

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

**FAO No.1974 of 2013 (O&M).
Date of Decision: 11.02.2016.**

Mrs. Seema and others

....Appellants.

VERSUS

Ram Rattan and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vikram Bali, Advocate for the appellants.

Mr. G.S. Rawat, Advocate for respondent No.1.

Mr. Sunny Dhul, Advocate for respondent No.2.

Mr. Ravinder Arora, Advocate for respondent No.3.

SNEH PRASHAR, J.

This appeal arises out of award dated 04.02.2012 passed by Motor Accident Claims Tribunal, Panchkula (for short, “the tribunal”) in MACT case No.28 of 2007 vide which the claim petition filed by the appellant invoking the provisions of Section 163-A of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) was dismissed.

The relevant facts are as under:-

It was pleaded by the claimants that deceased Chaman Lal was working in a private firm M/s N.V. Distilleries & Breweries Private Limited, Derabassi and had an income of Rs.3200/- per month. Chaman Lal

met with an accident when he alongwith other persons was traveling in a Three-Wheeler bearing registration No.PB-11X-3765. The accident occurred when a stray cattle came in the middle of the road and as respondent No.1 could not control the three wheeler, the same turned turtle. Chaman Lal was taken to P.G.I., Chandigarh but he succumbed to the injuries.

The legal heirs of deceased Chaman Lal filed a petition invoking the provisions of Section 163-A of the Act of 1988 for claiming compensation to the tune of Rs.10 lacs.

The petition was contested by the respondents (driver, owner and insurer of the three wheeler).

Considering the ocular and documentary evidence led by the parties, learned tribunal found that the deceased was getting a salary of Rs.5500/- per month. It was held that since the income of the deceased was more than Rs.40,000/- per annum, the claim petition under Section 163-A the Act of 1988 was not maintainable. Accordingly, the petition was dismissed vide award dated 04.02.2012.

Feeling aggrieved, the claimants-appellants have preferred the instant appeal.

The submissions made by Mr. Vikram Bali, learned counsel for the appellants, Mr. G.S. Rawat, learned counsel for respondent No.1, Mr. Sunny Dhul, learned counsel for respondent No.2 and Mr. Ravinder Arora, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellant argued that Section 163-A of

the Act of 1988 is a special provision for payment of compensation on structure formula basis. It provides that the owner of the motor vehicle or the authorized insurer shall be liable to pay, in the case of death or permanent disablement due to accident arisen out of the use of the motor vehicle, compensation as indicated in the Second Schedule to the legal heirs or the victim as the case may be. Learned counsel argued that factum of death of Chaman Lal on account of injuries sustained by him in the motor accident was not in dispute. The salary certificate Mark-A wherein the salary of the deceased was mentioned as Rs.5500/- per month, on which learned tribunal relied upon, had not been proved either by the claimants or by the respondents. Otherwise also, if at all the claim under Section 163-A of the Act of 1988 could not possibly be allowed, the case could still have been examined under Section 166 of the Act of 1988. To support his argument, learned counsel relied upon **United India Insurance Company Limited vs. Ram Ratti and others, 2010(4) P.L.R. 434** and **Regional Manager, Oriental Insurance Co. Ltd. vs. J.Ananda Murthy & Ors., 2011 A.C.J. 1820**. Reliance has also been placed on the judgment dated 21.11.2012 of this Court passed in **FAO No.5538 of 2011 (O&M)**.

Controverting the arguments of learned counsel for the claimants, learned counsel for the respondents pointed out that D.D.R. No.15 dated 07.01.2007 Ex.P1 was registered at Police Station Barwala, District Panchkula in respect of the accident in question. It contains the statement given by injured Chaman Lal himself, who later succumbed to the injuries. He stated that the accident occurred suddenly and by chance while

saving a stray cow and there was no fault on part of the driver of the three wheeler. He added that he was in full senses while giving statement and was admitted in P.G.I., Chandigarh for treatment. Learned counsel urged that from the report lodged with the police, it is evident that the accident had taken place by chance and no fault/negligence could be attributed to anyone for causing the same. With the said facts in the background, the claimants had filed a petition under Section 163-A of the Act of 1988 claiming compensation but when the widow of the deceased appeared in the witness box as PW1 she deposed that the salary of her husband was Rs.5500/- per month. To substantiate her statement, she tendered in evidence salary certificate Mark-A. Based on the ocular and documentary evidence of the claimants, the tribunal assessed the income of the deceased as Rs.5500/-. Since the annual income of the deceased came out to be in excess of Rs.40,000/- per annum, the petition not being maintainable under Section 163-A of the Act of 1988 was rightly dismissed by the tribunal.

Apparently, the facts in hand are distinguishable from the facts of United India Insurance Company Limited's case (supra) and Regional Manager, Oriental Insurance Co. Ltd.'s case (supra). The First Information Report in respect of the accident in which deceased Chaman Lal died was registered on the statement of Chaman Lal (deceased) himself. He stated that the accident occurred by chance and there was no fault on part of driver of the three wheeler. His statement cannot now be belied or ignored by the claimants to claim compensation under Section 166 of the Act of 1988.

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 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 annum 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.”

It was not just on the basis of the salary certificate Mark-A that learned tribunal assessed the income of the deceased as Rs.5500/- per month but it was also the deposition of PW1 Seema Devi widow of the deceased that the salary of her husband was Rs.5500/- per month. For that reason the claim petition being not maintainable under Section 163-A of the Act of 1988 was rightly dismissed by learned Tribunal.

Thus, the award calls for no intervention and the appeal being devoid of merit is dismissed.

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Since the appeal of appellants Seema Devi and others being not maintainable on merits on the ground that the salary of the deceased was more than Rs.40,000/- per annum has been dismissed, I do not find any

justification to condone the delay of 297 days in filing the appeal and accordingly the CM is also dismissed.

(SNEH PRASHAR)
JUDGE

11.02.2016.
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