

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

FAO-8033-2015 (O&M)

Date of decision: 3.2.2017

National Insurance Company Ltd.

...Appellant

Versus

Ashwani Kumar and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Aseem Aggarwal, Advocate for the appellant

None for the respondents

SNEH PRASHAR, J.

The Insurance Company has filed the present appeal challenging the award dated 3.8.2015 passed by learned Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal') vide which a sum of Rs.2,30,009/- was allowed to respondent No.1- claimant on account of the injuries suffered by him in a road side accident that took place on 7.2.2013.

Despite service, none has appeared on behalf of the respondents.

The submissions made by Mr.Aseem Aggarwal, Advocate representing the appellant have been heard.

The only argument raised by learned counsel for the appellant is that a sum of Rs.1,88,409/- awarded on account of medical expenses i.e. bills/ receipts/ memos etc. is contrary to the provisions of

Section 163-A of the Motor Vehicles Act (for short 'the Act').

Admittedly, the appellant suffered injuries in an accident that took place on 7.2.2013 arising out of use of vehicle No.HR40D-8614. After the accident, he was taken to Virk Hospital, Karnal where he remained admitted for a period from 8.2.2013 to 24.2.2013 and thereafter he took follow up treatment. He filed a petition under Section 163A of the Act claiming compensation for the injuries suffered by him, which was allowed and learned Tribunal awarded a sum of Rs.5000/- for pain and sufferings, Rs.1,88,409/- for medical expenses, Rs.6000/- for loss of income and Rs.30,600/- on account of disability suffered by him.

The award of compensation under Section 163-A of the Act is on predetermined formula for payment of compensation to road accident victims and that formula itself is based on criteria similar to determining the compensation under Section 168 of the Act.

In *Deepal Girishbhai Soni and Ors. vs. United India Insurance Co. Ltd., 2004(2) R.C.R. (Civil) 466* Hon'ble Apex Court observed that in Section 163-A of the Act the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non- obstante clause of wide nature which would mean that the provisions of Section 163-A of the Act would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an

exception to Section 166 of the Act and the concept of social justice has been duly taken care of.

The conclusion given in Para No.62 of Deepal Girishbhai Soni's case (supra) is 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.”

Para No.67 of Deepal Girishbhai Soni's case (supra) is also extracted as hereunder:-

“Section 163-A was introduced in the year 1994. The executive authority of the Central Government has the requisite jurisdiction to amend the Second Schedule from time to time. Having regard to the inflation and fall in the rate of bank interest; it is desirable that the Central Government bestows serious consideration to this aspect of the matter.”

Same is the law laid down by Hon'ble Supreme Court in **Oriental Insurance Company Limited vs. Meena Variyal & Ors., 2007 (2) R.C.R. (Civil) 698** wherein it was held as under:-

“We think that the law laid down in Minu B. Mehta &

Anr. Vs. Balkrishna Ramchandra Nayan & Anr. (supra) was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.”

Section 163-A of the Act is a *legislative innovation*

providing for strict liability that relieves the claimant of having proved the normal principles of fault that is normative basis for claiming compensation on the principle of tort. The section contains, therefore, certain inherent limitation on its applicability. The limitation set down under Section 163-A of the Act cannot be crossed over on imaginative grounds which are opposed to the statutory provision.

In view of the law laid down by Hon'ble supreme Court in Hansrajbai V. Kodala's case (supra), Deepal Girishbhai Soni's case (supra) and Meena Variyal's case supra, in the considered opinion of this Court, if a petition is filed under Section 163-A of the Act, the compensation has to be awarded in terms of the Second Schedule and there can be no deviation from the same.

In the case in hand, surprisingly, in para No.18 of the impugned Award, learned Tribunal reproduced the provisions of Section 163A(4) of the Act of the Second Scheduled of the Act relating to general damages in case of injuries and disabilities and noticed that in an injury case the actual expenses incurred supported by bills/ vouchers tendered in evidence, but not exceeding Rs.15,000/- as one time payment including hospitalization charges, are to be given as compensation, yet without discussing and assigning any reason, awarded a sum of Rs.1,88,409/- towards medical expenses.

In view of the above discussion, the appellant is held entitled to Rs.15,000/- as medical expenses and not Rs.1,88,409/- as awarded by learned Tribunal.

With the above modification in the award dated 3.8.2015
passed by learned Tribunal, the present appeal is hereby disposed of.

3.2.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No