

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

**FAO No.1327 of 1998 and
Cross Objection No.55-CII of 1998
Date of decision: 02.03.2016**

Himachal Road Transport Corporation and another

....Appellants

Versus

Sh. Ashok Kumar Sharma and another

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Neeraj Khanna, Advocate,
for the appellants.

Ms. Richa Mittal, Advocate,
for Mr. Inderjeet Sharma, Advocate,
for the respondent-cross objector.

RITU BAHRI J. (Oral)

Himachal Road Transport Corporation etc.-appellants have come up in appeal against the Award dated 11.03.1998 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal'), whereby an amount of Rs.4,60,000/- has been awarded as compensation in favour of claimant-Ashok Kumar Sharma (respondent No.1 herein) on account of death of Minakshi Sharma in a motor vehicular accident which took place on 26.01.1995.

Claimant-Ashok Kumar Sharma has also filed Cross Objection No.55-CII of 1998 seeking enhancement of compensation awarded by the

Tribunal.

Brief facts of the case are that on 26.01.1995, claimant-Ashok Sharma, along with his wife-Minakshi Sharma and one Sukhwinder Singh were going to Shimla in a car bearing registration No. CH-01-H-9806. The said car was being driven by the claimant himself, whereas his wife-Minakshi Sharma was sitting by his side and Sukhwinder Singh was sitting on the rear seat of the car. When they crossed Kiyarighat, Tehsil Kandaghat, District Solan, a bus bearing registration No. HP-14-3559 being driven by Hem Raj in a rash and negligent manner and at a very high speed, came from the opposite side and struck against the car of the claimant and dragged the same behind by about 62', as a result of which, Ashok Sharma and Minakshi sustained injuries. Later on, Minakshi succumbed to the injuries suffered by her. Ashok Kumar Sharma was rushed to Indira Gandhi Hospital, Shimla, from where, he was referred to PGI, Chandigarh. After this accident, face of the claimant has been disfigured due to loss of 10 teeth and injury to his left eye. His socket has been dipped down besides zygomatic Arc fracture which led to operation of skull. He had also suffered fracture on the bone below the left eyebrow which had been writhed after the operation which has led to cardiac problems. The amount of Rs.20,000/- was alleged to have been spent on the treatment which was still continuing. Consequently, claimant-respondent No.1 filed two claim petitions before the Tribunal; one under Section 166 of the Act on account of the injuries received by him and the other i.e. Petition No.13 under Section 163-A of the Act claiming compensation to the tune of Rs.10 lacs on account of the untimely death of his wife Smt. Minakshi.

In its reply before the Tribunal, Himachal Road Transport

Corporation (appellant herein) took a stand that claimant-Ashok Kumar, who had no driving licence and had no experience to drive a vehicle in hilly area, had driven the car in most negligent manner. He did not keep the car on left side of the road and took the same to the wrong side. It was further stated that he could not negotiate the curve because of high speed of the car and drove the car towards the extreme right side and struck against front right side of the bus, which was coming at a very slow speed. Thus, the accident had been caused due to rash and negligent driving of the car by claimant himself.

From the pleadings of the parties, following issues were framed by the Tribunal:-

1. Whether Meenakshi Sharma died as a result of the accident caused by the rash and negligent driving of Bus No.HP-14-3559 by Hem Ram respondent No.3 on 26.01.1995 in the area of Kiyhari Ghat, Tehsil Kandaghat, District Solan?
OPP
2. Whether the petitioner is entitled to any amount of compensation, if, so, to what amount and from whom? OPP
3. Whether this Tribunal ha no territorial jurisdiction to try the present petition? OPR
4. Relief.

On the statement made by learned counsel for the claimant, claim petition i.e. MACT case No.65 dated 04.10.1995 titled as 'Ashok Sharma Vs. State of Himachal Pradesh' which was filed under Section 166 of the Act, was treated to have been filed under Section 163-A of the Act.

Hence, no finding with regard to negligence was required to be given.

