

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

**FAO No. 10453 of 2014 (O&M)
Date of Decision:- 10.07.2015**

National Insurance Co. Ltd.

.....Appellant

Versus

Kamla and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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?

Present: Mr. R.C. Kapoor, Advocate
for the appellant.

None for respondent Nos.1 and 2.

Mr. Sushil Kumar Verma, Advocate
for respondent Nos.3 and 4.

SHEKHER DHAWAN, J.

Present appeal is challenge to the Award dated 16.09.2014 whereby the Tribunal awarded compensation of ₹5,47,400/- on account of death of Rakesh, who died in motor vehicle accident took place on 30.01.2014.

2. Claim petition was filed under Section 163-A of The Motor Vehicles Act, 1988 (hereinafter to be referred as 'The Act'). Relevant

facts for the purpose of decision of appeal that on 30.04.2014 Rakesh (since deceased) was going on foot towards Uklana Mandi from bus stand. Meanwhile, car bearing registration No. HR-20X-7333, which was being driven by respondent No.4 came from Litani side. All of a sudden, a stray cow came in front of the car and in order to save the said cow, the car hit against deceased Rakesh. Said Rakesh was taken to General Hospital, Fatehabad, where he succumbed to the injuries. Claim petition filed under Section 163-A of 'The Act'. Respondents contested the claim petition and the Tribunal awarded the compensation of ₹5,47,400/-

3. Appellant-Insurance Company has challenged the said award on the ground that the Tribunal has misread and mis-appreciated the evidence as the Tribunal awarded a sum of ₹1,00,000/- for loss of love and affection to the parents and ₹25,000/- for funeral expenses though the claim petition was under Section 163-A of 'The Act'. There is no provision under 2nd Schedule of 'The Act' to award a sum of ₹1,00,000/- for loss of love and affection and ₹25,000/- for funeral expenses rather the claimants are entitled to ₹2,500/- for funeral expenses and ₹2,000/- for loss to the Estate. So, the amount of compensation be reassessed as per 2nd Schedule which is applicable with present case.

4. Learned counsel for respondent Nos.3 and 4 took the plea that appellant-Insurance Company cannot challenge the impugned award on the question of quantum as no such defence is available to the appellant-Insurance Company as envisaged under Section 149 of 'The Act'. The reliance has been placed upon judgments from Co-ordinate

Benches of this Court in cases National Insurance Co. Ltd. Vs. Karamjit Kaur and others, 2010(1) R.C.R. (Civil) 660 and National Insurance Company Limited Vs. Indu Sharma and others, 2000(2) ACJ 808.

5. Having considered the rival contentions, this Court is of the considered view that the Tribunal has awarded compensation including sum of ₹1,00,000/- on account of loss of love and affection and a sum of ₹25,000/- on account of transportation and last rites. Such a view was taken by Hon'ble Supreme Court in cases Sarla Verma Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77 and Rajesh and others Vs. Rajbir Singh and others, 2013(3), RCR (Civil) 170.

6. As per view taken by Co-ordinate Benches of this Court, no such ground/defence is available to the appellant-Insurance Company to challenge the award passed by the Tribunal as envisaged under Section 149 of 'The Act'.

7. The provisions of Section 163-A of 'The Act' start with the language that it overrides the other provisions of the Act and any other law for the time being in force including Section 149. Meaning thereby that the defence which is open to the appellant-Insurance Company under Section 149 cannot be pleaded so far as awarding of interim compensation under Section 163-A to the legal heirs of the deceased is concerned.

8. The moment the claimant comes with a prayer under Section

163-A and succeeds in proving *prima facie* that the death or permanent disability had taken place, the Tribunal has the right to award the compensation under said Section after taking guidelines from the second Schedule of this Section. The proceedings under Sections 163-A and 166 of 'The Act' can go together being independent provisions and awarding of compensation under Section 163-A like under Section 140 does not detract or defeat the provision of Section 166 of 'The Act'. Moreover, the provisions of Section 140 and Section 163-A, are beneficial provisions introduced by the Legislature in order to mitigate the miseries of the victims and their dependents.

9. In view of the above, there are no grounds to modify the Award dated 16.09.2014 and the appeal is without any merit and the same stands dismissed.

July 10, 2015
naresh.k

(SHEKHER DHAWAN)
JUDGE