IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3683 of 2011 (O&M)
Date of Decision:24.09.2015

Neetu and others

….Appellants

Versus

Vijender Pal Singh and others

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. A.K. Goyal, Advocate for the appellants.

Ms. Puneeta Sethi, Advocate for respondent No.3-
New India Insurance Company.

NAVITA SINGH, J.

1. The Motor Accident Claims Tribunal, Sonepat (Tribunal for short) dismissed the claim petition filed by the appellants, whereby they had claimed compensation for the death of Kishan in a road accident which took place on 20.8.2009.

2. The appellants had pleaded that the deceased was hired as a driver by some persons for driving their car bearing No.DL-4CAA-9343 to Kanshipur. On the way, the car dashed into a stationery truck bearing No.UP-25Q-9272 on the highway, which was parked without any indication. The time of accident was 3 am. Due to darkness, the deceased did not notice the truck and rammed into it. His age was 28 years at that time.

3. Counsel for the appellants argued that the petition was filed under Section 163-A of the Motor Vehicles Act (Act for short) but was wrongly dismissed by the Tribunal stating that according to the statement of the widow of the deceased and his brother, income of Kishan was more than Rs.40,000/- per annum and, therefore, the petition was not maintainable. He contended that even if the income pleaded or stated in evidence was more than the permissible limit, the petition under Section 163-A of the Act could have been allowed if the

claimants notionally brought down the income of the victim to Rs.40,000/- per annum. He relied on Haseena Sulthana and others Vs. National Thermal Power Corporation Ltd. 2007 ACJ 1832.

4. Even if the view taken by a Coordinate Bench of the High Court of Andhra Pradesh is subscribed to, the case of the claimants herein is not that they were notionally bringing down the income of the victim to Rs.40,000/- for the purpose of the claim petition. The income in the petition was given Rs.3300/- per month with a view to keep the income within the permissible limit but the cat was let out of the bag by the witnesses when they deposed about the income of the deceased being much higher. It was for the appellants to plead and also state in evidence that the actual income of the deceased was more than Rs.40,000/- per month but they were restricting it to that limit for the purpose of bringing the petition under Section 163-A of the Act. This court is not bound to follow the view taken by the Andhra Pradesh High Court and also on facts, the same would not be applicable.

5. The Tribunal rightly observed that the widow deposed that her husband used to earn between Rs.200/- and 300/- every day without stating as to how many days he used to get the work as a driver. The Tribunal, therefore, correctly assumed that the deceased must be working for 20 days in a month earning Rs.200/- per day. In that case, the income acceded to Rs.40,000/- per annum. Widow also stated that her husband used to contribute more than Rs.5000/- for the household expenses, which would also mean that his income was much more than the permissible limit. Brother of the deceased also stated that Kishan used to earn between Rs.200/- and 250/- per day.

6. The Tribunal, therefore, made no mistake in coming to the conclusion that the petition was not maintainable and that it is liable to be

dismissed. There being no illegality in the order passed by the Tribunal, the appeal merits dismissal and is dismissed.

(NAVITA SINGH)
JUDGE

24.09.2015
Ishwar **Whether to be referred to reporter: Yes**