



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO-5083-2006 (O&M)

Date of Decision: October 03, 2024

Ashraf

.....Appellant

Vs.

Rajesh Kumar and anr.

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sandeep Jasuja, Advocate for the appellant.

Mr. Suman Jain, Advocate and Mr. Manmohan, Advocate
for respondent No. 2– Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 03.08.2006 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Gurugram (for short, 'the Tribunal') for grant of compensation, whereby the claim petition filed by the claimant-appellant was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on the intervening night of 23rd and 24th August, 2001, the claimant-Ashraj was proceeding towards village Cahalka from Village Islampur while driving Dumper No. HR-38C-3694. At about 4.00 a.m. when he reached near Puja Service Station, Sohna, then all of a sudden a Neel Gai appeared there. The claimant/appellant tried to save the cow and took his dumper on the left hand side of the road which struck with Neem tree. As a result



of the accident, he sustained serious head injury. He sustained permanent disability and disfigurement due to this accident. In connection with this accident an entry was got made in Daily Dairy Register at Sr.No.20 on 24.8.2001 at Police Station Sohna. The Claimant-appellant spent an amount of Rs.80,000/- on his treatment, for transportation and special diet etc. The claimant was taken to Pushpanjali Hospital, Gurgaon where he remained admitted from 24.8.2001 to 6.9.2001.

3. Upon notice of the claim petition, respondents appeared and denied the factum of compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

“1. Whether the accident in question was caused by the petitioner by use of dumper NO. HR-38-C-3694? OPP

2. If issue No. 1 is proved whether the claimant is entitled to any compensation on account of the injuries suffered by him in the accident, if so, to what extent and from whom? OPP

3. Whether respondent No.1 was not holding a valid and effective driving licence on the date of accident? OPR2.

4. Whether the petition is bad for mis joinder and non joinder of necessary parties? OPR 2

5. Relief.”

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence the claimant/appellant filed the present appeal for grant of compensation awarded by the Tribunal.

SUBMISSIONS OF THE COUNSELS



6. The learned counsel for the appellant-claimant contends that the claim petition was dismissed on the ground that in the claim petition, the monthly income of the appellant was stated to be Rs.4000/- per month. However, when the claimant appeared in witness box, he stated that his monthly income at the time of accident was Rs.3000/- per month. He further submits that the Tribunal has erred in law in dismissing the claim petition on the ground that the appellant does not suffer permanent injury due to the alleged accident, therefore, the provision of Section 163-A of the Motor Vehicles Act, 1988 will not be applicable in the present case. Therefore, he prays that present appeal be allowed.

7. *Per contra*, learned counsel for the respondent, however, vehemently argues that the claim petition had rightly been dismissed by learned Tribunal. He prays for dismissing of appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. The relevant portion of the award dated 03.08.2006 is reproduced as under:-

“9. The present claim petition has been filed under section 163-A of the Motor Vehicles Act to Claim compensation under Section 163-A of the Motor Vehicles Act the claimant is not required to prove that the accident took place due to rash and negligent driving of the driver of the vehicle or any other person. In order to claim compensation under section 163-A of the Act, the claimant is required to prove only that the vehicle was involved in the accident and due to that accident the claimant sustained injuries.



10. Regarding this accident, matter was reported to the police and entry in the Daily Diary Register was made at Police Station Sohna on 24.8.2001. Copy of the DDR entry is Ex.P1. In this document also it is mentioned that the accident took place as per pleas taken by the claimant in his claim petition. Claimant appeared in the witness box as PW 3 and stated that the accident took place when he tried to save the Neel Gai and he was driving the offending vehicle at the time of accident. To save Neel Gai, he turned his vehicle towards left side and the vehicle struck with the Neem Tree. PW3 stated that he sustained injuries on his body due to this accident.

11. There is evidence on the file that the claimant sustained injury on his body. No evidence has been adduced by the respondent to rebut the statement of PW3. Keeping in mind the circumstances mentioned above, I have no hesitation in holding that the dumper vehicle No. HR-38C-3694 was involved in this accident and the accident took place and that due to this accident claimant sustained injuries on his body. Accordingly, issue No. 1 is decided in favour of the claimant.

