IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 27.04.2016.

FAO No.505 of 2013 (O&M)

Bajaj Allianz General Insurance Company Limited ....Appellant.

VERSUS

Sonu and another ....Respondents.

WITH

FAO No.4921 of 2013

Sonu ....Appellant.

VERSUS

Harmesh and another ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Subhash Goyal, Advocate
for the appellant (in FAO No.505 of 2013) and
for respondent No.2 (in FAO No.4921 of 2013).

Mr. S.K. Verma, Advocate
for the appellant (in FAO No.4921 of 2013) and
for respondent No.1 (in FAO No.505 of 2013).

Mr. P.K. Ganga, Advocate
for respondent No.2 (in FAO No.505 of 2013) and
for respondent No.1 (in FAO No.4921 of 2013).

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SNEH PRASHAR, J.

On having sustained injuries in a motor accident arising out of use of canter bearing registration No.RJ-31G-0653 (hereinafter referred to as "the offending canter"), claimant-Sonu (appellant in FAO No.4921 of

2013) filed a claim petition invoking the provisions of Section 163-A of the Motor Vehicles Act, 1988 (for short, “the Act”). The driver, owner and insurer of the offending canter were impleaded as respondents, who contested the petition. However, learned Tribunal accepted the petition partly with costs and awarded Rs.3,70,727/- as compensation to the claimant alongwith interest at the rate of 7.5% per annum from the date of the petition till realization of the award amount.

Feeling aggrieved with the award passed by learned Tribunal, the appellant-insurance company preferred appeal i.e. FAO No.505 of 2013. Also being dissatisfied with the compensation awarded, claimant-sonu filed appeal i.e. FAO No.4921 of 2013.

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

The grievance of appellant-insurance company is that the Tribunal deviating from the provisions of the Second Schedule to the Act, had awarded excessive amount of compensation to the claimant. He pointed out that a sum of Rs.3,70,727/- had been awarded being the amount of the medical bills tendered in evidence by the claimant whereas the Second Schedule of the Act provides that medical expenses-actual expenses incurred supported by bills/vouchers but not exceeding as one time payment of Rs.15,000/- can be allowed under the head of general damages in case of injuries/disabilities. There is also no provision for grant of loss of income which has been allowed to the tune of Rs.10,000/-. The amount of Rs.60,000/- awarded on account of 30% disability suffered by the claimant is also not in consonance with the structured formula as per the Second Schedule of the Act. Learned counsel contends that in a petition under

Section 163-A of the Act, compensation has to be awarded as per the structured formula given in the Second Schedule to the Act.

On the other hand, learned counsel for the claimant argued that the appellant-insurance company cannot maintain this appeal to challenge the impugned award on the question of quantum as no such ground/defence is available to the appellant-insurance company under Section 149 of the Act. To support his argument, learned counsel relied upon ***National Insurance Co. Ltd. vs. Karamjit Kaur & Ors., 2010(1) R.C.R. (Civil) 660*** and ***National Insurance Company Limited vs. Smt. Indu Sharma & Ors., 2000(2) R.C.R. (Civil) 186.***

Emphasizing on the grounds of appeal filed by the claimant, the learned counsel contends that the disability certificate Ex.P164 proved that the claimant had become disabled to the extent of 30%. He was a young boy aged 19 years and was working as a mason. The disability is bound to effect his future earning capacity but learned Tribunal awarded only an amount of Rs.60,000/- on this count. Nothing was awarded for loss of enjoyment, amenities of life and for the pain and suffering undergone by the claimant.

Two star questions have arisen for determination; (i) whether the insurer can contest the motor accident claim on merits, in part, in regard to the quantum and in addition to the grounds mentioned in Section 149(2) of the Act for avoiding liability under the policy of insurance; (ii) whether an insurer can prefer an appeal under Section 173 of the Motor Vehicles Act, 1988 against an award of Motor Accident Claims Tribunal. The said questions relating to challenge to quantum of compensation awarded, were elaborately discussed and set at rest by Hon'ble Apex Court in ***United India Insurance Co. Ltd. vs. Shila Datta & Ors., 2011 A.C.J. 2729.*** Both the aforesaid points were answered in favour of the insurers and it was held as under:-

> *"When an insurer is impleaded as a party-respondent to the claim petition, as contrasted from merely being a noticee under section 149(2)of the Act, its rights are significantly different. If the insurer is only a noticee, it can only raise such of those grounds as are permissible in law under section 149(2). But if he is a party-respondent, it can raise, not only those grounds which are available under section 149(2), but also all other grounds that are available to a person against whom a claim is made. It therefore follows that if a claimant impleads the insurer as a party-respondent, for whatever reason, then as such respondent, the insurer will be entitled to urge all contentions and grounds which may be available to it.*
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> The Act *does not require the claimants to implead the insurer as a party respondent. But if the claimants choose to implead the insurer as a party, not being a noticee under section 149(2), the insurer can urge all grounds and not necessarily the limited grounds mentioned in section 149(2)of the Act. If the insurer is already a respondent (having been impleaded as a party respondent), it need not seek the permission of the Tribunal under section 170 of the Act to raise grounds other than those mentioned in section 149(2) of the Act. The entire scheme and structure of Chapters XI and XII is that the claimant files a claim petition only against the owner and driver and the tribunal issues notice to the insurer*

under section 149(2) so that it can be made liable to pay the amount awarded against the insurer and if necessary, deny liability under the policy of insurance, on any of the grounds mentioned in section 149(2). If an insurer is only a noticee and not a party- respondent, having regard to the decision in Nicolletta Rohtagi, it can defend the claim only on the grounds mentioned in section 149(2) and not any of the other grounds relating to merits available to the insured-respondent. This is the position even where the claim proceedings are initiated suo moto under sections 149(7) and 158(6) of the Act, without any formal application by the claimants, as the insurer is only a noticee under section 149(2) of the Act."

In view of the above law laid down in Shila Datta & Ors. Case (supra), the appeal filed by the appellant-insurance company is very much maintainable. Admittedly, in the case in hand the insurance company was impleaded as a party-respondent to the claim petition and was not merely a noticee. As such, it had the right to raise all objections/grounds available to a person against whom a claim petition is filed and was not restricted to the grounds mentioned in Section 149(2) of the Act.

Coming to the contentious issue raised by the appellant-insurance company that in a petition under Section 163-A of the Act compensation can be claimed and awarded strictly in accordance with the structured formula given in Second Schedule, it is worth noticing that the Hon'ble Supreme Court has been repeatedly observing that the legislature should come out with an amendment to the Second Schedule which was incorporated way back in the year 1994 so that adequate and just compensation may be awarded to the persons in the lower income bracket, but the view taken has always been that in a petition under Section 163-A of the Act, the compensation can be granted only as per the structured formula.

In ***Oriental Insurance Co. Ltd. vs. Hansrajbai V. Kodala, 2001(2) R.C.R. (Civil) 629*** it was held that 'benefit of filing a petition on no fault liability can be claimed on the basis of income with a gap of Rs.40,000/- per annum. It was the highest slab in the Second Schedule. It was also observed that others have to approach the Court under Section 166 of the Act'.

Rejecting the contention of the claimants that right to get compensation under Section 163-A is additional to claim compensation on no fault liability, it was held in Hansrajbai V. Kodala's case (supra) that there is no specific provision in the Act to the effect that such compensation is in addition to the compensation payable under the Act. Under Section 163-A, compensation is awarded without proof of any fault while for getting compensation on the basis of fault liability, claimant is required to prove wrongful act, neglect or default of the owner of the vehicle or vehicles concerned. The award of compensation under Section 163-A is on predetermined formula for payment of compensation to road accident victims and that formula itself is based on criteria similar to determining the compensation under Section 168.

Before parting with the judgment, the Hon'ble Apex Court drew attention of the Central Government for revision and appropriate correction of the Second Schedule which provides for payment of compensation on structured formula basis by exercise of its power under Section 163-A(3).

In ***Deepal Girishbhai Soni and Ors. vs. United India***

Insurance Co. Ltd., 2004(2) R.C.R. (Civil) 466 Hon'ble Apex Court observed that in Section 163-A the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non-obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of.

The conclusion given in Para No.62 of Deepal Girishbhai Soni's case (supra) is as under:-

> *"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."*

Para No.67 of Deepal Girishbhai Soni's case (supra) is also extracted as hereunder:-

> *"*Section 163-A *was introduced in the year 1994. The executive authority of the Central Government has the requisite jurisdiction to amend the Second Schedule from time*

to time. Having regard to the inflation and fall in the rate of bank interest; it is desirable that the Central Government bestows serious consideration to this aspect of the matter."

Same is the law laid down by Hon'ble Supreme Court in ***Oriental Insurance Company Limited vs. Meena Variyal & Ors., 2007(2) R.C.R. (Civil) 698*** wherein it was held as under:-

"We think that the law laid down in Minu B. Mehta & Anr. Vs. Balkrishna Ramchandra Nayan & Anr. (supra) was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or 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 the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of

establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

Section 163-A is a ***legislative innovation*** providing for strict liability that relieves the claimant of having proved the normal principles of fault that is normative basis for claiming compensation on the principle of tort. The section contains, therefore, certain inherent limitation on its applicability. The limitation set down under Section 163-A cannot be crossed over on imaginative grounds which are opposed to the statutory provision.

In view of the law laid down by Hon'ble supreme Court in Hansrajbai V. Kodala's case (supra), Deepal Girishbhai Soni's case (supra) and Meena Variyal's case supra, in the considered opinion of this Court, if a petition is filed under Section 163-A of the Act, the compensation has to be awarded in terms of the Second Schedule and there can be no deviation from the same. In the case in hand, the claimant remained hospitalized w.e.f. 19.01.2011 to 04.02.2011 i.e. for 16 days and as per the medical bills produced he spent around Rs.3 lacs on his treatment, however, as per the Second Schedule only Rs.15,000/- can be awarded to the claimant towards medical expenses-actual expenses, as one time payment. Accordingly, he is held entitled to Rs.15,000/- as medical expenses and not Rs.3,00,727/- as awarded by learned Tribunal.

The claimant has alleged that he was earning Rs.3200/- per month by doing the job of mason. According to the disability certificate Ex.P164, the disability suffered by the claimant was assessed as 30%. Since the claimant was a mason, there remains no doubt that the disability suffered by him would adversely effect his earning capacity. In view of the law laid down in ***Raj Kumar vs. Ajay Kumar and another, 2011(2) R.C.R. (Civil) 101*** the functional disability qua whole body of the claimant is taken as 15% which will amount to loss of earning capacity to the tune of Rs.480/- per month i.e. Rs.5760/- per annum. The claimant was 19 years old when he met with the accident. Applying the multiplier of '16' the amount comes to Rs.92,160/-. Accordingly, the amount of Rs.60,000/- awarded by learned Tribunal for the disability suffered by the claimant is enhanced to Rs.92,160/-.

Perusal of the award shows that no amount has been awarded to the appellant on account of pain and suffering undergone by the appellant. The appellant suffered multiple grievous injuries and remained hospitalized for 16 days. Considering the nature of injuries suffered by him and the period of his hospitalization, a sum of Rs.5000/- is awarded to the appellant for the pain and suffering undergone by him.

With the above modification in the award dated 12.09.2012, both the appeals captioned above, are hereby disposed of.

(SNEH PRASHAR)
JUDGE

27.04.2016.
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