The appellant-corporation is not disputing the accident. The challenge to the Award is only on the ground that the claim petition could not be entertained under Section 163-A of the Act because deceased-Minakshi Sharma was working as Assistant Employment Officer in the Directorate of Employment, Haryana, Chandigarh and was drawing the salary of Rs.5315/- per month. Her salary was above Rs.60,000/- per annum and in order to file a claim petition under Section 163-A of the Act, the annual income of deceased should not be more than Rs.40,000/-.

Learned counsel for the appellant-corporation has referred to the judgment passed by the Hon'ble Supreme Court in **Deepal Girishbai Soni and others Vs. United India Insurance Co. Ltd.**, 2004 ACJ 934, wherein it was held that Section 163-A was introduced in the year 1994 being a social security provisions, providing for a distinct scheme, only those whose annual income is up to Rs.40,000/- can take the benefit thereof. All other claims were required to be determined in terms of Chapter XII of the Act. The provisions under Sections 163-A of the Act are meant for distinct and specific purpose for those whose income is Rs.40,000/- or less, whereas all the other claims are covered under Sections 140 and 166 of the Act. In para Nos.67 of the aforesaid judgment, the Hon'ble Supreme Court observed as under:-

“67. We, therefore, are of the opinion that *Kodala's* case, 2001 ACJ 827 (SC), has correctly been decided. However, we do not agree with the findings in *Kodala* (supra), that if a person invokes provisions of Section 163-A, the annual income of Rs.40,000/- shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provisions, providing for a distinct scheme, only those whose annual income is up to Rs.40,000/- can take the benefit thereof. All the other claims are required to be determined in terms of Chapter XII of the Act.”

The aforesaid judgment of the Hon'ble Supreme Court has been

followed by a Co-ordinate Bench of this Court in **National Insurance Co. Ltd. Vs. Annie Varkey and others**, 2007 ACJ 1827, where the deceased was drawing Rs.12,000/- per month and it was held that it was not open to the claimants to forego part of the claim by restricting income to Rs.40,000/- per annum, so as to bring the claim under Section 163-A of the Motor Vehicles Act. Ultimately, by following the judgments passed in **Deepal Girishbhai Soni's** case (supra) and **Gurmeet Kaur Vs. Hardeep Singh**, 2006 ACJ 218 (P&H), the appeal filed by National Insurance Company Ltd. was allowed and the order of the Tribunal was set aside.

At this stage, reference can be made to the judgment passed by a Division Bench of this Court in **Himachal Road Transport Corporation and another Vs. Baldev Kumar Nayyar and others**, 2006 (2) RCR (Civil) 682. This was a case where prayer for treating the income of deceased as less than Rs.40,000/- was accepted by the Tribunal while calculating compensation under Section 163-A of the Act. While allowing the appeals, the Division Bench had held that the Tribunal could not have treated the petitions filed under Section 166 of the Act as petitions under Section 163-A of the Act by restricting the income to Rs.40,000/-. In para No.3 of the judgment, it was observed as under:-

“3. On the last date of hearing, counsel for the appellant had placed reliance on the judgment of Apex Court in **Deepal Girish Bhai Soni and others Vs. United India Insurance Company Ltd., 2004 (2) RCR (Civil) 466**, to contend that in view of the claim of the claimants themselves that the income of the deceased/injured was more than Rs.40,000/- per annum, the Tribunal was not justified in treating the petitions to be petitions under Section 163-A of the Act and awarding compensation without going into the question of negligence. Counsel for the claimant-respondents had sought time to go through the said judgment. He has not been able to refer to any other subsequent judgment of the Supreme Court taking a contrary view.”

No judgment to the contrary has been referred by learned counsel for respondent-cross objector.

In the present case also, initially MACT case No.65 dated 04.10.1995 was filed under Section 166 of the Act. However, subsequently on a statement made by learned counsel for the claimant, the same was treated by the Tribunal as have been filed under Section 163-A of the Act, which could not have been treated in view of the aforesaid judgments passed by the Hon'ble Supreme Court and this Court. As such, the impugned Award is liable to be set aside.

Resultantly, the present appeal is allowed, Cross Objection No.55-CII of 1998 is dismissed and the impugned Award dated 11.03.1998 is set aside.

(RITU BAHRI)
JUDGE

02.03.2016
ajp