where a copy is made available to the owner of the vehicle, he shall within thirty days of receipt of such copy forward the same to the claims Tribunal and insurer. In this background, the deletion of sub-section (3) from [Section 166](#) should be given full effect so that the object of deletion of said section by the Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filling the claim petition is pending either before the Tribunal, High Court or the Supreme Court. The present appeal is one such case. The appellant has been pursuing from Tribunal to this Court. His right to get compensation in connection with the accident in question is being resisted by the respondents on the

ground of delay in filling the same. If he had not filed any petition for claim till 14.11.1994 in respect of the accident which took place on 4.12.1990, in view of the [Amending Act](#) he became entitled to file such claim petition, the period of limitation having been deleted, the claim petition which has been filed and is being pursued upto this Court cannot be thrown out on the ground of limitation.”

The more important question which was not dealt with was entirely different. The accident admittedly had taken place on 07.04.1994. Section 163-A was introduced w.e.f. 14.11.1994, therefore, no claim could have been filed with respect to accidents which occurred prior to 14.11.1994. The claimants were seeking compensation on the no fault liability ground. A new right was created in favour of the claimants in November 1994. It did not exist when the accident took place. The question before the Full Bench were answered in para 28, which reads under:-

28. Question No. 3: This question should not detain us for long. Every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Every enactment which takes away or impairs vested rights under existing laws or creates a new obligation or imposes a new duty or attaches a new disability must be presumed to be intended not to have retrospective effect. [Section 163-A](#) takes away the right of the owner or the insurer to defend the claim and creates an obligation to pay the compensation fixed under the Second Schedule without demur. [Section 163-A](#) is, therefore, a statute which deals with substantive rights and it is only if the new provision affects matters of procedure only then it would apply to all actions, both pending as well as future. This is based on the fact

that no person can have a vested right in any course of procedure but it cannot be said so in the case of a substantive right. The owner or the insurer had a right to defend the claim for compensation which is a substantive right and this right is taken away by Section 163-A and therefore it can be given only prospective effect and not retrospective effect. That the intention of the Legislative was to give it only a prospective effect can also be gauged from Sub-Section (3) of Section 163A which reads:

“The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time-to-time amend the Second Schedule.”

It was held that the application of Section 163-A of the Motor Vehicle Act is prospective in nature. It is held that Section 163-A is prospective in operation and would be applicable to accidents which occurred after the Section was added and not to accidents which took place prior to its introduction. The claim was not maintainable.

There is no merit in the appeal and is dismissed.

May 31, 2017

sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No