

(2014) 07 P&H CK 0324

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 2492 of 2002 (O&M)

Sudesh Sharma

APPELLANT

Vs

Prahlad Kumar Garg

RESPONDENT

Date of Decision: July 24, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - 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 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.