IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4306 of 2007 (O&M)
Date of Decision:30.01.2015

Avtar Kaur and others

….Appellants

Versus

Prem Dass and others

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Vijay Lath, Advocate for the appellants.

Mr. R.N. Singal, Advocate for respondent No.3-
New India Assurance Company Ltd.

NAVITA SINGH, J.

1. The appeal is filed against the award dated 23.12.2006, whereby the Motor Accident Claims Tribunal, Rupnagar (Tribunal for short) rejected the claim of the appellants made under Section 163-A of the Motor Vehicles Act (Act for short) on the ground that the petition was not maintainable because the income of the deceased was more than Rs.40,000/- per annum.

2. Counsel for the appellants submitted that it was true that in the petition the claimants had alleged that the income of deceased Amarjit Singh was Rs.25,000/- per month but in view of the compulsion under Section 163-A of the Act, they restricted the income to Rs.40,000/- per annum. He contended that once the appellants scored down the income to Rs.40,000/- per annum, the respondents were not prejudiced in any way and, therefore, adjustment of rest of the claim on the part of the claimants should have been considered in the positive direction by the Tribunal and award should have been passed accordingly. Reliance was placed on Rani Devi and others Vs. Rai Singh and others 2007 (1) TAC 673 (P&H). The view taken in the reported case by a

Coordinate Bench of this Court is not binding. Even otherwise, another Single Bench of this Court took a different view in a case reported as New India Assurance Co. Ltd Vs. Rupinder Kaur and others, The Punjab Law Reporter 623 Vol.CLXXVI-(2014-4) in which the judgment was passed later in point of time. The view taken in New India Assurance Co. Ltd (supra) is subscribed to by me.

3. If the appellants had moved for compensation under Section 163-A of the Act, they should have adhered to the mandatory provisions of law and should not have pleaded the income of the deceased to be Rs.25,000/- per month. It was held by the Supreme Court in Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd. 2004 (3) ALL MR 674 that remedies under Sections 163-A and 166 of the Act were independent of each other and if the claimant elects to make a claim under Section 163-A of the Act, it should remain restricted to that. This would mean that the pre-requisite for filing a claim under Section 163-A of the Act regarding income of the deceased must prevail and the claimant/s has/have to be sure about the pleadings. It was also held by the Supreme Court that only those, whose annual income was upto Rs.40,000/-, could take the benefit of Section 163-A of the Act.

4. The other reported case relied on by counsel for the appellants, which is Guruanna Vadi and another Vs. The General Manager, Karnataka State Road Transport Corporation and another 2001 (3) RCR (Civil) 693, is again not binding as it was decided by Karnataka High Court.

5. The Tribunal besides holding that the petition under Section 163-A of the Act was not maintainable for the reasons given above, observed that the income of the deceased actually could not have been within the prescribed limit because it was the case of the appellants that he owned the Tavera car, which met with an accident and the deceased was the owner thereof. The vehicle was new. The deceased was, thus, rich enough to purchase and maintain a Tavera

car. It is not understandable as to why the Tribunal made detailed discussion on the compensation and other aspects when the view was that the petition itself was not maintainable. Be that as it may, it is clear that the appellants wanted to get compensation for the death of Amarjit Singh and were hell-bent on that. They tried all tactics. They tried to show that there was negligence on the part of the driver of the bus, which was being driven by respondent No.1. The appellants even went to the extent of saying that the contents of FIR Ex.P1 were not correct and the facts were twisted by the police in connivance with the respondents. It is not explained as to what role the respondents had to play when the FIR was lodged. Simply because the contents of the FIR did not suit the appellants, they tried to blame the police and the respondents.

6. Counsel for the appellants referred to the contents of the claim petition where it was mentioned that the private bus came from behind in a rash and negligent manner and struck against the Tavera car being driven by the deceased. Due to the impact, the vehicle of the deceased, in turn, hit the military bus, which was coming from the opposite side. In reply to the said part, respondents No.1 and 2 alleged that the accident had taken place due to the fault of the military vehicle and not due to the fault of respondent No.1. The reply of respondents No.1 and 2 would obviously have been to the extent that there was no fault of respondent No.1 in causing the accident and they would naturally want to shift the burden on the third vehicle. If respondents No.1 and 2 did not say that the accident took place on account of negligence of the deceased himself, it would not mean that true facts had been depicted by them. They could be hand in glove with the appellants to escape liability. Even if the deceased was not at fault, the appellants made effort to shift the liability, disagreeing with the first version given in the FIR, which the Tribunal had no reason to disbelieve. It

was, therefore, rightly held that the FIR could not be belied by the oral evidence of the appellants.

7. In view of the detailed reasons given above, the appeal is dismissed.

(NAVITA SINGH)
JUDGE

30.01.2015
Ishwar

Whether to be referred to reporter: Yes