

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

**FAO No. 5255 of 2005 (O & M)
Date of Decision:-09.03.2018**

Sukhwinder Kaur @ Sukhjinder Kaur and others
...Appellants

Versus

Baljit Singh and others
...Respondents

CORAM:- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Mr. Neeraj Khanna, Advocate and Mr. Deepak Suri, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN J.(Oral)

This appeal arises from the award dated 01.12.2004 passed by
the Motor Accident Claims Tribunal, Bathinda (for short 'the Tribunal').

This was burnt case and has been reconstructed from the
salvaged records and copies supplied by the counsels subject to just
exceptions.

The accident took place on 28.8.2001. Lachhman Singh @
Vakil Singh along with others was passenger in a jeep bearing Registration
No.PB-04-E-3232. The said jeep was being driven by Baljit Singh. At
about 3.30 PM when the jeep reached near Village Jida Romana, bus stand,
one tahli tree fell on the jeep, as a result of this Lachhman Singh @ Vakil
Singh lost his life.

The legal heirs of deceased Lachhman Singh alias Vakil Singh
filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988

(for short 'the Act'). In the claim petition, it was claimed that the deceased was earning Rs.20,000/- per month. The Tribunal dismissed the claim petition on the ground that the claimants never stepped into the witness box to support their claim. No evidence was produced to establish that they were legal heirs of the deceased. Appeal has been filed being aggrieved of dismissal of the claim petition. Even in appeal no evidence has been produced to show that the appellants are legal heirs of the deceased. The monthly income of the deceased was claimed to be Rs.20,000/-.

Learned counsel for the appellants argued that the income of the deceased may be restricted to Rs.40,000/- per annum, counsel further contends that an application to this effect was also moved before the Tribunal.

The contentions raised by learned counsel for the appellants cannot be accepted in view of the law laid down by the Supreme Court in **Deepal Girishbhai Soni and others vs. United India Insurance Co. Ltd., Baroda 2004(5) SCC 385** in which it was held as under :-

“62. 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 annual 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.”

The appellants have failed to prove that they were legal heirs of

the deceased, in such circumstances claim petition was rightly dismissed by the Tribunal on this ground alone. Even otherwise claim petition under Section 163-A of the Act cannot be filed where the income of the deceased was more than Rs.40,000/- per annum. No fault can be found in the award of the Tribunal dismissing the claim petition.

Appeal is dismissed.

March 09, 2018
Vijay Asija

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No