IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.5963 of 2012 (O&M).
Date of Decision: 17.03.2016.

United India Insurance Company Limited ....Appellant.

VERSUS

Harjinder Kaur and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.K. Bashamboo, Advocate for the appellant.

Mr. P.K. Ganga, Advocate for respondents No.5 and 6.

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SNEH PRASHAR, J.

Assailing the award dated 24.07.2012 passed by learned Motor Accident Claims Tribunal, Sirsa (for short, "the Tribunal") in MACT Case No.1 of 2011 awarding compensation to legal heirs (Harjinder Kaur and others) of deceased Harmeet Singh, who lost his life in a motor vehicular accident, the appellant-insurance company filed this appeal.

The submissions made by Mr. R.K. Bashamboo, learned counsel for the appellant and Mr. P.K. Ganga, learned counsel for respondents No.5 and 6 have been heard and record perused.

A petition invoking the provisions of Section 163-A of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") was filed by

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Harjinder Kaur and others (respondents No.1 to 4) claiming compensation on account of death of Harmeet Singh son of Mukhtiar Singh, resident of Dhani Partap Nagar, Tehsil Ellenabad, District Sirsa in a motor vehicular accident caused by Bal Ram-respondent No.5 while driving Tractor Farmtrac bearing registration No.HR-44D-1659 (hereinafter referred to as the “offending tractor”) rashly, negligently and in a high speed. The driver, owner and insurer (appellant) were impleaded as respondents No.1 to 3. They contested the petition raising various objections but after trial learned Tribunal partly accepted the petition with costs and awarded a sum of Rs.6,75,000/- as compensation to the claimants.

Feeling aggrieved, the insurer (appellant-insurance company) preferred the instant appeal.

Learned counsel for the appellant argued that as per pleadings of the claimants the monthly income of the deceased was Rs.3300/- per month. The petition was filed under Section 163-A of the Act of 1988 which is a special provision for payment of compensation on the basis of structured formula as specified in the Second Schedule of the Act. The benefit of the said provision can be extended only when the income of the victim is not more than Rs.40,000/- per annum. Contrary to the pleadings of the claimants and the provisions of Section 163-A of the Act of 1988, learned Tribunal assessed the income of the deceased as Rs.4500/- per month and deducting 1/3rd of the amount i.e. Rs.1500/- towards personal and living expenses of the deceased applied the multiplier of '18' to the amount of Rs.36,000/- assessed as loss of dependency per annum. The

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amount of Rs.25,000/- allowed towards loss of consortium, loss of love and affection and for mental pain and agony is also much higher than the amount that can be allowed under Section 163-A of the Act of 1988.

Despite due notice of the appeal, there has been no representation on behalf of the claimants. Indeed, the petition claiming compensation was filed under Section 163-A of the Act of 1988 and in their pleadings the claimants mentioned the monthly income of the deceased as Rs.3300/- which is the upper limit for claiming compensation under the said provision. No reason was mentioned by learned Tribunal for deviating from the provisions of Section 163-A of the Act of 1988 while assessing the income of the deceased as Rs.4500/- per month.

In ***Deepal Girishbhai Soni and others vs. United India Insurance Co. Ltd., Baroda, (2004) 5 Supreme Court Cases 385*** the question that arose on appeal before Hon'ble Supreme Court was whether a proceeding under Section 163-A of the Act of 1988 is a final proceeding, by reason whereof, a claimant, who has been granted compensation under Section 163-A, is debarred from proceeding with any further claims on the basis of fault liability in terms of Section 166. The Hon'ble Supreme Court held as under:-

> *"The scheme envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any*

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other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000/- or less is covered thereunder whereas Sections 140 *and* 166 *cater to all sections of society.*

It was further held as under:-

"We, therefore, are of the opinion that 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. 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."*

Lastly, it was laid down:-

"We, therefore, are of the opinion that Kodala (supra) 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/- per annual shall be treated as a cap. In our opinion, the proceeding under Section 163-A *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."*

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In view of the law laid down by Hon'ble Apex Court it has to be held that learned Tribunal legally erred in assessing the income of the deceased as Rs.4500/- per month i.e. Rs.54,000/- per annum whereas under the provisions of Section 163-A of the Act of 1988 the annual income of Rs.40,000/- is the upper limit.

In the above premise, assessing the income of the deceased as Rs.3300/- per month i.e. Rs.39,600/- per annum and the age of the deceased being 26 years the multiplier being '18' the amount comes to Rs.7,12,800/-. As per the note given at the bottom of the Second Schedule, 1/3rd of the amount is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. So the amount comes to Rs.4,75,200/-. In addition to the above, the claimants shall also be entitled Rs.5000/- towards loss of consortium. The amount of Rs.2000/- awarded towards funeral expenses is not disturbed. Vide order dated 07.11.2012, this Court stayed payment beyond Rs.4,80,000/- which means that the said amount has already been disbursed to the claimants and nothing is required to be recovered back.

Accordingly, the appeal filed by appellant-insurance company is allowed and the award dated 24.07.2012 passed by learned Tribunal is modified.

(SNEH PRASHAR)
JUDGE

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