IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 6565 of 2011 (O&M)

Date of Decision:14.12.2017

Neermla and others ....Appellants

Versus

Harjinder Singh and others ......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Shalini Verma, Advocate Amicus-curiae for the appellants.

Mr. Puneet Jain, Advocate and
Mr. M.B. Jain, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 28.7.2011 passed by the Motor Accidents Claims Tribunal, Kaithal (for short 'the Tribunal').

Siri Chand aged 50 plus met with a motor vehicular accident on 27.12.2009. He was going on his bicycle when he was hit by a Car bearing registration No.PB-65-A-0966. He died on the spot. The claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the widow, three minor children and mother of the deceased. The Tribunal assessed the monthly earning of deceased as Rs.3300/- and made 1/3rd deduction for self expenses and after applying the multiplier of 11 as deceased was above 50 years, awarded a sum of Rs.2,99,900/- including Rs.9500/- under conventional heads. Interest at the rate of 7.5% per annum was awarded by the Tribunal.

The present appeal has been filed for enhancement of compensation.

None had appeared for the appellant on 13.12.2017 and the case was adjourned for today i.e. 14.12.2017. Even today, inspite of two pass-overs none has put in appearance. FAO is pending since 2011. Ms. Shalini Verma, Advocate who is present in Court, is appointed as amicus-curiae. She has been handed over a copy of paper book. She has gone through the paper book and assisted the Court.

Learned amicus-curiae has argued that the income assessed of the deceased as Rs. 3300/- is on the lower side. The grievance has been made that 1/3rd deduction has wrongly been made whereas 1/5th deduction for self expenses should have been made. Further grievance is that the deceased was 40 years of age and multiplier of 13 should have been applied instead of 11.

Learned counsel for the Insurance Company argued that the calculation has been made as per second schedule of the Act. He further contended that the claim petition will not lie under Section 163-A of the Act if earning of the deceased is more than 40,000/- per year. He also contended that deceased was more than 50 years of age it had been proved, from the deposition of the widow of Siri Chand. She in her statement stated that she is 50 years of age and her husband was older than her.

The Act provides two remedies for claiming compensation i.e. one under Section 166 of the Act and the other under Section 163-A of the Act. The basic difference is that under Section 166 of the Act, the onus is casted upon the claimants to prove that there was a rash and negligent driving of the offending vehicle which resulted into accident. Under Section 163-A of the Act, there is no onus casted upon the claimant to prove rash and negligent driving of the offending vehicle but there is restriction that it applies only to the person who had his income upto Rs.40,000/- per year. Moreover, the compensation is to be calculated as per the structure provided under Second Schedule of the Act.

Hon'ble the Apex Court in ***Deepal Girishbhai Soni and others Versus United India Insurance Co. Ltd, Baroda, 2004(2) RCR (Civil) 466*** has held as under:

> "62. 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 proceedings 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."

In the above decision, it has been held that Section 163-A of the Act, has been provided for that strata of the Society which has small earning and this will not be open to the person whose earning is more than Rs.40,000/- per year.

In the present case, the Tribunal has awarded the compensation according to the schedule. The contention raised with regard to age of the deceased is also belied by the statement of the widow.

In such circumstance, there is no scope for enhancement and the award passed by the Tribunal cannot be faulted.

The appeal, being bereft of any merit. is hereby dismissed.

(AVNEESH JHINGAN)
JUDGE

14.12.2017
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No