

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

**F.A.O. No.32 of 2008 (O&M)
Date of Decision : 04.05.2016**

Gurmail Kaur and others

..... Appellants

versus

Jagnahar Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Jaideep Verma, Advocate
for the appellants.

Respondents No.1 and 2 already proceeded ex-parte.

Mr. Suvir Dewan, Advocate
for respondent No.3.

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?

AJAY TEWARI, J. (Oral)

This appeal has been filed by the claimants against the dismissal of the claim petition.

Brief facts are that the deceased was a pillion rider on Moped coming from Rurki Hiran side towards village Bharomajra side driven by Jagnahar Singh. Suddenly a stray cow appeared on the road and the driver lost control and they both fell down and resulting into the death of Parkash Singh, aged 62 years. The Tribunal held that there was no negligence and

did not proceed even under Section 163-A of the Motor Vehicle Act and consequently dismissed the claim.

Learned counsel for the appellants has argued that considering the fact that the income of the deceased was assessed @ Rs.2400/- p.m. the Tribunal should have proceeded under Section 163-A of the Act.

Learned counsel for respondent No.3 has stated that there would be no bar for the Tribunal to have proceeded under Section 163-A once the income of the deceased was proved within the limit but even in that case it was proved on the record that the insurance policy did not cover a pillion rider. Therefore, any award on that basis would have to be only against respondents No.1 and 2.

I find weight in the argument of learned counsel for respondent No.3. None had appeared on behalf of respondents No.1 and 2 and they have already proceeded against ex-parte.

Learned counsel for the appellants has relied upon the judgment of this Court in the matter of *New India Assurance Co. Ltd. vs. Jaspreet Kaur and others, reported as 2006(3) RCR (Civil) 810* and the judgment of the Karnataka High Court in the matter of *Sharabi and another vs. P. Sahebkhani and others, reported as 2006 ACJ 229*, to contend that the Tribunal has the jurisdiction to pass an award under Section 163-A even if the claimants wrongly claimed the income of the deceased to be more than Rs.40,000/- p.a. but the Tribunal comes to a finding that his income was less than Rs.40,000/-.

In the circumstances, in view of the judgments cited above the

claim of the appellants has to be accepted. On the quantum, learned counsel for the appellants has argued that the Tribunal has wrongly held that the multiplier of 4 has to be applied whereas it should be 7 as per the second schedule. Consequently, it is held that multiplier of 7 has to be applied. There is no other ground for increase.

Resultantly, the appeal is disposed of. The appellants would be entitled to recover the compensation from respondents No.1 and 2 jointly and severally.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

May 04, 2016

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**(AJAY TEWARI)
JUDGE**