IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 6198 of 2010(O&M)

Date of Decision: August 28 , 2015.

Meena Devi and others

...... APPELLANT (s)

Versus

Ramesh Kumar and others

...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Narender Kajla, Advocate
for the appellants.

Mr. Amit Singla, Advocate
for respondent No.1.

Mr. D.P.Gupta, Advocate
for respondent No.2 – Insurance Company.

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1. Whether reporters of 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?

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LISA GILL, J.

Instant appeal has been filed by the claimants for enhancement of the compensation awarded to them by the learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as, the 'Tribunal') vide award dated 14.12.2007 on account of the death of Dhan Singh. Petition under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') was filed by the claimants who are the widow and minor children of deceased – Dhan Singh.

As per averments in the claim petition, Dhan Singh lost his life in a motor vehicular accident which occurred on 04.09.2002 while using his car bearing registration No. CH01-J-2843. A sum of ₹5,00,000/- alongwith interest was claimed as compensation by the claimants on account of the death of Dhan Singh. Claim petition was resisted by the Insurance Company which alleged collusion between the claimants and owner of the vehicle. It was also pleaded that Dhan Singh was not having a valid and effective driving licence at the time of accident and the offending vehicle was being driven in contravention of the terms and conditions of the insurance policy. Owner of the offending vehicle was proceeded against *ex parte*.

Learned Tribunal on consideration of the facts and circumstances of the the case and the evidence on record concluded that Dhan Singh, who was driving the offending vehicle on 04.09.2002 died due to the use of said vehicle.

A total sum of ₹3,75,000/- was awarded to the claimants while taking the monthly income of deceased – Dhan Singh to be ₹3,000/- per month. Deducting 1/3rd of the income on account of his personal expenses, dependancy was assessed at ₹2,000/- per month i.e., ₹24,000/- per annum. Multiplier of 15 was applied and the claimants were held entitled to compensation of ₹3,60,000/-. Sum of ₹5,000/- was awarded on account of loss of consortium and ₹10,000/- on account of transportation and funeral expenses. It was further concluded that the deceased was not having a valid and effective driving licence at the time of accident. However, the Insurance Company was held liable to pay the amount of compensation with a right to recover the same from the owner.

It is to be noticed that FAO No.445 of 2009 (Ramesh Kumar v. Meena Devi and others) filed by the owner, Ramesh Kumar challenging the recovery rights afforded to the Insurance Company was allowed by this Court vide order dated 26.10.2010 whereby the award with reference to the finding in respect to the genuineness of driving licence was set aside and the matter was remitted to the Tribunal to decide this issue afresh. Award determining compensation, however, stood confirmed. Matter was remitted to the Tribunal only for resolving dispute inter se between the insurer and insured. Learned Tribunal vide decision dated 03.02.2011 after recording evidence concluded that deceased Dhan Singh was holding a valid and effective driving licence therefore, the amount of compensation shall be paid by the insurer. It is informed that said decision dated 03.02.2011 has attained finality.

Learned counsel for the appellants contends that though the petition was undoubtedly filed under Section 163A of the Act which provides for a structured formula, it is not necessary in a said petition that the formula detailed in Schedule II to the Act should be strictly followed keeping in view the increase in prices and inflation. Reference is made to the judgments of Hon'ble Supreme Court in **Master Mallikarjun v. Divisional Manager,** ***2013 ACJ 2445,*** **Reshma Kumari and others v. Madan Mohan and another,** ***(2013) 9 SCC 65*** and **U.P. State Road Transport Corporation v. Trilok Chandra,** ***1996(2) RRR 718*** to suggest that Schedule II to the Act has in fact been rendered redundant and there is no logic in adhering to the quantum as prescribed in the said Schedule. Principles followed while deciding petitions under Section 166 of the Act should be applied in such cases under Section 163A of the Act as well.

Learned counsel for respondent No.2, *per contra*, refutes the said averments while relying on decision dated 15.05.2014 in FAO No.3460 of 2004 (Mohit Garg and another v. Afrojan and others) and FAO No.4579 of 2004 (Afrojan and others v. Mohit Garg and another) of this Court.

Learned counsel for respondent No.3 additionally submits that claimants had earlier filed a claim petition alleging the deceased to be earning ₹4,000/- per month. Said claim petition had been withdrawn and the present petition was filed claiming the deceased's income to be ₹3,000/- per month. Withdrawal of the earlier petition and filing of another one is simply to bring the same within the parameters of 163A of the Act. Therefore, this appeal should be dismissed.

Having heard learned counsel for the parties and going through the record, it transpires that the earlier claim petition filed by the claimants was doubtlessly withdrawn by the claimants but with a specific liberty to file a subsequent claim petition. Said contention has been succinctly dealt with by the Tribunal in the impugned award. Said finding of the Tribunal has not been challenged by the Insurance Company or any of the other respondents. It has thus attained finality.

Argument of learned counsel for the appellants that the structured formula as provided in Schedule II to the Act need not to be followed strictly in claim petitions filed under Section 163A of the Act, is not acceptable. Said proposition has been considered by this Court in FAO No.3460 of 2004 (Mohit Garg and another v. Afrojan and others) and FAO No.4579 of 2004 (Afrojan and others v. Mohit Garg and another) vide decision dated 15.05.2014. It has been rightly held that limitation set down in 163A of the Act cannot be wished away by fanciful claims. A border which is set down by respective provisions cannot be effaced in such a manner. Judgments of the Hon'ble Supreme Court as referred to above, have been discussed in the decision dated 15.05.2014 by this Court. It has been held that none of the said decisions of Hon'ble Supreme Court re-write provisions of Section 163A or Schedule II to the Act though the legislature has been exhorted to set right the provisions. Said judgments were confined to a claim on behalf of a child. Therefore, there is no merit in the averment on behalf of the appellants that court should grant compensation in the manner provided in Section 166 of the Act by ignoring the parameters as laid down under Section 163A and Schedule II of the Act.

Schedule II to the Act provides for multiplier of 16 to be applied in the cases where age of the deceased at the time of accident is above 35 years but below 40 years. Deceased – Dhan Singh was admittedly 36 years of age at the time of accident therefore, multiplier of 16 has to be applied. However, a perusal of the award reflects that multiplier of 15 has been applied by the Tribunal instead of 16.

Income of the deceased has been accepted to be ₹3,000/- per month as claimed by the appellants. Deduction of 1/3rd (i.e., ₹1000/-) on account of personal expenses has been correctly applied. Dependancy thus comes to ₹24,000/- per annum (2000x12). Applying a multiplier of 16 instead of 15, loss of dependancy is thus assessed as **₹3,84,000/-** (24000x16). Claimants have already been awarded a sum of ₹5,000/- on account of loss of consortium and ₹10,000/- on account of transportation and funeral expenses as provided in the

Schedule. Therefore, they are not entitled to enhancement on any other account.

Total amount of compensation to which the claimants are entitled is **₹3,99,000/-** (₹3,84,000+₹5,000+₹10,000) instead of ₹3,75,000/-.

The compensation already awarded to the claimants by the Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

August 28 , 2015.
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