

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

**FAO No. 1638 of 2011 (O&M)  
Date of Decision:- 27.07.2015**

**Rambir and another**

**.....Appellants**

**Versus**

**Manoj Kumar and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN**

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

Present: Mr. R.S. Hooda, Advocate  
for the appellants.

Mr. Suvir Dewan, Advocate  
for respondent No.3-Insurance Company.

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**SHEKHER DHAWAN, J.**

Present appeal is challenge to the Award dated 06.10.2010 passed by the Accident Claims Tribunal, Palwal (hereinafter to be referred as 'The Tribunal'), whereby 'The Tribunal' has dismissed the claim petition filed under Section 163-A of The Motor Vehicles Act, 1988 (hereinafter to be referred as 'The Act'), being not maintainable.

2. Learned counsel for the appellants took the plea that undisputedly claim petition was filed under Section 163-A of 'The Act',

taking the income of the deceased was shown to be more than ₹40,000/- on the ground that salary of the deceased was ₹4,000/- per month. Later on, the said income was taken to be ₹3,250/- per month and as income of the deceased was scaled down and was brought within the permissible limit of ₹40,000/- per annum, the claim petition was maintainable but 'The Tribunal' has completely ignored this plea. In support of his arguments, learned counsel for appellants has placed reliance upon judgment from Co-ordinate Bench of this Court in case **Gurmeet Kaur and others** Vs. **Hardeep Singh and another**, 2006 ACJ 218, wherein, the view was taken that claimants were entitled to seek such an amendment, as the same was permissible under Order 23 Rule 1 CPC to withdraw/abandon of part of claim. More so, the Motor Vehicles Act, 1988 is for welfare and same should be interpreted in a liberal manner. So, the appeal be accepted and claimants be awarded just compensation.

3. While arguing on this point, learned counsel for respondent No.3 took the plea that 'The Tribunal' has rightly negated the plea and there are no grounds to interfere in the said findings returned by 'The Tribunal'. So, the appeal be dismissed.

4. Having considered the rival submissions made by learned counsel for both the parties and the view taken by a Co-ordinate Bench of this Court, this Court is of the considered view that most of the facts are not disputed that claim petition was filed on the ground that deceased was getting salary of ₹4,000/- per month. Meaning thereby, ₹48,000/- per annum. Undisputedly, claim petition under Section 163-A of 'The Act'

was not maintainable if the deceased was having income of more than ₹40,000/- per annum. However, in the case in hand, the claimants took the plea that salary income of the deceased was ₹3,250/- per month and that way scaled down the claim on the ground that annual income of the deceased was less than ₹40,000/-. But 'The Tribunal' has rightly negated the said plea because that was contrary to the documentary evidence available on file. Positive evidence come on the file. 'The Tribunal' has rightly dismissed the claim petition mainly on the ground that in earlier claim petition, copy of which is available Ex.R1 on record, was filed and that petition was dismissed as withdrawn. This evidence is available on file by way of Ex.R6 i.e. statement of claimant Rambir, wherein he has stated that salary of deceased was ₹4,000/- per month. 'The Tribunal' was justified in saying so that claimants cannot wriggle out from such statement, having been made earlier because otherwise there is no evidence. The plea was taken by claimants that salary income of deceased was ₹3,250/- per month just to get the claim but there is no explanation to the statement Ex.R6 having been made and thereafter claim petition having been filed on the ground that income of the deceased was ₹4,000/- per month. The only evidence available on file regarding income of deceased is statement of claimant Rambir i.e. Ex.R6, which was after administration of oath that income of the deceased was ₹4,000/- per month. No reliance can be placed upon evidence of such a person, who has no sanctity for the oath administered in the Court. 'The Tribunal' has rightly placed reliance upon judgment from Division Bench of this Court

in case Himachal Road Transport Corporation and others Vs. Baldev Kumar Nayyar and others, 2006(2) The Punjab Law Reporter, 75.

'The Tribunal' has also rightly placed reliance upon judgment of this Court in case Ram Sarup Vs. Lakhpat Singh and others, 2010 ACJ, 1274, where such a view was taken that claimant cannot take such a plea by scaling down his income just to grab the amount of compensation.

5. In view of above, there is no ground to interfere in the findings recorded by 'The Tribunal', which is based on facts and documentary evidence available on file. Therefore, the present appeal is without any merit and same stands dismissed.

July 27, 2015  
naresh.k

( SHEKHER DHAWAN )  
Judge