

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.323

**FAO No.36 of 2003
Date of decision : 22.09.2017**

Jasbir Kaur

..... Appellant

VERSUS

Darshal Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Ms. Natasha Munjal, Advocate for
Mr. M.K. Dogra, Advocate
for the appellant.

Mr. Vinod Chaudhri, Advocate
for respondent No.3-Insurance Company.

SUDHIR MITTAL, J. (Oral)

The deceased is Gurjant Singh, who was working as a Conductor on a private truck bearing registration No.PB-04-E-9764. The truck was proceeding from Jalandhar to Gauhati. On 14.09.1999 at about 8.30 a.m., the truck was re-fueling at a place known as Mehrona. The dealer of the Gas Station instructed the driver of the said truck to move it ahead but its way, was being blocked by a mini bus whose driver advised the driver of the truck to reverse the vehicle. While being reversed, the truck struck against a wall on which the deceased-Gurjant Singh was sitting. As a result of this accident, Gurjant Singh died. The present claim petition has been filed under Section 163-A of the Motor Vehicle Act, 1988 (for short 'the Act').

2. The claimant is mother of the deceased, who was aged 25 years on the date of the accident and was unmarried. The only issue to be determined is whether the learned Motor Accidents Claims Tribunal, Ferozepur (hereinafter referred to as 'the learned Tribunal') has determined the compensation correctly. Since, the petition has been filed under Section 163-A of the Act, there is no question of any fault involved herein. The learned Tribunal has assessed the monthly income of the deceased as ₹3,000/- and has also found that he was 25 years old on the date of the accident. Learned counsel for the appellant does not dispute these findings nor are they being disputed by the respondents. The learned Tribunal has calculated the compensation on the basis of the age of the claimant and not on the basis of the age of the deceased. This principle is being contested by the learned counsel for the appellant. She has further placed reliance on Schedule-II of the Act.

3. Being a petition under Section 163-A of the Act, the Second Schedule thereto will apply. Therefore, the compensation has to be determined on the basis of income of the deceased and his age at the time of the accident. A deduction of 1/3 is to be made from the compensation determined towards personal maintenance of the deceased. Compensation is also payable under the usual heads of funeral expenses, loss of consortium, loss of estate and medical expenses as provided in the said Schedule of the Act. No increase in the amounts provided under the said Schedule is permissible by the Courts and only the Central Government is entitled to amend the Second Schedule of the Act keeping in view the cost of living. It has been held by the Hon'ble Supreme Court in '**Deepal Girishbhai Soni and others Vs. United India Insurance Company Limited, 2004 (2) RCR**

(Civil), 466.’ The relevant observations from this judgment are reproduced below:-

“37. Chapter XI was, thus, enacted for grant of immediate relief to a section of people whose annual income is not more than ₹40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto; compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in column Nos.2 to 6 thereof leaves no manner of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.”

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41. 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. Sub-section (2) of Section 163-A is in pari material with sub-section (3) of Section 140 of the Act.

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52. 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.”

4. Similarly, a Single Judge of this Court in **‘Mohit Garg and another Vs. Afrojan and others, 2014 (4) PLR 160’** has held as follows:-

“7. This theoretical discourse is set forth to fend off the argument which is placed by the counsel that even in a claim under Section 163-A, the court can grant compensation in the manner provided under Section 166. If we must import the principle under Section 166 to 163-A, we are trying to efface a border that respective provisions set down. The limitation set down under Section 163-A cannot be wished away by fanciful claims. What is possible for the Supreme Court to do under Article 142 of the Constitution, I am afraid I cannot invoke. Again it can be noticed that in Master Mallikarjun's case (supra), the Supreme Court was

holding that even a claim under Section 163-A, the court need not feel constrained to refer to formula for determining the compensation for the injuries, was saying so in the case of a claim on behalf of a child. In a case of an injury or death of a child, it is never needed to establish in Tribunal that yet another person was negligent. Indeed, a child can never be attributed to any negligent conduct. On the other hand, to state an extreme position a child is even entitled to roam free the way he wants. Any one else who uses the road or vehicle shall ensure that his own conduct is so circumspect that he commits no harm to a child. The negligence of a child is an oxymoron. It is the negligence of yet another person that causes injury or death to a child. A person using a motor vehicle in a public place shall so use it whenever we consider the issue on behalf of the child that there is no case made for contributory negligence by a child or to even state any form of negligence by the child. The Supreme Court, therefore, could have very well felt not constrained by having to examine the case of compensation through the prism of Section 163-A. It was possible to see that the child was fully compensated by importing the principle of tort liability. I will, therefore, read this judgment as fully confined to a claim on behalf of the child.”

5. In view of the above, reliance by learned counsel for the appellant on ‘**Jasvir Kaur and another Vs. Budh Singh and others, 2015 (73) RCR (Civil) 235,** is mis-placed. In this case, the claim was filed under Section 163-A of the Act, but compensation has been determined on the basis of the principles laid down for determination of compensation under Section 166 of the Act. The said judgment did not take into consideration.

Deepal Girishbhai Soni's case (supra) nor have the provisions of Section 163-A of the Act being taken note off. To my mind, the said judgment is *Per-incuriam* and I respectfully dis-agree with the same.

6. Thus, as noticed hereinabove, compensation is being assessed on the basis of the Second Schedule of the Act. It is not in dispute that the deceased was earning ₹3,000/- per month and was 25 years' old. Taking his annual income as ₹36,000/-, the amount of compensation is assessed as ₹6,84,000/-. A deduction of 1/3 has to be made on account of personal expenses. Therefore, the amount of compensation payable is assessed as ₹4,56,000/-. To this amount, a sum of ₹2,000/- is to be added on account of funeral expenses and ₹2,500/- on account of loss of estate. Thus, the total amount of compensation payable is ₹4,60,500/-.

7. Accordingly, the appeal is allowed in the above terms. The enhanced compensation will be payable with interest @ 7.5% per annum from the date of filing of the claim petition till the date of payment. Respondent No.3-Insurance Company is directed to make payment within a period of three months from the date of receipt of a certified copy of this judgment. The Insurance Company is entitled to recover the amount paid from respondent No.2-Vijay Kumar (owner of the truck).

(SUDHIR MITTAL)
JUDGE

September 22, 2017

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No