

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

FAO-115-2007 (O&M)

**Reserved on : 06.05.2016
Pronounced on : 30.08.2016**

Munshi Singh and another

...Appellants

Versus

Krishan Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present : Mr. V.K. Shukla, Advocate for the appellants.

Mr. Neeraj Khanna, Advocate for respondent No.3.

JITENDRA CHAUHAN, J. (ORAL)

The appellant-claimants have preferred the present appeal against impugned Award dated 01.11.2006, passed by learned Motor Accidents Claims Tribunal, Moga (for short, 'the Tribunal'), whereby, while awarding compensation of Rs.50,000/- to the claimants under Section 140 of the Motor Vehicles Act (for short, 'the Act'), the claim petition under Section 160 of the Act has been held to be not maintainable, whereas, it has been declined under Section 166 of the Act for want of proof.

Briefly stated facts of the present case, as emanating from the record, are that on 23.02.2004, Surjit Singh, since deceased, while driving truck No.HR-37-A-1148, was hit by another truck bearing No.HR-29-B-0746, being driven by Iqbal Ahmed, coming from the opposite side. The

occurrence was witnessed by Banta Singh son of Lachhman Singh, who was coming from Durgpur to Punjab. Banta Singh informed the police of Police Station Maholo, District Sitapur (Uttar Pradesh).

In the above background, the claimant-appellants preferred claim petition bearing MACT No.35 dated 05.11.2004, under Section 166 of the Act, *inter alia*, averring therein that the accident in question took place due to the sole rash and negligent driving of truck bearing registration No.HR-29-B-0746 by its driver, Iqbal Ahmed; the deceased was unmarried; and was earning Rs.4,000/- per month. In total, an amount of Rs.5,00,000/- was claimed by the claimant-appellants as compensation, being parents of the deceased. They also claimed Rs.50,000/- as interim compensation, along with interest @ 18% per annum under Section 140 of the Act.

Upon notice, respondent Nos.2 and 4 were served through publication, however, they chose not to appear and contest the claim petition and they were proceeded against ex parte.

Respondent Nos.1 and 3 filed separate written statement raising all sorts of formal objections.

After framing of issues, learned Tribunal returned issue-wise findings and rejected the claim of the claimants under Sections 160 and 166 of the Act. It was held that the claimants had failed to examine any witness to prove negligence or rashness on the part of the driver of the offending truck. However, they were held to be entitled to compensation to the tune of Rs.50,000/- under Section 140 of the Act.

Feeling aggrieved, the claimant-appellants have approached this Court by way of the instant appeal. Furthermore, during the pendency of the present proceedings, they have moved application bearing CM No.7839-

CII-2014, under Order 6 Rule 17 of read with S. 151 of the Code of Civil Procedure, for amendment of the claim petition by converting the same from Section 166 of the Act to Section 163-A of the Act and for grant of compensation in accordance with the Second Schedule.

I have heard learned counsel for the parties and carefully gone through the record.

In the instant case, the point for determination before this Court is whether at this stage, the claimants can be allowed to covert the claim petition which was originally filed under Section 166 of the Act to Section 163-A of the Act, by notionally bringing down his income to Rs.40,000/- per annum.

As per the judgment of Hon'ble the Supreme Court in the case titled as **Deepal Girishbhai Soni v. United India Insurance Co. Ltd., SC 2004 (2) R.C.R. (Civil) 466**, it was held that the remedy for payment of compensation both under Sections 163-A and S. 166 being final and independent of each other, a claimant cannot pursue his remedies thereunder simultaneously. Therefore, one must opt to go either for a proceeding either under Section 166 or Section 163-A but not under both. Unlike Section 140 and 141 of the Act, the Parliament did not want to provide additional compensation in terms of Section 163-A of the Act.

Hon'ble the Supreme Court has considered the possibility that if under the proceedings under Section 166 of the Act, after obtaining compensation under Section 163-A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefore as a consequence whereto the Tribunal refuses to grant any

compensation, would it be within the jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Furthermore, if in a case the Tribunal, upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, would it be at liberty to award compensation in terms of Section 163-A thereof? Both these questions have been answered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under Section 163-A of the Act is interim in nature. Thus it has been clearly held that the award under the provisions of Section 163-A/166 of the Act are final and not interim.

Once the proceedings have become final and the award has been announced, if the claimants are allowed to convert the claim after failing or succeeding under one set of proceedings, it will lead to multiplicity of litigation.

Moreover, there is a bar operating under Section 163-B of the Act, which reads as under:-

*“163B Option to file claim in certain cases. —
Where a person is entitled to claim compensation under section 140 and section 163A, he shall file the claim under either of the said sections and not under both”*

The wording of the provision is very clear and does not have room for doubt. Once the claimant has been awarded compensation under Section 140 of the act, he/she is precluded from invoking the provisions of

Section 163A of the Act. In the present case, claimants had filed a claim petition under Section 166/140 of the Act. Although, their claim was rejected under Section 166 of the Act, they were awarded Rs.50,000/- under Section 140 of the Act. Since, the claimants have already received compensation under Section 140 of the Act, further claim under Section 163A of the Act shall not be maintainable. [**New India Assurance Co. Pvt. Ltd. Vs. Geeta Sadan and others (2012) 114 (3) Bom LR 1585; Deepal Girishbhai (supra) relied**].

As far as the question of notionally bringing down income of Rs.40,000/= in order to invoke the provisions of Section 163A is concerned, it was specifically stated in Deepal Girishbhai (supra) as follows:-

“In our opinion, the proceeding under Section 163A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.”

Admittedly, this is a beneficial legislation and deserves liberal interpretation to implement the legislative intent. However, such benefits cannot be stretched to include persons who are not covered by it. The provision of Section 163A of the Act are applicable only to those whose income does not exceed Rs.40,000/- and its advantage cannot be given to all sections of society.

The aforesaid ratio was restated in the case of **New India Assurance Co. Ltd. Vs. Ashabai, (2008) 2 TN MAC 255 (Bom).**

Furthermore, this Court in the case titled as **Sadhna v. Kuldeep Singh, (P&H) 2009 (3) R.C.R. (Civil) 754** has held that it is not open for a person to notionally scale down his income so as to invoke the provisions of S. 163-A of the Act and thereby defeating the very object of Section 163-A of the Act.

The remedy for 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. This view taken in the case of Deepal Girishbhai was reiterated by Hon'ble the Supreme Court in ***Oriental Insurance Co. Ltd. Vs. Dhanbai Kanji Gadhei, 2011 AIR (SC) 1138*** by holding that claimant must elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.

The ratio of law laid down in the **Gurunnavadi and another vs. The General Manager, Karnataka State Transport Corporation and another, MFA No. 5377 of 1998 decided on 10.4.2001** and in **Civil Revision No. 4573 of 2004 decided on 25.01.2006, titled as Ravinder and another v. Subhash Chand and others**, is not applicable in the present case.

In view of the foregoing discussion, the claimants cannot be allowed to convert the claim petition originally filed under Section 166 of the Act to Section 163-A of the Act, by notionally bringing down his income to Rs. 40,000/- per annum.

Consequently, CM No.7839-CII of 2014, is hereby dismissed.

As far as the main appeal is concerned, learned Tribunal has held that since the claimants had already been awarded compensation of Rs.50,000/- under Section 140 of the Act, they were not entitled to any compensation under Section 160/166 of the Act. This Court does not find any illegality or perversity with the finding recorded by learned Tribunal.

As a result of the foregoing discussion, FAO No.115 of 2007 is hereby dismissed.

30.08.2016

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No