

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

FAO No. 1632 of 2013

DATE OF DECISION : 11.10.2017

Manoj Kumar Jain

.... APPELLANT

Versus

Gori Shankar and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Vivek Suri, Advocate,
for the appellant.

Mr. Satpal Dhamija, Advocate,
for respondent No.2-Insurance Company.

* * *

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 15.10.2012 passed by the Motor Accident Claims Tribunal, Rohtak (for short 'the Tribunal') dismissing the claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act').

Facts have not been disputed by either of the party.

The only issue raised by the appellant is that even though the injured was earning more than ₹ 40,000/- per year, yet he could have filed the claim petition under Section 163-A of the Act.

I have heard learned counsel for the parties and perused the

paper book and the record.

The issue raised is no longer res integra. The Hon'ble Apex Court in **Deepal Girishbhai Soni and others Versus United India Insurance Co. Ltd., Baroda**, 2004 (5) SCC 385, has held as under :-

“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 annum shall be treated as a cap. In our opinion, the proceeding 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.”

Relying upon the above decision, this Court in case reported as **Himachal Road Transport Corporation and another Versus Baldev Kumar Nayyer and others**, 2006 (2) RCR (Civil) 682, observed as under :-

“In this view of the matter, we are satisfied that the impugned award dated 6.11.2003 cannot be sustained. The Tribunal could not have treated the petitions filed under Section 166 of the Act as petitions under Section 163-A of the Act by restricting the income to Rs. 40,000/-. This issue stands settled by the Apex Court in Deepal Girish's case (supra). Accordingly, we set aside the impugned award dated 6.11.2003 and direct

*the Motor Accident Claims Tribunal, Panchkula
to decide the petition filed under Section 166 of
the Act in accordance with law.”*

In view of the aforesaid decisions, it is the settled position of law that if a person invokes provisions of Section 163-A of the Act, his annual income of ₹ 40,000/- shall not be treated as a cap, and only those persons whose annual income is upto ₹ 40,000/- can take the benefit of the provision of Section 163-A of the Act. Admittedly, at the time of the accident, the appellant was drawing salary of ₹ 18,586/- per month, i.e. more than ₹ 40,000/- per annum. The Tribunal has rightly dismissed the claim petition of the appellant being not maintainable as same was filed under Section 163-A of the Act.

In view of the above, the impugned award dated 15.10.2012 passed by the Tribunal dismissing the claim petition of the appellant is upheld, and the appeal is dismissed.

October 11, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes