



FAO-1535-2006 (O&M)

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**206 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO-1535-2006 (O&M)
Date of Decision: 29.11.2024**

Smt. Neel Kamal Soni and others

.....Appellants

Vs.

Oriental Insurance Company and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. R.S.Bajaj, Advocate,
for the appellants.

Mr. Shashi Kumar Yadav, Advocate,
for respondent No.1-Insurance Company.

Mr. Arsh Bir, Advocate, for
Mr. Nitesh, Advocate,
for respondent No.2.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 26.09.2005 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Jalandhar (for short, 'the Tribunal'), whereby the claim petition filed by the appellants/claimants for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 11.08.2002 at about 3:30 P.M., when the car bearing registration No.CH-03-A-1022 being driven by Avneesh Kumar Soni (since deceased) reached near Kathu Nangal on



Amritsar Batala Highway, all of a sudden, the right front tyre of the car got burst causing the vehicle to lose balance and went off the road. The highway's main road level was elevated by 5 to 6 feet about the surrounding terrain. As a result of which, the car forcefully stuck against the road side tree causing multiple injuries to the occupants of the car. Due to the accident, Avneesh Kumar Soni suffered multiple vascular and spinal injuries and was declared brought dead at Nayyar Hospital. In this regard, FIR No.24 was registered on the same day at Police Station Kathu Nangal.

3. Upon notice of the claim petition, respondents appeared and filed written reply denying the factum of accident/compensation.

4. From the pleadings of the parties, the learned Tribunal framed the following issues:-

“1. Whether Avneesh Kumar Soni died in the accident which took place on 11.08.2002 at about 3:30 p.m. when he was travelling in car Indica bearing registration No.CH-03-A-1022, driven by Avneesh Kumar Soni? OPA.

2. If issue No.1, is proved, whether claimants are entitled for compensation? If so, to what extent and from whom? OPA.

3. Whether claim petition is not maintainable in the present form? OPR

4. Whether Avneesh Kumar Soni was not holding valid driving licence at the time of accident? OPR

5. Whether car No.CH-03-A-1022 was not road worthy and the Insurance Company is not liable to pay compensation? OPR

6. Whether claimants are not entitled for the compensation as prayed for, as claimants are trying to



take advantage of rash and negligent driving of driver of the car? OPR

7. *Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPR*

8. *Relief.”*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence, the present appeal.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the appellants/claimants contends that the claim petition was dismissed only on the ground that no negligence is proved by the appellants/claimants. He prays that the present appeal be converted from Section 166 to Section 164 of the Motor Vehicles Act, 1988 and prayed for compensation as per settled law.

7. *Per contra*, learned counsel for the respondent-Insurance Company, however, vehemently argues on the lines of the award dated 26.09.2005 and submits that the award has rightly been dismissed by the learned Tribunal. Therefore, he prays for dismissal of the present appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. The relevant portion of the award dated 26.09.2005 is reproduced as under:-

“Issue No. 1, 2, 3, 5 & 6:

8. *All these issues are inter-connected and as such I would like to decide all these issues together. In support of these issues, the petitioner examined PW-1 Neel Kamal*



Soni who deposed on oath that on 11.08.2002 they had gone to Batala to attend the Shagun function and her husband Late Sh. Avneesh Kumar Soni was driving the car. While coming back to Amritsar at about 3.30 p.m. they reached near Kathu Nangal on Amritsar Batala highway suddenly the right side front tyre of the car bursted and vehicle got unbalanced and went off the road and forcefully struck against a road side tree causing multiple injuries to the occupants of the car. As a result of this accident her husband and father-in-law died. The respondents have also categorically admitted that the accident had taken place due to the bursting of tyre of the car.

9. *This petition has been filed under section 166 of the Motor Vehicle Act and therefore, it was incumbent upon the claimants to prove negligence before the respondents could be held liable for compensation.*

10. *As observed by the Hon'ble Supreme Court in Minu B. Mehta and another Vs Balkrishna Ramchandra Nayan and another 1977 ACJ 118 the liability of the owner of car to compensate the victim in a car accident due to the negligent driving of his servant is based on law of Tort. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. Therefore, before the master could be made liable it is necessary to prove that the servant was acting during the course of his employment and that he was negligent. The accident to which the owner or the person insuring is liable is to the extent of his liability in respect of death or bodily injury and that liability is covered by the insurance. Therefore, if the owner has not incurred any person, there is no liability and it is not contended to be covered by the insurance.*



Thus, proof of negligence is therefore necessary before the owner and insurance company could be held liable. In this case, the owner of the vehicle involved in the accident was not driving the car himself, rather it was being driven by his brother Avneesh Kumar when the accident took place. There was thus no relationship of master and servant between the owner and the deceased. Moreover, neither it is the pleaded case of the parties nor it has been established on the file that the accident has taken place due to the negligence of the deceased. Therefore, it is clear that there was no liability on the part of the owner to pay the compensation to the deceased under section 166 of the Motor Vehicle Act and therefore, there cannot be any liability of the Insurance Company as well.

