

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 152 of 2019

Reserved on: 7.11.2019

Decided on: 29.11.2019

Prem Lal and another

.....Appellants.

Versus

Ripen and another

.. ..Respondents

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ yes

For the Appellant:

Mr. Prakash Sharma,
Advocate.

For Respondents:

Mr. Amandeep Sharma,
Advocate, for respondent No.
1.

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Whether reporters of the local papers may be allowed to see the judgment?

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Mr. Ashwani K. Sharma,
Senior Advocate with Mr.
Ishan Sharma, Advocate, for
respondent No. 2

Sureshwar Thakur, Judge (oral).

The instant appeal, stands directed, by the aggrieved legal heirs, of, deceased Ajay Kumar, who met his end, in a motor vehicle accident, hence, involving a motor cycle, bearing registration No. HP-55-7905, (i) wherethrough the relief, of, therein determined hence compensation amount, became declined, to, the claimants. Initially, at the outset, it is to be borne in mind, that, the claim petition, as, constituted before the learned MACT concerned, became constituted, under, the provisions, of, Section 163-A of the Motor Vehicles

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Act, (i) necessarily hence the apposite fault, of, deceased Ajay Kumar, who was atop, hence vehicle bearing No. HP-55-7905, was, not enjoined to be adjudicated upon. However, the learned Tribunal, in, the impugned verdict, had, declined, the, awarding of compensation, to, the LRs of the afore deceased, on anvil, of, a judgment rendered, by the Hon'ble Apex Court, in case titled as **"Ningamma and another versus United India Insurance Co. Ltd."**, reported in 2009 ACJ 2020, (ii) wherein an expostulation of law, is, embodied, vis-à-vis, the Insured of the vehicle concerned, stepping

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into shoes of the owner, and, also his becoming barred to claim hence compensation, as the liability, to pay the same, is, upon him. However, for the reasons, to be assigned hereafter, the fastening, of, any absolutest reliance, upon, the afore verdict, is mis-befitting, (iii) as the learned Tribunal, has chosen to mete, only a, piecemeal deference, vis-à-vis, the afore mandate, borne, in the judgment (supra), rendered by the Hon'ble Apex Court, than its proceeding to, render also deferences, to, thereafter, hence occurring, paragraphs 25 and 26, in, the Judgment (supra), paras whereof, stand extracted, hereinafter:

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“25. Undoubtedly, section 166 of the MVA deals with ‘just compensation’ and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting ‘just compensation’ in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award ‘just compensation’ irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms

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and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court.

26. While entertaining the appeal, no effort was made by the High Court to deal with the aforesaid issues and, therefore, we are of the considered opinion that the present case should be remanded back to the High Court to give its decision on the aforesaid issues. The High

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Court was required to consider the aforesaid issues even if it found that the provision of Section 163-A of MVA was not applicable to the facts and circumstances of the present case. Since all the aforesaid issues are purely questions of fact, we do not propose to deal with these issues and we send the matter back to the High Court for dealing with the said issues and to render its decision in accordance with law. The High Court will also consider the question of quantum of compensation, if any, to which the claimants might be entitled to, having regard to the earning capacity of the deceased and 'just compensation', if any. Since

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the claim is a very old claim, we request the High Court to consider the matter as expeditiously as possible."

(i) And wherein the Hon'ble Apex Court, has made a further expostulation of law, qua it being incumbent upon the MACT concerned, to, dehors, no claim petition, becoming constituted therebefore, rather under, the provisions, of, Section 166, of, the Motor Vehicles Act, to rather assess 'just compensation', vis-à-vis, the claimant, (iv) and also, it proceeding, to, for facilitating, the, afore determination, hence making an order or remand, to, the High Court, to, enable, it, to make the afore computation, vis-à-vis, the claimants therein, dehors,

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any inapplicability, of, the provisions, of, Section 163-A, of, the Motor Vehicles Act, vis-à-vis, the apposite claim petition. Even though, the afore made expostulation, in, paragraphs No. 25 and 26, of, the verdict (supra), of, the Hon'ble Apex Court, does, substantially override, the, therebefore occurring rather apt mandate in the verdict (supra), (v) whereupon(s) hence the reliance, as, placed, by the MACT concerned, to, hence decline, the, awarding, of, determined compensation amount, vis-à-vis, the claimants, may become validated, and, would also, hence constrain this Court, to, make an alike therewith hence an order, of, remand, to the MACT concerned. However, for, the

