IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 11.05.2016.

FAO No.6682 of 2011 (O&M)

The New India Assurance Company Ltd. ....Appellant.

VERSUS

Kuldeep Kaur and others ....Respondents.

WITH

FAO No.3987 of 2012 (O&M)

Kuldeep Kaur and others ....Appellants.

VERSUS

Jasvir Singh and another ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Rajesh K. Sharma, Advocate
for the appellant (in FAO No.6682 of 2011) and
for respondent No.2 (in FAO No.3987 of 2012).

Mr. Nitin Thatai, Advocate
for the appellants (in FAO No.3987 of 2012) and
for respondents No.1 to 5 (in FAO No.6682 of 2011).

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SNEH PRASHAR, J.

The award dated 26.07.2011 passed by learned Motor Accident Claims Tribunal, Ludhiana (for short, “the Tribunal”), by virtue of which MACT Case No.104 of 02.08.2010 i.e. the claim petition under Section

163-A of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") filed by Kuldeep Kaur and others (claimants-appellants) was allowed, has given rise to two appeals captioned above, one filed by the insurance company with whom Truck Trailer No.PB-10BY-2191 (hereinafter referred to as "the offending truck trailer") was insured and the other by Kuldeep Kaur and others, the claimants themselves.

Precisely, the facts are that on 30.09.2009, when Jai Hind Singh (since deceased) was driving the offending truck trailer, its steering wheel became free and in order to save himself when he jumped out of the vehicle he got entangled in the wheel and suffered injuries and died. Boota Singh, companion of the deceased lodged D.D.R. No.13 on the same day at Police Station Fathehabad (Agra).

The widow, sons, daughter and mother (legal representatives) of deceased Jai Hind Singh filed a petition invoking the provisions of Section 163-A of the Act of 1988 claiming compensation from the owner and insurer (respondents in the petition) of the offending truck trailer for his untimely death. The petition was contested by the respondents. Respondent No.1 apart from raising preliminary objection of maintainability of the claim petition, admitted the accident, age and income of the deceased, but denied the remaining averments of the claimants. Respondent No.2 besides denying the accident raised all preliminary objections available to the insurer under the Act of 1988.

On the basis of pleadings of the parties, issues were settled.

Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal partly allowed the petition and awarded Rs.3,03,600/- as compensation to the claimants (appellants in FAO No.3987 of 2012) and held the respondents jointly and severally liable for payment of the compensation amount.

Feeling aggrieved, the appellant-insurance company assailed the award by filing appeal i.e. FAO No.6682 of 2011. The appellants-claimants also being dissatisfied, filed the appeal i.e. FAO No.3987 of 2012 seeking enhancement of the compensation amount.

The submissions made by learned counsel for the parties have been heard and record perused.

FAO-6682-2011 (O&M)

Learned counsel for the appellant-insurance company argued that the petition filed under Section 163-A of the Act of 1988 by legal heirs of deceased Jai Hind Singh, who died in a motor vehicular accident, was not maintainable as he was not in the income group of persons whose income is upto Rs.40,000/- per annum. In their pleadings, the claimants stated the income of the deceased as Rs.5000/- per month. In her affidavit Ex.PA, claimant-Kuldeep Kaur, widow of the deceased, deposed that the deceased was the only bread earner of the family and used to provide Rs.3200/- approximately for maintenance of the family after deducting his personal expenditure. PW2 Boota Singh, employer of the deceased, testified in his affidavit that the deceased was earning Rs.5000/- to Rs.6000/- per month. From the pleadings and ocular evidence led by the claimants, it is proved that the income of the deceased was more than Rs.40,000/- per annum. The law on the point is now very clear that the remedy under Section 163-A is available only to those, whose income is upto Rs.40,000/- per year and therefore, the petition filed by the claimants was not maintainable. To support his argument, learned counsel relied upon ***New India Assurance Co. Ltd. vs. Latabai and others, 2009 ACJ 1387*** and ***Deepal Girishbhai Soni and Ors. vs. United India Insurance Co. Ltd., Baroda, 2004(4) Judgments Today 86 (SC).***

It appears to be misconception on part of learned counsel for the appellant-insurance company that in their pleadings the claimants had mentioned the income of the deceased as Rs.5000/- per month. Perusal of the claim petition indicates that though there is correction in the figure, but the income of the deceased was mentioned as Rs.3200/- per month. That was the income taken by learned Tribunal as well while awarding compensation to the claimants. The statement of claimant-Kuldeep Kaur that the deceased used to give her Rs.3200/- per month after deducting his personal expenditure, would not mean that the income of the deceased was not upto Rs.40,000/- per annum. She did not quote any amount which the deceased used to keep for his personal and living expenses. The income quoted by PW2 Boota Singh was based on his personal notion. He neither produced any document nor stated his source of information regarding the income stated by him. His statement cannot be used to reject the statement of the widow.

The other argument of learned counsel for the appellant-insurance company is that the deceased himself was the tort feaser as he had jumped from the offending truck trailer and came under its wheels, has no base to stand on. No evidence to support their objection was led by the appellant-insurance company. On the other hand, relying on the testimony of the eyewitness, learned Tribunal held that the deceased died due to the injuries sustained by him in a motor vehicle accident arising out of use of the offending truck trailer and the said finding needs no intervention. From that it follows that there being no merit in the appeal of the appellant-insurance company, it is dismissed.

FAO-3987-2012 (O&M)

Learned counsel for the appellants-claimants argued that the age of the deceased was 37 years when he died due to the injuries sustained by him during the accident. According to the Second Schedule of the Act of 1988, the multiplier of '16' was applicable instead of '12' applied by learned Tribunal. The deduction of 1/3rd from the income of the deceased towards his personal and living expenses was inappropriate and nothing was awarded to the appellants towards funeral expenses, loss of consortium and loss of estate.

Undisputedly, Jai Hind Singh (deceased) died due to the injuries suffered by him in a motor vehicular accident arising out of use of the offending truck trailer. The income of the deceased was rightly fixed by learned Tribunal as Rs.3200/- per month i.e. Rs.38,400/- per annum. The deceased being 37 years old when he died in the accident, the multiplier of '16' will be the appropriate multiplier as per the Second Schedule of the Act of 1988 and not '12' as adopted by learned Tribunal. Applying the multiplier, the amount comes to Rs.6,14,400/-. As per the note given at the bottom of the Second Schedule, 1/3rd is to be deducted towards the expenses which the victim would have incurred in maintaining himself had he been alive. After deduction, the amount comes to Rs.4,09,600/-. In addition to the above amount, Rs.2000/- towards funeral expenses, Rs.5000/- for loss of consortium and Rs.2500/- on account of loss of estate is allowed to the appellants-claimants.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 26.07.2011 passed by learned Tribunal is modified. The enhanced compensation of Rs.1,15,500/- shall be paid to the appellants-claimants within 45 days from the date of receipt of certified copy of this judgment, failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

11.05.2016.
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