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

549

**FAO-5185-2005 (O&M)
Date of Decision : 27.09.2018**

Reshma and another ...... Appellants

Versus

Tarri and others .... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present: Mr. Ashok Jindal, Advocate
for the appellants.

None for respondents No.1 and 2.

Brig. B.S. Taunque (Retd.), Advocate
for the respondent No.3.

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AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgment and order of the Tribunal dated 25.08.2005 dismissing a petition under Section 163-A of the Motor Vehicles Act.

Since very limited issue has been raised detailed reference to the facts is not required.

The solitary ground which weighed with the Tribunal in dismissing the claim petition was that earlier the appellants had filed a petition under Section 166 of the Motor Vehicles Act but they withdrew the same without seeking any permission to file a fresh petition and as per the Tribunal this second petition without seeking a leave was not maintainable.

In my opinion, the reasoning given by the Tribunal is flawed. The Tribunal seems to have fallen into the error of confusing the same transaction with the same cause of action. May be the transaction was the same accident but the earlier petition was filed on the cause of action that the offending vehicle was being driven rashly and negligently while the second petition had been filed on the ground of no fault liability. In the circumstances, I have no hesitation in setting aside the finding given by the Tribunal. Consequently, the finding on maintainability of the petition is set aside.

Now the question is whether the matter should be remanded back to the Tribunal for computing the compensation. In my opinion, in the stark circumstances of the present case where the death took place almost 20 years ago, it would be unjust to refer the matter back to the Tribunal, more so when it is a petition under Section 163-A of the Motor Vehicles Act and the only issue is the income of the deceased.

The appellants have claimed that the income of the deceased was Rs.40,000/- p.a. as he was working as a Mason with his father. However, keeping in view the year of death, I deem it appropriate to consider the income of the deceased @ Rs.2000/- p.m. Ordered accordingly.

As per the Second Schedule of Section 163-A of the Motor Vehicles Act, the multiplier of 16 has to be applied. Further as per the said schedule, deduction of 1/3rd has to be applied and further more an amount of Rs.4500/- has to be awarded under the conventional heads i.e. an amount of Rs.2000/- towards funeral expenses and an amount of Rs.2500/- towards loss of estate. Ordered accordingly.

It is further held that the total compensation amount would carry interest @ 12% p.a. from the date of filing of the claim petition till the date of realization. The total compensation shall fall to the share of the appellant No.1.

Appeal stands allowed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

September 27, 2018
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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No