

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

-.-

FAO 1904 of 2002 (O&M)
Date of decision: 28.08.2018

Dayal Singh

..... Appellant

Versus

Preetmohinder Singh and another

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

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

Mr. Neeraj Khanna, Advocate
for respondent No. 2

-.-

Rekha Mittal, J. (Oral)

The present appeal directs challenge against award dated 11.10.2001 passed by the Motor Accidents Claims Tribunal, Patiala (hereinafter to be referred as 'the Tribunal') whereby application filed under Section 163-A of the Motor Vehicles Act, 1988 (in short, 'the Act') for grant of compensation in regard to death of Balkar Singh out of use of motor vehicle i.e. Canter bearing No. CH-01-A-6822 was dismissed by the Tribunal in view of its findings recorded in paras 13-14 of the award but claimant was awarded a sum of Rs.50,000.00 under 'no fault liability'.

The sole submission made by counsel for the appellant is that in application under Section 163-A of the Act, the Tribunal cannot examine the question of deceased/victim being the wrong doer in order to deny compensation. It is further argued that the insurance company examined a witness stated to be its Surveyor and his testimony is sufficient to prove plea

of claimant that Balkar Singh sustained injuries while driving the aforesaid Canter.

Counsel for the insurance company, on the contrary, would urge that even if findings of the Tribunal recorded in paras 13-14 of award are set aside, application for compensation is not maintainable as the deceased is stated to be earning Rs.60,000/- per annum but application for compensation under Section 163-A of the Act can be maintained if income of the deceased/victim is not more than Rs.40,000.00 per annum.

I have heard counsel for the parties, perused the paper book and the award.

Contention raised by counsel for the appellant that in application under Section 163-A of the Act, the Court cannot go into the question if the victim himself is the tort-feasor is meritorious and liable to be accepted. In this context, reference can be made to the latest judgment of Hon'ble the Supreme Court ***United India Insurance Company Limited vs. Sunil Kumar and another 2018(1) RCR (Civil) 680***. In this view of the matter, findings recorded by the Tribunal in paras 13-14 of the award are erroneous and accordingly set aside.

Indisputably, Dayal Singh has filed application under Section 163-A of the Act and the Tribunal in para 2 of the award has noticed plea of the claimant that the deceased was employed as Driver with respondent No. 1 and used to get Rs.5,000.00 as salary and Rs.1,000.00 per month as overtime and TA/DA etc. Application for compensation under Section 163-A of the Act can be filed if income of the deceased is not more than Rs.40,000.00 per annum. As income of the deceased is stated to be Rs.72,000.00 per annum, application under Section 163-A of the Act is not

maintainable and liable to be dismissed on this score alone.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

No order as to costs.

(Rekha Mittal)
Judge

28.08.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No