

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

**F.A.O. No. 1815 of 2014 (O&M)
Date of Decision:- 06.04.2015**

New India Assurance Company Ltd.

.....Appellant

Versus

Seema Gandhi 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. Ravinder Arora, Advocate for the appellant.

Mr. Anil K. Sharma, Advocate
and Ms. Kanchan Sehgal, Advocate
for respondent No.1.

Mr. Ameet Awasthi, Advocate
for respondent Nos. 2 and 3.

SHEKHER DHAWAN, J.

The appellant-New India Assurance Company Ltd., has challenged the award dated 19.11.2013, whereby the Motor Accidents Claims Tribunal, Chandigarh (hereinafter to be referred as 'the Tribunal') awarded compensation of ₹1,09,000/- along with interest @ 7 % from the date of application till the date of realization against the driver, owner and the appellant-Insurance Company.

2. Brief facts relevant for the purpose of decision the present appeal that on 14.10.2011 at about 11.00 AM, claimant Seema Gandhi was going on Honda Activa bearing registration No.CH-03-Q-1309 and when she reached near House No.3062, Sector 20-D, Chandigarh, a Honda City car bearing registration No.CH-03-F-4767, which was driven by respondent No.1 in a rash and negligent manner hit the Honda Activa scooter of the claimant. Resultantly, the claimant fell down on the road and sustained injuries. She was taken to the Inscol Hospital and then to Government Medical College & Hospital, Sector 32, Chandigarh.

3. Claimant was of the age of 47 years and was self employed and earning Rs.20,000/- per month. As per the claimant, because of the disability in this accident, she became permanent disable, resulting into loss of earning capacity and additional expenses on medical conveyance and special diet etc. and claimed compensation to the tune of ₹10 lacs.

4. The respondents contested the claim petition on all accounts and respondents mainly took the plea that claimant herself was rash and negligence while driving the scooter. As per appellant-Insurance Company, respondent No.1, was not having valid driving license on the date of incident.

5. The Tribunal after considering the material and evidence available on file, accepted the claim petition and awarded compensation to the tune of Rs.1,09,000/ and the liability was fastened upon all the respondents, which was jointly and severally. Being dissatisfied with the award, pronounced by the Tribunal, the appellant-Insurance Company before this Court.

6. Mr. Ravinder Arora, Advocate, learned counsel for the appellant took the plea that the claim petition was filed under Section 163-A of Motor Vehicles Act, 1988 (hereinafter to be referred as 'the Act'), which was not maintainable, as the income of the injured was ₹20,000/- per month. That means income of the injured was more than ₹40,000/- per annum, which is a cap for filing a petition under Section 163-A of the Act. The Tribunal fell in error while awarding a lump sum amount of ₹1,09,000/- on account of permanent disability though claimant had come with the plea that she had suffered 30% disability. No disability certificate was proved in this case. So, the appeal be accepted and award be set aside.

7. While arguing on these points Mr. Anil K. Sharma, Advocate, learned counsel for respondent No.1-claimant took the plea that the income of the claimant was mentioned to be Rs.20,000/-. The amount of compensation has been worked out as per structured formula and there is absolutely no illegality in the award pronounced by the Tribunal in this case.

8. Having considered the rival contentions raised by learned counsel for both the parties, this Court is of the considered view that there is no dispute on the fact that the present claim petition was filed under Section 163-A of the Act. This fact was so stated in the claim petition itself that claimant was earning ₹20,000/- per month. Whereas the provisions of Section 163-A of the Act lays down a condition precedent that annual income should not exceed ₹40,000/-.

9. Special provisions, incorporated under Section 163-A of the Act, for grant of immediate relief to a section of people whose annual income is not more than ₹40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto. The compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant thereupon. An award made thereunder, therefore, shall be in full and final settlement of the claim. The same is not interim in nature.

10. Section 163-A was introduced in the Act by way of a social security scheme. It is a complete code by itself. It appears from the Objects and Reasons of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act several representations and suggestions were made from the State Governments, transport operators and members of the public in relation to certain provisions thereof. Section 163-A of the Act makes provision so as to make the payment of compensation on a structured formula basis.

11. As the payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.

12. Similar, matter had gone before the Hon'ble Apex Court in case **Deepak Girishbhai Soni and others Vs. United India Insurance Co. Ltd., 2004(2) 466 RCR (Civil)**, and it was held that it was not permissible to switch over to Section 166 after exercising one under

Section 163(A) because it is not an interim relief or temporary remedy subject to any other relief under the Act and as such cannot be clubbed or adjusted in the remedy to claim under Section 166 of the Act.

12. Identical view was taken by Hon'ble Division Bench of this Court in case **Himachal Road Transport Corporation and another vs. Baldev Kumar Nayyer and others, 2007 ACJ 678.** The Tribunal has not considered these illegal aspects although the Tribunal was fully aware that the claim petition was filed under Section 163-A of the Act and income claimed by the claimant was ₹20,000/- per month. The present claim petition filed before the Tribunal was legally not maintainable and even claimant could not switch over to the proceedings under Section 166 of the Act, as observed by Hon'ble Supreme Court in case **Deepal's Girishbhai Soni and others Vs. United India Insurance Co. Ltd. (case supra).**

13. In view of the above, the appeal is accepted and the award dated 19.11.2013 stands set aside.

April 06, 2015
naresh.k

(SHEKHER DHAWAN)
JUDGE