

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

**FAO No.5651 of 2005 (O&M)
Date of decision: 15.01.2018**

Lajwanti and others

....Appellants

Versus

Raj Kumar alias Raja and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. A.S. Sullar, Advocate,
for the appellants.

Mr. Dheeraj Narula, Advocate,
for respondent Nos. 1 and 2.

Mr. R.N. Singal, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed against the award dated 22.07.2005 passed by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as 'the Tribunal'), dismissing the claim petition filed by claimant-appellants under Section 163-A of the Motor Vehicles Act (hereinafter referred to as 'the Act') seeking compensation on account of death of Jangir Singh in a motor vehicular accident which took place on 23.12.2001. Appellant No. 1 is widow and appellant Nos.2 and 3 are sons of deceased Jangir Singh.

Brief facts of the case are that on 23.12.2001, Jangir Singh (deceased) along with claimant No.1, Hoshiar Singh-claimant No.2 and other occupants were coming from village Keshupura to their house at Dhani Jangir Singh in a three-wheeler bearing registration No. HR-39-3559,

which was being driven by respondent No.1 in a rash and negligent manner. When they reached near Dhani of Jangir Singh, driver of three-wheeler tried to cross a vehicle coming from the opposite direction. In that process, he turned his vehicle into the *kacha* berm of the road, as a result of which, the vehicle turned turtle and occupants thereof received injuries. Jangir Singh was taken to Nursing Home of Dr. Y.K. Choudhary, where he remained admitted upto 08.01.2002. Thereafter, he was referred to C.M.C. Ludhiana, but due to serious and grievous injuries, he could not survive and expired on 12.01.2002. With regard to the incident, information was given to the police of Police Station, Sadar, Sirsa, but no case was registered. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that in the claim petition, it was stated that the deceased was earning Rs.8500/- per month. Ultimately, the Tribunal dismissed the claim petition keeping in view that a petition under Section 163-A of the Act, can be entertained where income of deceased is upto Rs.40,000/- per annum. Reference was made to a judgment passed by Hon'ble the Supreme Court in **Deepal Girishbhai Soni and others vs. United India Insurance Company Ltd., Baroda**, 2004 (2) 12 (Supreme Court) 01.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. The proceedings of Section 163-A of the Act are social security provisions. Reference, at this stage, can be made to a judgment passed by this Court in **Oriental Insurance Company Ltd. vs. Saroj and others**, 2008 ACJ 594,

wherein it has been held as under:-

“6. The judgment does not lay down a law that merely by setting up a claim on the basis of higher income, the claimants would be disqualified to lay a claim under Section 163-A of the Act. Moreover, it appears from the ratio of that judgment that the provisions of Section 163-A of the Act being beneficial piece of legislation in nature would not act as a bar in a case where the Tribunal comes to the finding that the income is below Rs.40,000/- per year. As regards the second limb of the submission of learned counsel questioning the maintainability of claim petition under Section 149 of the Act, the contention appears to be absolutely irrelevant as this section relates to requirements of policies and extent of liabilities. Moreover, the insurance of the offending vehicle is not in question. Further, the breach of condition of policy is not in question either.”

Applying the ratio of the above judgment on the facts of the present case, the present appeal deserves to be allowed. Accordingly, income of deceased Jangir Singh is being taken as Rs.40,000/- per annum as contemplated under the Motor Vehicle Act. The deceased was 60 years of age at the time of death/accident, therefore, multiplier of 09 is to be applied. It is not in dispute that the offending vehicle was insured with respondent No.3-insurance company. Therefore, all the respondents are held liable jointly and severally to pay the compensation to the claimants-appellants. In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby assessed, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.40,000/- per annum
(ii)	1/3 rd of (i) above is deducted as personal expenses of the deceased	40,000– 13,333 = Rs.26,667/-
(iv)	Compensation after multiplier of 09 is applied	Rs.26,667/- x 09 = Rs.2,40,003/-
(v)	Compensation under the conventional heads	Rs.9500/-
(x)	TOTAL COMPENSATION AWARDED	Rs.2,49,503/-

by the respondents to claimant-appellants within a period of two months from the date of receipt of certified copy of this order. This amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “*Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others*”, 2015(1) SCC 539.

Accordingly, the present appeal is allowed in the aforesaid terms.

(RITU BAHRI)
JUDGE

15.01.2018
ajp

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