

Surender Kumar Arora & Another

v.

Dr. Manoj Bisla & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE ANIL R. DAVE

Civil Appeal No. 2943 Of 2012 (@ Special Leave Petition(C) No. 30683 Of 2010) | 20-03-2012

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of Delhi in MAC Appeal No.408 of 2009, dated 3.6.2010. By the impugned judgment and order, the High Court has confirmed the judgment and order passed by the Motor Accidents Claim Tribunal, Patiala House, New Delhi in Petition No.176/2000 dated 29.04.2009.

3. The Motor Accidents Claim Tribunal ('the Tribunal' for short), in a petition filed by the appellants under Section 166 of the Motor Vehicles Act ('the Act' for short), based on the evidence of the driver of the vehicle (respondent no.1 herein) has come to the conclusion that the driver of the vehicle was not driving the vehicle in a rash and negligent manner. In view of the aforesaid finding and the conclusion, the Tribunal was of the view that the Insurance Company cannot be mulcted with the responsibility of paying the insurance amount to the parents of the deceased person.

4. Disturbed by the order so made by the Tribunal, the appellants had filed an appeal before the High Court. The High Court, keeping in view the settled distinction between the provisions of Section 163-A and Section 166 of the Motor Vehicles Act, has come to the conclusion that it was for the parents of the deceased to have established that the vehicle was driven by respondent no.1 in a rash and negligent manner, which they have failed to do so before the Tribunal. In order to appreciate the assertion of the appellants that the findings on facts by the Tribunal is perverse, the Court has also re-appreciated the entire evidence on

record and has come to the conclusion that it was not the case of the parents of the deceased that the vehicle in question was driven by respondent no.1 on the fateful day in a rash and negligent manner. Having come to the aforesaid conclusion and by applying the principles enunciated by this Court, in our opinion, rightly has rejected the appeal filed by the parents of the deceased. The correctness or otherwise of the said order, is the subject matter of the appeal before this Court.

5. Learned counsel appearing for the appellant submits that both the courts have committed a grave error in rejecting the claim petition filed by the parents of the deceased. According to the learned counsel, though the petition was filed under Section 166 of the Act, the Tribunal ought to have awarded compensation to the parents of the deceased in view of the death of the deceased person who was travelling in the vehicle which was driven by respondent no.1. In aid of the submission, the learned counsel has invited our attention to the observations made by this Court in *Kaushnuma Begum (Smt.) & Ors., Vs. New India Assurance Co. Ltd. & Ors., (2001) 1 SCC 9*.

6. Learned counsel Shri S.L.Gupta, appearing for the respondent - Insurance Company would submit, that, since the petition that was filed by the parents of the deceased person was under Section 166 of the Act, the entire responsibility of proving the act of rash and negligent driving by the driver of the vehicle was on the claimants and since that was not done by adducing cogent evidence, the Courts below were justified in rejecting the claim petition filed by the claimants/appellants under Section 166 of the Act. In aid of his submission, learned counsel has drawn our attention to the observations made by this Court in the case of *Oriental Insurance Co. Ltd. Vs. Meena Variyal & Ors., (2007) 5 SCC 428*.

7. Having heard the learned counsel for the parties to the lis, the question that would arise for our consideration and decision is, whether the parents of the deceased are entitled to the payment of compensation under the provisions of the Act by the respondent Insurance Company. In order to answer the issue that we have framed for ourselves, the facts in brief requires to be noticed:

8. The claimants are the parents of the deceased person. The deceased was a doctor by profession. The deceased was travelling in the motor vehicle driven by respondent no.1, who happens to be a close associate/friend. It has come in the evidence of the claimants as well as respondent no.1 that the vehicle in question was not driven in a rash and negligent manner by respondent no.1.

9. Admittedly, the petition filed by the claimants was under Section 166 of the Act and not under Section 163-A of the Act. This is not in dispute. Therefore, it was the entire responsibility of the parents of the deceased to have established that respondent no.1 drove the vehicle in a rash and negligent manner which resulted in the fatal accident. Maybe, in order to help respondent no.1, the claimants had not taken up that plea before the Tribunal. Therefore, High Court was justified in sustaining the judgment and order passed by the Tribunal. We make it clear that if for any reason, the claimants had filed the petition under Section 163-A of the Act, then the dicta of this Court in the case of Kaushnuma Begum (Smt.) & Ors. (supra) would have come to the assistance of the claimants.

10. In our view the issue that we have raised for our consideration is squarely covered by the decision of this Court in the case of Oriental Insurance Co. Ltd. (supra). In the said decision the Court stated :

"...Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

11. We are in agreement with the principles stated by this Court in the aforesaid decision.

12. In view of the above, in our opinion, neither the Tribunal nor the High Court has committed any error whatsoever which would call for our interference in the appeal filed by the parents of the deceased. Accordingly, we reject the appeal. However, we direct that the amount paid by the respondent - Insurance Company by way of interim compensation under Section 140 of the Act, shall not be recovered from the appellants by the respondent - Insurance Company. No order as to costs.

13. Ordered accordingly.