IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.3881 of 2014.
Date of Decision: 17.03.2016.

Jawentri Devi ....Appellant.

VERSUS

Sunil Kumar and another ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ishaan Cooner, Advocate for the appellant.

Mr. Ashish Yadav, Advocate for respondent No.1.

Mr. Vinod Gupta, Advocate for respondent No.2.

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SNEH PRASHAR, J.

A petition invoking the provisions of Section 163-A of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") was filed by appellant-Jawentri Devi claiming compensation on account of death of her son Parveen Kumar in a motor accident caused by Sunil Kumar-respondent No.1 while driving motorcycle bearing registration No.HR-02Y-8560 (hereinafter referred to as the "offending motorcycle"). The driver-owner and insurer were impleaded as respondents No.1 and 2. They contested the petition raising various objections but after trial learned Tribunal allowed the petition and awarded a sum of Rs.4,11,000/- as compensation to the claimant.

Feeling unsatisfied with the award, the appellant preferred the instant appeal.

The submissions made by Mr. Ishaan Cooner, learned counsel for the appellant, Mr. Ashish Yadav, learned counsel for respondent No.1 and Mr. Vinod Gupta, learned counsel for respondent No.2 have been heard and record perused.

The only grievance of the appellant is that as per the note given at the bottom of the Second Schedule the amount of compensation so arrived at in case of a fatal accident claim is to be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. Deviating from the said provision, learned Tribunal wrongly deducted 1/2 of the amount towards personal and living expenses of the deceased.

On the other hand, learned counsel for respondent No.2 argued that when the award is to be modified in the light of provisions of the Second Schedule, the error committed by learned Tribunal in allowing Rs.25,000/- towards funeral expenses should also be corrected.

Section 163-A of the Act of 1988 is a special provision for payment of compensation on structured formula basis. It postulates that notwithstanding anything contained in the Act of 1988 or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Since the compensation was claimed under Section 163-A of the Act of 1988, the deduction towards personal and living expenses of the deceased as per the note given under the Second Schedule had to be 1/3rd and not 1/2. Learned Tribunal assessed the income of the deceased as Rs.40,000/- per annum. The age of the deceased was 30 years, therefore, the multiplier of '18' applied by learned Tribunal is appropriate. Accordingly, the amount comes to Rs.7,20,000/-.

Deducting 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive, the amount comes to Rs.4,80,000/-. The amount of Rs.26,000/- awarded towards expenditure on treatment of the deceased is appropriate and needs no modification. In addition to the above, the claimant will be entitled to Rs.2500/- on account of loss of estate and Rs.2000/- towards funeral expenses and not Rs.25,000/- as awarded by learned Tribunal. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 19.11.2013 passed by learned Tribunal is modified. The enhanced amount of compensation i.e. Rs.99,500/- shall be deposited by the respondents within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum.

(SNEH PRASHAR)
JUDGE

17.03.2016.
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