ISSUE NO. 2:

12. The present claim petition has been filed under section 163- A of the M.V. Act. For proper appreciation, section 163-A(i)& (ii) is reproduced below:-

163-A(i) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the



authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

(ii) In any claim for compensation under Sub-section (i). the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

13 Clause (ii) of section 163-A of the Act makes it clear that the claimant is not required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to wrongful act or negligence or default of the owner of vehicle concerned. Section 163-A(i) also make it clear that the compensation amount under this special provision can be granted only in case of death or permanent disablement due to the accident arising out of the use of the motor vehicle. It is not a death case. The case of the claimant is that he sustained multiple, serious and grievous injuries on his body. No certificate has been obtained regarding permanent disability by the claimant. The permanent disability certificate is issued by a team of three doctors in the Civil Hospital. The claimant based his claim upon a certificate Ex.P11 issued by Dr. S. Sexana of Pushpanjali Hospital, Gurgaon. In this certificate it is mentioned that the claimant got treatment



in Pushpanjali Hospital and injuries on his head are also mentioned in this certificate. It is mentioned that the claimant was discharged from the hospital on 6.9.2001 and the recovery was uneventful. It is mentioned that upto the date of issuance of the certificate on 1.10.2001 the recovery of the claimant was upto 90%. On the basis of this certificate claimant claims that there was 10% permanent disability. In this certificate word permanent is nowhere mentioned. It is mentioned that the recovery within the spell of 18½ months was 90%. It is not mentioned that claimant sustained 10% disability or permanent disability.

14 Discharge card Ex.P10, final Bill Ex.P12 and receipt regarding payment Ex. P13 are also place on the file. The amount of Rs.24.000/- was paid as hospital bill by the claimant in Pushpanjali Hospital and he sustained had injury and few minor injuries on other parts of the body. Facing this situation learned counsel for the claimant stated that permanent disability can be considered due to dis- figurement of the face of claimant also. Claimant stated that he sustained injuries on his head and there are scar mark on his head. Stitches in large number were applied on his head at the time of operation. Three photographs are also placed on the file which are not properly proved. Even in these photographs also only scars of healed injuries on the head of the claimant towards right side are shown. These healed scars are visible only because hair on the head of that part were removed for proper healing of the wounds or for obtaining photographs of the scars.



15. In my view on the basis of this scar with triangular shape on the head of the claimant, findings cannot be given regarding disfigurement of the face or to assess it as a case of permanent disability. In this regard my attention was drawn on section 142 (c) of the act wherein permanent disfigurement of the head or face is considered as permanent disablement. I fell, on the basis of these healed scars on the head of the claimant, in the absence of any disability certificate issued by the board of doctors, it cannot be held that the claimant sustained permanent disability.

16. Now it is clear that neither it is a death case nor it is a case of permanent disability. As such I have no hesitation in holding that the claimant is not entitled to receive any amount as compensation under section 163-A of the Motor Vehicle Act.

*17. Apart from it, compensation amount can be awarded under Section 163-A of the Act in case the annual income of the injured or the deceased was upto 40,000/- per annum. In this case claimant himself has taken plea that his monthly income was Rs.4000/- Calculating on these basis, the annual income of the claimant at the time of accident becomes Rs.48,000/-. Learned counsel for the claimant argued that merely because plea has been taken that salary of the claimant was Rs.4000/- per month, it cannot be considered that the annual income of the claimant was more than Rs.4000/. **It is contended that the claimant when appeared in the witness box has stated that his monthly income at the time of accident was Rs.3000/-.** I am not much impressed with this contention of learned*



*counsel for the claimant. Either the claimant has taken false plea in the petition or he has deposed falsely when he appeared in the witness box. I feel courts cannot encourage the persons who have no hesitation in telling a lie or taking false pleas before the courts for their personal gains. When claimant himself has taken pleas that his monthly income was Rs.4000/- per month at the time of accident, now he cannot be allowed to say that his income was Rs.3000/-per month, in the absence of any amendment in the claim petition. On this point of legal controversy learned counsel for the claimant place his reliance upon case law **National Insurance Co.Ltd. Vs. Indu Sharma and others 2000 ACJ 808 (P&H), and s\Sharabai and antoher Vs.P.Sahebkhan and others 2006 ACJ 229 (Karnaaka)**. In case law referred above, **National Insurance Co. Ltd. Vs.Indu Sharma and others**, it was held that it is not correct that section 163-A of the Act shall apply only if annual income of the deceased or disabled [person was within the range of Rs.40000/-]. In another decision of the Hon'ble Karnataka High Court, in case law referred above Sharabai and another Vs. P. Sahebkhan and others it was held that claim petition under section 163-A is maintainable. As per facts of that case the plea was that the annual income of the deceased was Rs.1,00,000/- whereas Tribunal had given findings regarding annual income of the deceased as Rs.28,800/-.*

