

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

FAO No.4822 of 2003

Date of Decision : 28.09.2015

Baljit Kaur

..... Appellant

Versus

Prem Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Y.P. Malik, Advocate
for the appellant.

Mr. Azad Singh, Advocate
for respondents No.1 and 2.

Mr. Paul S. Saini, Advocate
for respondent No.3-Insurance Company.

Mr. T.S. Chauhan, Advocate and
Mr. Satnam Chauhan, Advocate
for respondent No.4.

RAMENDRA JAIN, J.

Brief facts relevant for decision of this appeal are that
around 7 p.m. on 31.08.1999, Soni Pal Singh since deceased
driving a scooter bearing No.PB-12-D-0178, was going from

Mohali to Kurali. When he crossed petrol pump Sahauran, a Maruti car bearing No.PB-11-E-1354 while coming in a rash and negligent manner from the side of Kurali, struck against it. As a result thereof, Soni Pal Singh sustained grievous injuries. He was taken to the hospital at Kharar, where he was declared dead. Hence, his widow i.e. appellant initially filed a claim petition under Section 166 of the Motor Vehicles Act (for short, 'the Act') for grant of compensation against his accidental death. However, during pendency of the same, she converted the same under Section 163-A of the Act. She claimed that her deceased husband aged 24 years was earning ₹ 4,000/- per month as Peon in Accounts Branch of Punjab University, Chandigarh. She was fully dependent upon him and thus, may be awarded adequate compensation for her subsistence.

2. Upon notice, respondent No.2 did not file written statement, whereas respondents No.1 & 3 in their separate statements, while denying the contents of the claim petition prayed for its dismissal. Proforma respondent No.4 in her written statement pleaded that her deceased son was given employed by respondent No.2 on compassionate ground against the death of her husband Karnail Singh. The petitioner-appellant in his life time had left her deceased husband nor ever co-operated with him. The petitioner-appellant has also been given job on compassionate ground, so she was not entitled for

any compensation, rather she being mother of the deceased, his brother and sister were entitled to compensation. With these broad submissions, she too prayed for dismissal of the claim petition.

3. The learned Tribunal after framing necessary issues and taking evidence of both the sides to their satisfaction, awarded total compensation of ₹ 4,80,000/- to the appellant Baljit Kaur, besides costs of ₹ 1,000/- against the death of deceased Soni Pal Singh vide impugned award dated 12.12.2002. The aforesaid compensation was to be shared in the ratio of 75:25 % each by the appellant-claimant and respondent No.4 respectively.

4. Aggrieved with the aforesaid award, the appellant-claimant Baljit Kaur has preferred the present appeal.

5. I have heard the learned counsel for both the sides and gone through the case file carefully.

6. At the outset, it is pertinent to mention here that the appellant had filed her claim petition under Section 163-A of the Act to award compensation on the basis of structured formula given in 2nd Schedule of the Act.

7. As per the stand of the appellant, the age of her deceased husband was 24 years at the time of his death. Thus,

on the basis of structured formula given in 2nd Schedule of the Act, the learned Tribunal has calculated the total earnings of the deceased to the tune of ₹ 7,20,000/- and further has made a deduction of 1/3rd towards his personal expenses and after applying the same, has rightly granted compensation of ₹ 4,80,000/- to the appellant-claimant.

8. Since, as discussed above, the present case relates to Section 163-A of the Act, therefore, the hands of this Court are tied in enhancement of further compensation beyond the award of the learned Tribunal, in view of the 2nd Schedule of the Act.

9. During the course of arguments, learned counsel for the appellant has fairly withdrawn ground No.3 of the appeal, taking note of the fact that since the present case is under Section 163-A of the Act, therefore, the income of the deceased cannot be taken more than Rs.40,000/- per annum. However, the fact cannot be lost sight of that the learned Tribunal has erred in not awarding ₹ 2,000/- to the appellant-claimant towards funeral expenses of the deceased and ₹ 5000/- towards loss of consortium, besides, ₹ 2500/- towards loss of his assets. Hence, the appellant-claimant is awarded a sum of ₹ 9500/- under the above heads.

10. The contention of the learned counsel for the appellant that the 2nd Schedule of the Act was enacted 19 years back in

the year 1994 and thus, the same has now become redundant, irrational and unworkable, due to changed scenario, present cost of living, current rate of inflation and increased life expectancy, is quite genuine. However, the same has to be taken care of by the Parliament only as the Motor Vehicle Act is a Central Act. In case titled **'Puttamma and others Vs. K.L. Narayana Reddy and Another' 2014(1) Recent Apex Judgments (R.A.J) 1,** the Hon'ble Apex Court has already given directions to the Central Government to take immediate measures to make proper amendments in the table of 2nd Schedule, keeping in view the present cost of living.

11. The citation titled **'Oriental Insurance Company Ltd. Vs. Mool Chand Bisht and others' 2014 ACJ 834,** relied upon by learned counsel for the appellant relates to Section 163 of the Act and not to Section 163-A of the Act and thus, no benefit of the same can be given to him.

12. The citation titled **'United India Insurance Company Limited Vs. B.L. Rochhunga and another' 2009 ACJ 2139,** relied upon by the learned counsel for the appellant does not help him in any way, because the said case is a injury case, whereas, the present case pertains to a death in which compensation has to be given as per table given in 2nd Schedule.

13. The facts and circumstances of **'Oriental Insurance Company Ltd. Vs. Smt. Saroj and others' 2007 (1) RCR (Civil) 152 (DB) (P&H)**, are not identical to the facts of the present case and therefore, no benefit of the same too can be given to the appellant.

14. However, in the peculiar facts and circumstances of the case and considering the fact that the present appeal is pending since 2003, the same is partly allowed to the above stated extent with cost of ₹ 25,000/-. Accordingly, the appellant-claimant and respondent No.4 are awarded a total amount of compensation of ₹ 9500 + ₹ 25000 (Cost) = ₹ 34,500/- along with interest @ 9% per annum from the date of filing of the claim petition till actual realization of the above amount to be shared equally by them.

**(RAMENDRA JAIN)
JUDGE**

28.09.2015
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