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predominant hereinafter assigned reason(s), this Court is, constrained, to, not adopt, the, afore recourse, given (a) the verdict carrying the afore expostulation, becoming rendered, by, a two judge(s) Bench, of, the Hon'ble Apex Court, and, also, given the prime factum, vis-à-vis, upon, any claim petition, becoming constituted, under, the provisions, of, Section 163-A of the Motor Vehicles Act, hence imperatively enjoining the claimant concerned, to, plead and prove, vis-à-vis, the annual income, of, the deceased concerned, or, of the disabled claimant concerned, becoming pegged, upto, Rs. 40,000/-, (b) and, wants thereof rendering hence the apposite claim petition

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becoming construed to be mis-constituted rather remaining un-adjudicated upon, (c) nor also in the afore verdict, the further conundrum not emerging, vis-à-vis, upon pleadings becoming cast, vis-à-vis, the, income of, the deceased concerned, exceeding Rs. 40,000/-, or, upon the pleaded income, of, the, disabled claimant exceeding Rs. 40,000/-, hence necessitating the precise recursings, vis-à-vis, the apt statutory mechanism, nor, hence in the verdict (supra,) the, recursing(s), of, the, mandate of Section 166 rather becoming pronounced, to, constitute, the, only apt, and, befitting recursings.

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2. Consequently, for want, of, the afore conundrum, hence, emerging before the Bench of, the Hon'ble Apex Court, hence rendering the verdicts (supra), alluded, in, the impugned order, (i) rather, With the afore conundrum, purportedly emerging, and, also becoming dwelt, upon, and being subsequently adjudicated, upon, by a three Bench, of, the Hon'ble Apex Court, (ii) and, whereon, a verdict stood rendered, in a case titled as, "Deepal Girishbhai Soni versus United India Insurance Co.Ltd", reported in (2004) 5 Supreme Court cases 385, (iii) and whereon(s), a, candid expostulation of law, is embodied, hence barring, the, disabled claimant concerned, or the, legal

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representative(s), of, the deceased concerned, to, rear a claim, under, Section 163-A of the Motor Vehicles Act, upon, the, pleaded, and, proven income of the afore(s), at, the relevant time, hence exceeding Rs. 40,000/-, (iv) and, rather upon the afore income, of, the afore, at the relevant time, hence exceeding Rs. 40,000/-, rather it, becoming pronounced therein qua thereon(s), hence the apt recourses remedy, by them, becoming comprised, in, the one constituted, under, Section, 166 of the M.V. Act.

3. Be that as it may, since the extant petition, is, constituted under the mandate, of, Section 163-A

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of the MV Act, and, it remains un-constituted, under, the provisions of Section 166 of the M.V. Act, besides predominantly, when, the, income, of, the deceased concerned, at the relevant time, was pleaded, and, also proven to be exceeding Rs. 40,000/- (i) thereupon reiteratedly, the claimants, may not, recourse, the remedy constituted, under Section 163-A of the Act, whereas, the befitting recoursesable remedy, was, the one constituted, under Section 166 of the M.V. Act. Dehors the above, in the larger interest, of, justice, and, for ensuring qua the claimants' becoming, not, deprived, of, assessment, of, just and reasonable compensation qua them, thereupon, it is open for

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the claimants concerned, to, institute a fresh petition, under, Section 166 of the M.V.Act, before, the learned MACT concerned, and the latter, shall upon its presentation therebefore hence shall make, in accordance with law, an adjudication thereon.

4. Consequently, there is no merit in the petition/appeal and the same is dismissed. The impugned judgment rendered by the learned MACT concerned, in Claim petition No. 43/2 of 2016, is affirmed and maintained. Also, the pending application(s), if any, are also disposed of.

29.11.2019
(kalpana)

(Sureshwar Thakur)
Judge.