

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

FAO-520-2006
Date of decision: 04.08.2017

Ram Murti and others

.... Appellants

Versus

Jagtar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.H.R.Nohria, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent No.3.

Avneesh Jhingan, J.

This is an appeal against the award dated 31.08.2005 passed by the Motor Accidents Claims Tribunal, Faridkot (hereinafter referred to as the 'Tribunal'). The appeal has been filed by the parents, widow and daughter (who was minor at the time of accident of deceased Surinder Kumar) for enhancement of the claim awarded by the Tribunal.

The brief facts of the case as set out are that on the intervening night of 6/7.02.2005, Surinder Kumar (deceased) had gone from Jaitu to Malout in a Tata Sumo bearing registration No.PB-30A-2212 to attend the marriage of Renu Bala. The said vehicle was driven by Jagtar Singh. After the marriage, the deceased was coming back. At about 2.30 a.m. when the vehicle was 7/8 kms away from Gidderbaha on Bhatinda Road, then

suddenly a stray cattle came in front of the vehicle and the driver of vehicle turned towards the right side of the road in order to save the cattle. In doing so, the vehicle struck against the 'Kikkar' tree. Due to the impact, Surender Kumar died on the spot.

The claim petition was filed by the mother, father, widow and minor daughter of the deceased. The Tribunal relying upon the doctors report accepted the age of the deceased as 32 years. Before the Tribunal, there was no serious dispute that the deceased was earning around Rs.3500/- per month.

The Tribunal in its order itself recorded that though by applying multiplier method, the compensation amount may be more but keeping in view the entirety of the case a sum of Rs.3 lakhs lumpsum was granted to the claimants along with interest @ 6% per annum from the date of filing the claim petition till realization of the award amount.

In the present appeal, the appellants have challenged the award stating that they had claimed Rs.10 lakhs as compensation along with interest @ 18% per annum but the Tribunal has ignored the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') read with IInd schedule thereto and hence the compensation should be enhanced.

Counsel for respondent No.3 had defended the award of the Tribunal and has argued that the Tribunal weighing the entire facts and taking into account a larger picture has rightly awarded Rs.3 lakhs along with interest. No interference is called for.

After hearing learned counsel for the parties and going through the record of the case, in my view, the claim petition filed under Section 163-A of the Act should have been dealt with as per Schedule IInd. In case FAO No.3371 of 2004, decided on 13.01.2016, titled as **“Pawan Kumar and others Vs. Ramesh Kumar and others”** this Court has held that Schedule II of the Act has to be followed and there is no scope for deviation for manner of how the amounts are specified as payable. It has been held as under:-

“If a petition is filed under Section 163-A of the ***Motor Vehicle Act***, there is no scope for deviation for a manner of how the amounts are specified as payable so long as there is no legislative change in Schedule II. The concepts, which are familiar for loss of love and affection of a child or the value of the domestic work cannot suffer any reduction cannot be imported in the Scheme of Section 163-A. Even if an argument that she used to earn Rs.4,000/- cannot be accepted, for, it would take the case outside the purview of Section 163-A. I am prepared to admit the maximum income possible for a lady of aged 53 years as Rs.4,000/-, making a deduction of 1/3rd and take the same to be the contribution to the family. Considering that she was 53 years of age, the multiplier applicable was 11 and the loss of dependency that has to be taken at Rs.2,97,833/-. I will make a provision for loss of estate at Rs.2500/- and funeral expenses at Rs.2,000/- as provided under Schedule II and add the sum to provide for a compensation

of Rs.3,56,412/-. Various heads of claims are tabulated as under:-

Fatal Accident		Date of accident	
Age	53	27.10.1998	
Occupation	Domestic work		
Claimants:	Son, Daughter and husband		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount (Rs.)	Amount (Rs.)
1	Income	1500	4000
2	Add, % of increase		
3	Deduction (1/3)	1000	2666
4	Multiplicand (annualised)	12000	31992
5	Multiplier	11	11
6	Loss of dependence	1,32,000	3,51,912
7	Medical expenses		
8	Loss of Consortium		
9	Loss of love and affection for children		
10	Loss to estate		2500
11	Funeral Expenses	2000	2000
	Total	1,34,000	3,56,412

The additional amount of compensation shall also attract interest at the rate of 6% from the date of filing the petition till the date of payment. The liability shall be in the same manner as determined by the Tribunal.

The Hon'ble Apex Court, in Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd., Baroda, 2004 (2) R.C.R. (Civil) 466, while dealing with the question as to whether the proceedings under Section 163A of the Act are final or not, held as under :-

“42. Section 163-A was, thus, enacted for grant

of immediate relief to a section of the people whose annual income is not more than Rs 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. . . . This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that 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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46. 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 authorised 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.

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51. The scheme envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set-off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs 40,000 or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society.

52. It may be true that Section 163-B provides for an option to a claimant to either go for a claim under Section 140 or Section 163-A of the Act, as the case may be, but the same was inserted ex abundanti cautela so as to remove any misconception in the minds of the parties to the lis having regard to the fact that both relate to the claim on the basis of no-fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims both under Section 163-A and Section 166 does not arise. If the submission of the learned counsel

is accepted the same would lead to an incongruity. xxx xxx xxx”.”

After going through the above referred decision, legal position comes that once the award is made under Section 163-A of the Act, then there is no question of deviating from Schedule II of the Act. Further more, it was held that Section 163-A of the Act has an overriding effect which provides for special provision for payment of compensation on structured formal basis.

Though the loss of human life cannot be compensated, yet in order to arrive at just and equitable compensation as per Schedule II of the Act, the income of the deceased is taken up to be Rs.3300/- per month, the compensation is to be calculated in the following manner:-

Monthly Income	:	Rs.3300/-
1/3 rd deducted as personal expenses		
Monthly dependency	:	Rs.2,200/-
Annual dependency	:	Rs.26,400/-
Multiplier applicable	:	17
Loss of dependency	:	Rs.4,48,800/-
Loss of consortium	:	Rs.5,000/-
Funeral expenses	:	Rs.2,000/-
Loss of estate	:	Rs.2,500/-
Total compensation	:	Rs.4,58,300/-

Accordingly, the award of the Tribunal is modified to the extent that the compensation is enhanced from Rs.3 lacs to Rs.4,58,300/-. The

enhanced compensation shall be paid to the claimants along with interest at the rate of 6% per annum from the date of the claim petition till realisation of the amount. The compensation would be distributed in the same ratio, as has been directed by the Tribunal in its award.

The appeal is partly allowed.

(AVNEESH JHINGAN)
JUDGE

04.08.2017

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Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes