
(2015) ACJ 2316 : (2014) 175 PLR 260

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 1082 of 2012

Nosahiba

APPELLANT

Vs

Israr Ahmed

RESPONDENT

Date of Decision: March 11, 2014

Acts Referred:

Motor Vehicles Act, 1988 " Section 140, 163A

Citation: (2015) ACJ 2316 : (2014) 175 PLR 260

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Askwani Arora, Advocate for the Appellant; Vandana Malhotra, Advocate for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The appeal is at the instance of the claimants whose petition was dismissed. The claim was made at the instance of the

representatives of the deceased who had borrowed a vehicle from the owner of the vehicle alleged to have dashed against a mile stone and

suffered fatal injuries. The Tribunal dismissed the petition on the ground that the death was not shown to be resultant to the accident injury and that

further there was no claim possible at the instance of borrower of a vehicle for an accident that he invited by himself by his own driving. As far as

the first contention taken in defence that death was not resultant to the injury, learned counsel appearing on behalf of the appellant points out that

the postmortem which was conducted soon after the accident had noted down injury that he had suffered and it was specifically brought out that it

was a roadside accident and the death could have taken place on account of the injuries found at the body which was compatible with roadside

accident. I am of the view that the Tribunal was in error in stating that the death was not on account of the accident injury. I reverse the finding.

2. As regards the entitlement of borrower to make claim by the fact that there was a package policy, I hold that it cannot be a ground for the

claimants to make a claim for death u/s 163A of the Motor Vehicles Act. Section 163A of the Motor Vehicles Act which sets out a strict liability

only relieves the claimants from having to prove the negligence of person who owed duty of care to injured or deceased by the use of motor

vehicle. Two things have to be established u/s 163A. One, the death or injury was resultant to the use of a motor vehicle. Two, there was another

person who had caused the injury or death, who under normal circumstances, but for the provision owed a duty of care. This latter component of

care is indeed the philosophical foundation of all tort liability. Section 163A merely sets out a strict liability of the person who owed a duty of care

but whether he exercised such care or not is not required to be proved in such a case. Section 163A does not create a new liability which is not

founded on law. If a person brings upon himself death by his conduct, the only exception is through the provision obtained under Workmen's

Compensation Act where the workman who receives a fatal injury would leave a trail of claim for compensation for the legal representatives if it is

shown that the death was in the course of or out of employment. It is not even necessary in such a situation that the workman had actually

committed breach of the express instructions of the employer. In every other situation, where the death results by the conduct of a person, who

had the use of a motor vehicle, there could be no claim for compensation except under no fault liability in the manner contemplated by the Supreme

Court in Eshwarappa @ Maheshwarappa and Another Vs. C.S. Gurushanthappa and Another, .

3. Learned counsel for the appellants refers me of certain rulings of this Court which have taken view that for a claim u/s 163A of the Motor

Vehicles Act, all that is necessary is that the death must have been by the result of use of a motor vehicle. This, in my view, does not accord with

correct understanding of law of liability. It is immaterial that some of those decisions which were rendered by this Court were not modified by the

Supreme Court. A summary disposal of the decision taken by this Court at the time of admission by the Supreme Court cannot constitute any

binding precedent on the subject. The entitlement of the claimant shall, therefore, only be for Rs. 50,000/- against the insurance company under no

fault liability u/s 140 of the Motor Vehicles Act as laid down by the Supreme Court in Eshwarappa @ Maheshwarappa"s case (supra). The award

is modified to that extent and the appeal is allowed. Learned counsel for the appellants states that the amount as determined by this Court could be

directed to be given only to the widow and need not be apportioned amongst other claimants. I take this as concession made by the counsel on

behalf of the appellants for whom he holds the brief and direct the compensation to be paid only to the widow.