

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.3671 of 2007

Date of Decision.02.08.2017

Gobind Rai

.....Appellant

Vs

Raj Kumar and another

.....Respondents

Present: Mr. R.S. Mamli, Advocate
for the appellant.

Mr. Ravinder Arora, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The claimants had preferred a claim petition under Section 166 of the Motor Vehicles Act on account of having sustained injuries in a motor accident occurred on 14.8.2000 by alleging his income ₹15,000/- per month. The aforementioned petition later on, through an application seeking amendment converted from Section 166 to Sector 163-A of the Motor Vehicles Act, 1988 and on the basis of a cap of income to be not more than ₹40,000/- per annum for claiming compensation under Section 163-A, the Tribunal had dismissed the claim petition.

Mr. R.S. Mamli, learned counsel appearing on behalf of the appellant submits that the aforementioned observation of the Tribunal is not sustainable in the eyes of law as there is no evidence on record with regard to income having more than ₹40,000/- per annum, despite the fact that the amendment of claim petition from Section 166 to Section 163-A has been allowed. In this regard, an application for additional evidence was filed but

the same was also rejected vide separate order dated 10.05.2007 but inadvertently, though the same could not be challenged but can always be challenged by taking the aid of Order 43 Rule 1A CPC. In the absence of any proof that the claimant was earning more than ₹40,000/-, the compensation was required to be determined by the Tribunal under Section 163-A as he sustained injuries with a disability of 20% on his person, thus, urges this Court for setting aside the award passed by the Tribunal.

Mr. Ravinder Arora, learned counsel appearing on behalf of the insurance company submits that in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd. 2004(2) RCR (Civil) 466**, the petition filed under Section 166 cannot be converted into Section 163-A. Be that as it may but the same could not be allowed as the appellant has not been able to lead evidence with regard to income as ₹40,000/- per annum. The pleading itself is conclusive piece of evidence to form an opinion of declining the petition under Section 163-A, thus, urges this Court for dismissal of appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that the finding rendered by the Tribunal is perfectly legal and justified and does not call for interference, for, the application for additional evidence in view of the admission in the claim petition of having an income of ₹15,000/- per month could not have helped the appellant in any manner. No evidence beyond pleadings can be looked into. In the absence of evidence of having income of ₹40,000/- per annum, the Tribunal had no other option but to go with the pleadings that the claimant was earning ₹15,000/- per month and rightly dismissed the claim petition.

In view of the aforementioned observations, the award passed

by the Tribunal is perfectly legal and justified. No ground for interference is made out. The appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 02, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No