10. A perusal of the award dated 03.08.2006 shows that Ld. Tribunal, Gurugram while dismissing the claim petition observed that in the claim petition, the income of the deceased was shown to be Rs.4000/- per month. By taking his



earning to be Rs.4000/- per month, the annual income of the claimant-appellant was calculated as Rs.48,000/- per annum. Since there is a cap of Rs.40,000/- per annum under Section 163-A, therefore, the claim petition of the claimant was dismissed. However, a perusal of the record further reveals that the claimant has specifically deposed in his statement to the effect that his income was Rs.36,000/- per annum as required under Section 163-A of the Motor Vehicles Act, 1988.

11. This Court vide judgment dated 17.05.2024 passed in FAO-407-2006, titled as ***Satpal Vs. Daljit Singh and others*** held as under:-

“13 The claim petitions are drafted by the Advocates and it is standard practice to state the maximum earnings and amount of compensation in the pleadings. The Court/Tribunal should appreciate the evidence led on oath, rather than strictly adhering to the pleadings. The present claim petition was dismissed solely on the stated earning of Rs.6,000/- in the pleadings, completely discarding the evidence presented. This indicates a manifest failure to apply judicial mind. Therefore, the present appeal is allowed. The appellant/claimant is granted compensation under Section 163-A by taking his income to be Rs.3,000/- per month.”

12. Further the Tribunal has erred in dismissing the claim petition on the ground that the appellant does not suffer any permanent disability due to the alleged accident. However, this Court is not satisfied with the reasoning given by the learned Tribunal as Section 163-A of Motor Vehicles Act, 1988 is now substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) and in the amended Section there is no requirement regarding



permanent disability for claiming compensation under Section 164 of the Motor Vehicles Act, 1988 and the compensation should have to be enhanced as per substituted statutory provision i.e. Section 164 of the Act. Therefore, the appellant herein is entitled to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in the case of death in the sum of Rs.5 lakh and in case of grievous hurt, to the extent of Rs.2.5 lakhs. The relevant Section 164 of the Motor Vehicles Act, 1988 is reproduced as under:-

“Payment of compensation in case of death or grievous hurt, etc. –

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of



compensation shall be reduced from the amount of compensation payable under this section.]

13. Further, this Court in **FAO No.4301 of 2006**, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others**” held as under:-

“11. Hon’ble Supreme Court in the case of **Ram Murti and others Vs. Punjab State Electricity Board** [2022(4) TAC 738] held that the appellants therein to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in the case of death in the amount of Rs.5 lakhs and in the case grievous hurt of Rs.2.5 lakhs.

12. This Court in **FAO-195-2006** titled as **Mamta and Others Vs. Happy and Others**, decided on 29.05.2024, held that since Motor Vehicle statute is a beneficial legislation, the Judge should not go into the technicalities of the provisions, under which the application or petition is moved but should apply his judicial mind, as these are only the irregularities and not illegalities which cannot be cured. It has been observed by the Hon’ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically. Further, Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy.



The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary.”

14. In view of the above, this Court is not satisfied by the reasoning given by the Ld. Tribunal in dismissing the present claim petition filed by the appellant-claimant and appeal filed by appellant is liable to be allowed.

15. On the touchstone of here-in-above discussed findings and judicial precedent, the judgment dated 03.08.2006 passed by Ld. Tribunal, Gurugram stands vitiated due to complete absence of application of judicial mind.

16. In view of the above, the claimant/appellant is held entitled to compensation to the tune of Rs.2.5 lakh.

17. So far as the interest part is concerned, as held by Hon’ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nandu State Transport Corporation** (2022) 5 **Supreme Court Cases 107**, the appellant-claimant is granted the interest @9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

18. The Insurance Company is directed to deposit the awarded amount along with interest with the Tribunal within a period of two months from today. The appellant-claimant is directed to furnish his bank account details to the Insurance Company/Tribunal. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the bank account of the appellant-claimant.

19. Pending applications, if any, also stand disposed off.



(SUDEEPTI SHARMA)
JUDGE

October 03, 2024
G Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes