

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

FAO-447-2015 (O&M)
Date of decision: 23.02.2016

Sukhbir Singh

...Appellant(s)

Versus

National Insurance Co. Ltd and ors

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Dheeraj Narula, Advocate,
the appellant(s).

Mr. Paul S. Saini, Advocate,
for respondent No. 1.

Mr. Gurmeet Singh Saini, Advocate
for Mr. B.S. Sidhu, Advocate,
for respondent No. 2.

JITENDRA CHAUHAN, J.

CM-1132-CII-2015

The reply to the application for condonation of delay in the Court is taken on record. For the reasons contained in the application, the delay of 281 days in filing the appeal is condoned and the appeal is allowed.

Main case

This appeal has been filed by the driver of the offending vehicle against the award dated 08.01.2014, passed by Motor Accident Claims Tribunal, Ferozepur (for short 'the Tribunal') vide

which compensation of Rs. 3,22,000/- was awarded to the claimants on account of death of their son, Gurjeet Singh. However, while allowing the claim petition, the Tribunal held that the amount of compensation shall be paid by respondent No. 3, the Insurance Company and the liberty was granted to the Insurance Company to recover the amount from the driver and owner of the offending vehicle. It is the latter part of the award which is assailed in the present appeal.

The learned Counsel for the appellant contends that the Tribunal has committed grave error in holding that the amount of compensation shall be paid by the driver of the vehicle. It is further contended that the instant claim was filed under Section 163-A of the Motor Vehicles Act and the learned Tribunal has not taken into consideration the provision of law properly. As per the provision, in case a claim under Section 163-A of the Act is allowed, the owner of the motor vehicle or the authorized insurer shall be liable to pay the compensation.

In view of the dictum of law laid down in “***Deepal Girishbhai Soni Vs. United India Insurance Co. Ltd. 2004(2) R.C.R. (Civil) 466***”, it is contended that Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A contains non-obstante clause in terms whereof the owner of the motor vehicle or the authorized insurer is 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.

The learned counsel for the Insurance Company could not controvert the arguments advanced by learned counsel for the appellant. Keeping in view the provision of Section 163-A of the Act, the direction given by the Tribunal to recover the amount from the appellant-driver is set aside and it is held that the Insurance Company will be at liberty to recover the amount of compensation from the owner of the vehicle in question only.

The award is modified to that extent.

The appeal is disposed of in the manner indicated above.

The statutory amount be refunded to the appellant on filing application in this regard.

23.02.2016

sumit

**(JITENDRA CHAUHAN)
JUDGE**