Sudesh Sharma Vs Prahalad Kumar Garg

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 24, 2014

Acts Referred: Motor Vehicles Act, 1988 â€" Section 149, 163A, 166

Citation: (2014) 4 RCR(Civil) 530

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Neeraj Khanna, Advocate for the Appellant; Deepak Grewal, Advocate for Sanjeev Kodan, Advocate and Rohit Goswami, Advocate for Vinod Chaudhry, Advocate for the Respondent

Final Decision: Partly Allowed

Judgement

K. Kannan, J.
The appeal is for enhancement of claim for compensation filed in a petition u/s 163A of the Motor Vehicles Act. It was a

case of the deceased who was a passenger in a car when the driver drove against a tree and killed the passenger. The petition was filed u/s 163A

of the MV Act and the evidence was that the income of the deceased was more than Rs. 40,000/- per year. An application has been filed before

this court seeking for amendment of the claim petition u/s 166 of the MV Act. The objection taken by the insurer is that the application has been

filed more than 12 years from the date of the filing of the petition and, therefore, it ought not to be accepted. An application for amendment in

motor accident case which is a welfare legislation could be resisted where there is a bar of limitation or there is a waiver of some rights. Section

163A is a statutory innovation brought through an amendment in the year 1994 to allow for a claim for compensation on strict liability basis,

without having to prove rashness and negligence of any other person involving the injured/or representative of the deceased. This is intended to

secure benefit to a class of persons who are economically in a lower strata and as a measure of welfare to see that compensation is not completely

deprived by inability to prove rashness and negligence. All that is required is the death or injury should have resulted by the use of a motor vehicle

and if there was an insurer that was liable for such an injury under the terms of the policy, the minimum of what is required under Schedule-II shall

be paid by the insurer.

2. It has been laid down that it shall be impermissible for a person whose income is more than Rs. 40,000/- but deliberately scales down the

income to be less than Rs. 40,000/- to bring it within the four corners of Section 163A. Such a petition is barred in law as held in Deepal Girish

Bhai Soni & others Versus United India Insurance Company Limited-2004 ACJ 934. In this case if the claim is made u/s 163A and an

independent claim is made over again u/s 166, then it could be stated that such a petition would be barred. If, on the other hand, a claim is made

u/s 163A which is found to be wrong as per law and the appropriate claim would be only u/s 166, the claimant indeed takes up the additional

burden of what does not exist u/s 163A. It is another way of saying that the petitioner subjects himself to more rigorous appraisal regarding the

issue of negligence and renders his claim open to rejection for absence of proof of negligence. He does not therefore improve the situation except

when he is able to prove the negligence of the driver, in which case the scales of compensation get to be different which are driven through

precedents. Several of heads of claims for compensation are set out in the form prescribed under the Motor Accident Claims Rules and the

method of assessment to compensation is set through several pronouncements and particularly on the lines drawn by the decision of the Supreme

Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and modified later with reference to the issues relating to

loss of consortium and loss of love and affection in the manner suggested in the decision in Rajesh and Others Vs. Rajbir Singh and Others, There

have been some clarifications also with respect to prospect of increase which were originally understood as possible only in respect of settled

employments but other decisions following Sarla Verma (supra) have explained that this prospect could be applied even for self-employments and

employments in private institutions.

3. In this case by an amendment, the Insurance Company cannot be said to be prejudiced, for, as regards the Insurance Company, the permissible

defences are always be confined to what is set forth u/s 149 of the Motor Vehicles Act. It shall also become possible apart from the defences

available u/s 149 to plead jurisdictional issues regarding maintainability of petitions or non-involvement of vehicles. Beyond this, there shall be no

other objection which the Insurance Company could be heard of. A conversion of an application u/s 163A to 166 cannot be resisted by an insurer

on a plea that such a conversion would result in undertaking a larger slice of liability if the negligence is established. The Insurance Company is in

business only to pay and not to make profit. If there shall be an increase in liability, so it shall be under the scheme of the Act. I, therefore, reject a

plea on behalf of the insurer that conversion shall not be made. The objection is also on the ground that the petition is belated. We have come by

sorry spectacle in almost every High Court in India of our inability to tackle cases within any reasonable time. If there is a delay, it is as much an

institutional delay than how a party contributes to it. I will not, therefore, let even a delay as prevailing to assist the insurer to scale down its liability.

The application in CM No. 6203-CII of 2014 for conversion of the petition u/s 163A to 166 is allowed.

4. As regards the proof of negligence which he would require to be established in this case, the driver, in this case, dashed against a tree and one

passenger died. An act of a driver dashing against a tree, which, by the very nature of things, cannot shift itself from one place must mean that there

had been a negligent act only on the part of the driver. Instance where a driver could plead exoneration of such a responsibility shall be when there

is a mechanical failure but there again the liability of the owner would still be exposed. A vehicle is bound to be kept in a state of repair and if there

was a mechanical defect that resulted in accident, it should still be seen as want of care by the owner that would make him liable and consequently,

the insurer is liable for any claim arising out of the accident. That minimal requirement is that the death or injury is by the use of a motor vehicle.

There is no dispute as regards the same. I find that the death that as resulted is a typical illustration of a res ipsa loquitur situation and no further

proof for negligence is necessary than merely statement of fact of death or injury. This is not a claim by the driver or owner of the vehicle, which

alone would be barred. The claim is by a passenger in a case where there is a comprehensive insurance cover for risk to a passenger. I, therefore,

hold the owner of the vehicle to be liable the same way as the driver is and this shall be channeled to the liability of the insurer as a person who is

bound to indemnify the insured.

5. The deceased was an Enforcement Officer in the Provident Fund office, drawing an income of Rs. 7,320/-. He was also assessed an income tax

assessee at the relevant time. Having regard to the prospect of increase that was possible in government undertaking, I will provide for 30%

increase but subject the same to 10% deduction for tax and apply a multiplier of 13 against 7 as taken by the Tribunal. I will also provide for loss

of consortium to the wife and to the unmarried daughter on the scales suggested in Rajesh (supra). I will tabulate the several heads of claims as

under:-

There shall be an award of Rs. 12,14,535/- and the amount shall be distributed amongst the widow and children equally. The liability shall be on

the Insurance Company.

6. The award stands modified and the appeal is allowed to the above extent.