

(2023-3)211 PLR 228

PUNJAB AND HARYANA HIGH COURT

Before: Ms. Justice Nidhi Gupta

PARDEEP KUMAR - Appellant(s)

versus

KAPOOR SINGH & Another - Respondent(s)

FAO-7510-2017 (O&M)

Motor Vehicles Act, 1988 (59 of 1988) Section 163-A - Deceased-son had borrowed the offending vehicle from his father who was the insured - Compensation is payable to a third party - Since borrower of the vehicle was the son of the owner of the vehicle, and borrower steps into the shoes of the insured therefore, cannot be stated to be third party - Liability under Section 163-A of the Act is on the owner of the vehicle, so a claimant cannot be both, a claimant, as well as recipient of the claim - Insurance policy included Additional Personal Accident Cover premium for five persons - Tribunal had awarded a sum of Rs.1,00,000/- to the appellant - No interference.[Para 8, 9]

Cases referred to:

1. (2009-4)156 PLR 796 (SC), *Ningamma v. United India Insurance Company Limited*

Mr. Aakash Juneja, for the appellant.

Nidhi Gupta, J. - (27.02.2023) -

CM-24900-CII-2017

This is an application under Section 5 of the Limitation Act for condonation of delay of 109 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN CASE

Perusal of order sheets of the present case show that there was no representation on behalf of the appellant on 22.02.2018, 09.08.2018, 29.01.2019, and thereafter on 19.03.2019 matter was adjourned at the request of learned counsel for the appellant. There was no representation on 14.08.2019 as well. Even today, adjournment was being sought by

learned counsel for the appellant. However, as this is an appeal of the year 2017 and has repeatedly been adjourned at request of learned counsel for the appellant/due to non-appearance on behalf of the appellant, therefore, this Court declined the request for adjournment.

2. Present appeal has been filed by the appellant-claimant seeking enhancement of compensation of Rs.1,00,000/- awarded by Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as "the learned Tribunal") vide Award dated 12.12.2016 passed in MAC Petition No.45 of 2014 filed under Section 163-A of the Motor Vehicles Act (hereinafter referred to as "the Act"). Appellant who is 28 years of age is the brother of deceased-Amit Sindhu.

3. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Amit Sindhu had died due to injuries suffered by him in a motor vehicular accident that took place on 12.05.2014 out of use of Swift car bearing registration No.HR-12U-7233 (hereinafter referred to as "the offending vehicle") being driven by deceased-Amit Sindhu, owned by respondent No.1 and insured by respondent No.2. It is pertinent to note that respondent No.1/owner of offending car, is father of deceased-Amit Sindhu who was driving the offending car at time of accident.

4. Learned counsel for the appellant seeks enhancement of compensation inter alia, on the ground that:

a) appellant had sought compensation to the tune of Rs.20,00,000/- along with interest @ 18% per annum. However, learned Tribunal has granted only Rs.1,00,000/- along with interest @ 7.5% per annum;

b) nothing has been granted by way of consortium;

c) compensation granted is very meager and deserves to be enhanced as the Act is a beneficial piece of legislation;

d) accident in question took place as a stray animal came on the road and deceased lost control and offending vehicle ran into a dig on left side of the road and struck into adjoining electricity pole, as a result of which all the occupants of the car received injuries and when they were taken to PGIMS, Rohtak, Arun who was another occupant of the car, and Amit Sindhu, present deceased and driver of the car, were declared dead;

e) nothing has been granted by way of transportation, loss of estate, loss of future prospects, dependency, etc.;

f) deceased was 23 years of age at the time of death and earning Rs.39,000/- per annum and appellant was totally dependent on income of deceased and therefore, deduction of 1/3rd ought to have been made.

5. No other argument is made on behalf of the appellant.

6.I have heard learned counsel for the appellant.

7.Perusal of record of the case shows that it is the deposition of the appellant himself as PW3 that he is a qualified MBA; that his father is posted as Patwari at Bahadurgarh, and offending vehicle is in the name of his father/respondent no. 1 herein; however, he cannot tell salary of his father. It was further suggested to the appellant/PW3 that he is not dependent on earning of his deceased brother and they had not spent Rs.1,00,000/- on his last rites. Be that as it may, no evidence whatsoever, was brought to the notice of this Court to show that the appellant was dependent on the deceased.

8.Further, in the present case, admittedly, deceased had borrowed the offending vehicle from his father who was the insured. Accordingly, learned Tribunal relied upon judgment of the Hon'ble Supreme Court in case of *Ningamma v. United India Insurance Company Limited*, (2009-4)156 PLR 796 (SC), and held that "compensation is payable to a third party involved in the accident, as in the present case it is not a case of third party, rather, deceased was son of owner of the offending vehicle and therefore, a person cannot be both, a claimant as also recipient with respect to the claim." I am in concurrence with the reasoning of the learned Tribunal that liability under Section 163-A of the Act is on the owner of the vehicle, so a claimant cannot be both, a claimant, as well as recipient of the claim. Further, as per judgment of the Hon'ble Supreme Court in abovesaid case of *Ningamma* (supra), compensation is payable to a third party. However, in the present case, since borrower of the vehicle was the son of the owner of the vehicle, and borrower steps into the shoes of the insured therefore, cannot be stated to be third party.

9.However, since in the present case, the insurance policy (Exhibit R1) included Additional Personal Accident Cover premium for five persons accordingly, learned Tribunal had awarded a sum of Rs.1,00,000/- to the appellant. It is in these circumstances that learned Tribunal had partly allowed claim petition and granted Rs.1,00,000/- on account of personal accident cover along with interest @ 7.5% per annum.

10.In view of facts and legal position as noticed above, I find no error whatsoever in the reasoning of the learned Tribunal. Present appeal accordingly stands dismissed.

11.Pending application(s) if any also stand(s) disposed of.

SS

-