11. For the aforementioned reasons, I am of the view that since the claimants have failed to prove that the accident in question has taken place due to the rash and negligent driving of the deceased. Therefore, they are not entitled to any compensation and this petition is not maintainable in the present form. Hence, all these issues are decided against the petitioners and in favour of the respondents.

Issue No. 4 and 7:

12. The onus to prove both these issues was laid upon the respondents, but the learned counsel for the respondents has not pressed these issues during the course of arguments nor any evidence was led to prove these issues. Hence, both these issues are decided in favour of the petitioners and against the respondents.



10. A perusal of the award dated 26.09.2005 reveals that the complainant, while returning to Amritsar at approximately 3:30 p.m., met with an accident near Kathu Nangal on the Amritsar-Batala highway. The accident occurred when the front-right tyre of the vehicle burst unexpectedly, causing the car to lose control, went off the road, and collide with a roadside tree. As a result of this collision, the complainant sustained injuries, while her husband and father-in-law succumbed to their injuries.

11. The respondents have unequivocally admitted that the accident occurred due to the bursting of the tyre. Furthermore, it is established that the vehicle involved in the incident was identified as bearing chassis number CH-03-A-1022.

12. Given the respondents' unambiguous acknowledgment of the tyre burst as the proximate cause of the accident, this Court finds it unnecessary to delve into the question of negligence under Section 166 of the Motor Vehicles Act, 1988. Section 163-A of the Act provides a statutory remedy based on no-fault liability, allowing compensation to be awarded without the requirement to prove negligence on the part of the driver or owner.

13. In the interest of justice and to ensure an expeditious resolution of the matter, this Court deems it appropriate to exercise its inherent powers to treat the present petition as one under Section 163-A of the Motor Vehicles Act, 1988. Such a conversion aligns with the legislative intent to provide relief to victims and their dependents, thereby obviating the need for unnecessary procedural delays.



14. Further, this Court in FAO No.4301 of 2006, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others**” held as under:-

*“11. Hon’ble Supreme Court in the case of **Ram Murti and others Vs. Punjab State Electricity Board** [2022(4) TAC 738] held that the appellants therein to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in the case of death in the amount of Rs.5 lakhs and in the case of grievous hurt of Rs.2.5 lakhs.*

*12. This Court in FAO-195-2006 titled as **Mamta and Others Vs. Happy and Others**, decided on 29.05.2024, held that since Motor Vehicle statute is a beneficial legislation, the Judge should not go into the technicalities of the provisions, under which the application or petition is moved but should apply his judicial mind, as these are only the irregularities and not illegalities which cannot be cured. It has been observed by the Hon’ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically. Further, Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary.”*

15. In view of the above referred to judgments, this Court is now treating the present claim petition/appeal under Sections 164, which is substituted vide 2019 amendment (Act 32 of 2019) from Section 163-A of the Motor Vehicles Act, 1988. Keeping in view the beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides



for payment of compensation in case of death in the amount of Rs.5 lakh and in case grievous hurt of Rs.2.5 lakh. The appellants/claimants are held entitled to compensation to the tune of Rs.5,00,000/-.

CONCLUSION

16. In view of the law laid down by Hon'ble the Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 26.09.2005 is hereby set aside and the appellants/claimants are held entitled to compensation to the tune of Rs.5,00,000/-.

17. So far as the interest part is concerned, as held by Hon'ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nandu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellants/claimants are granted the interest @ 9% per annum on the compensation amount from the date of filing of claim petition till the date of its realization.

18. The respondent No.1-Insurance Company is directed to deposit the amount of compensation along with interest with the learned Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is further directed to disburse the amount of compensation along with interest in the accounts of the appellants/claimants in equal share. The appellants/claimants are directed to furnish their bank accounts details to the learned Tribunal.

19. Respondent No.1-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Shashi Kumar Yadav, Advocate,



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within a period of 20 days from the date of receipt of the copy of this judgment.

20. Disposed of accordingly.

21. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

29.11.2024

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No