

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

FAO No.3395 of 2013 (O&M)
Decided on:-February 22, 2018.

Swaran Kanta and another.

.....Appellants.

Versus

Nazim Hassan and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Vishal Gupta, Advocate
for the appellants.

Mr. Sandeep Godara, Advocate for
Mr. Rohit Chaudhary, Advocate
for respondents No.1 and 2.

Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate
for respondent No.3.

HARI PAL VERMA, J. (Oral)

The appellant-claimants have filed the present appeal impugning the award dated 22.03.2013 passed by learned Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (for short, the Tribunal), whereby their claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short, the Act), was dismissed.

Briefly stated, it is the case of the appellant-claimants that on 28.04.2011, their son Mukul alias Mannu was pillion rider on a motorcycle bearing registration No.HR-02W-0868 which was being driven by Tejbir Singh resident of village Telipur, Tehsil Jagadhri, District Yamuna

Nagar. The motorcycle was running at a slow speed and on the correct left side of the road. When the motorcycle proceeded after the turn of old Tehsil, towards Ambala Road, a truck bearing registration No.HR-38G-8157 being driven by respondent No.1 in a rash and negligent manner came from behind and hit the motorcycle. Mukul @ Mannu fell down on the road and the truck passed over his body due to which he sustained multiple grievous injuries on his person. He was taken to Civil Hospital, Jagadhri, where he was declared dead. Accordingly, an FIR No.230 dated 28.04.2011 under Sections 279 and 304-A IPC was registered against respondent No.1 at Police Station City Jagadhri on the basis of statement of Tejbir Singh i.e. driver of the motorcycle. It was alleged by the claimants that the respondent No.1 was driving the truck in a rash and negligent manner and, therefore, he being driver, respondent No.2 being owner and respondent No.3 being insurer of the truck are jointly and severally liable to pay the amount of compensation to the claimants.

In the claim petition, it was pleaded that the deceased was 20 years of age and was a student of 10+2. He was earning Rs.3,000/- per month by way of tuition work. The claimants spent an amount of Rs.30,000/- on transportation and last rites of the deceased.

After filing the replies on behalf of the respondents, the Tribunal had framed issues and one of the issues in the petition i.e. issue No.1 was that *“Whether Mukul @ Mannu died due to the injuries sustained by him in a motor vehicle accident which took place on 28.04.2011 in the area of Police Station City Jagadhri, on account of rash or/and negligent driving of truck*

bearing No. HR-38G-8157 by respondent No.1 which is owned by respondent No.2 and insured by respondent No.3.”

The aforesaid issue No.1 was decided in favour of the appellant-claimants as they had proved that Mukul @ Mannu died due to the injuries sustained by him in a motor vehicle accident which took place on 28.04.2011 on account of rash and negligent driving of truck bearing No.HR-38G-8157 by respondent No.1. The only ground on which the claim petition was dismissed by the Tribunal was that the mother of the deceased i.e. appellant-claimant Swaran Kanta while appearing in the witness box as PW2 had deposed in her cross-examination that the deceased was earning Rs.10,000/- per month and, therefore, the claim petition under Section 163-A of the Act was not maintainable, as the Second Schedule of the Act limits the operation of Section 163-A of the Act to a limited class of persons, whose annual income is Rs.40,000/- or less.

It is in the aforesaid circumstances, the appellant-claimants have filed the present appeal impugning the award dated 22.03.2013 passed by the Tribunal.

At the outset, learned counsel for the appellant-claimants has argued that though the claim petition was filed by the claimants alleging rash and negligent driving of the truck by respondent No.1 and, therefore, the claim petition should have been filed under Section 166 of the Act, but since the claimants had filed the petition under Section 163-A of the Act, he restricts his claim under Section 163-A of the Act only.

He has further argued that the averments made by the claimants in the claim petition are very categorical, wherein the income of the deceased has been mentioned as Rs.3,000/- per month and it is on these facts, the petition under Section 163-A of the Act was filed and was being pursued by the claimants. Moreover, the appellant-claimant No.1 Swaran Kanta, while appearing in the witness box as PW2 had deposed in her examination-in-chief that the deceased was a student of 10+2 and was about 20 years of age and used to earn Rs.3,000/- per month from tuition work at home.

He has further contended that in these circumstances, there was no question of earning a huge amount of Rs.10,000/- per month by the deceased and it was probably for the reason that PW2 Swaran Kanta could not understand the question posed to her by the opposite counsel and the reference of income of Rs.10,000/- per month was made in the cross-examination of PW2. Moreover, it was never the intention of the claimants to claim compensation on the basis of income of Rs.10,000/- per month by the deceased. Had the actual income of the deceased been Rs.10,000/- per month or more, the claimants would have preferred a petition under Section 166 of the Act instead of filing the same under Section 163-A of the Act.

He has further relied upon the judgment of this Court in **2012(1) AICJ 14** titled as ***Dalvir Kaur Versus Basant Singh and another***, wherein this Court has held that Section 163-A of the Act is a beneficial piece of legislation and the claimant is not debarred to seek amendment in the claim petition for reducing the monthly income of the deceased. Reliance has also been placed upon ***Ningamma and another Versus United India Insurance***

Company Limited 2009(3) RCR (Civil) 435 and New India Assurance Company Limited Versus Sajjan Kumar and others 2012 ACJ 558 to contend that even if the income of the deceased has been claimed more than Rs.40,000/- per month, still a claim petition under Section 163-A of the Act is maintainable. He has referred to paragraph No.15 of the judgment in *New India Assurance Company Limited Versus Sajjan Kumar and others' case (supra)*, which reads as under:

*“15. All the above-mentioned authorities relied upon by the learned counsel for the appellant have been handed down by single Bench of this Court and other High Courts. In authorities relied upon by the learned counsel for the respondents, it has been held by this Court and single Benches of various other High Courts that claim petition under Section 163-A of the Act is maintainable if the income is found to be less than Rs.40,000/- per annum or the claimant restricted his income to the extent of Rs.40,000/- per annum. The Division Bench of Punjab and Haryana High Court would prevail upon all other single Bench judgments. In authority **Oriental Insurance Co. Ltd. v. Saroj, 2008 ACJ 594 (P&H)**, it has been held that where the income by the claimant is pleaded more than Rs.40,000/- per annum but the same was found to be Rs.40,000/- by the Tribunal, in that case, the claim petition under Section 163-A of the Act is maintainable.”*

On the other hand, learned counsel for the respondents have argued that no doubt, the claim petition was filed under Section 163-A of the Act, but when appellant-claimant Swaran Kanta as PW2 had stated in her cross-examination that the deceased was earning Rs.10,000/- per month by imparting tuitions, her statement should have been given due weightage and

cannot be discarded lightly. Therefore, there is no illegality in the impugned award passed by the Tribunal and the present appeal deserves to be dismissed.

I have heard learned counsel for the parties.

There is no dispute that the deceased was a student of 10+2 and was about 20 years of age. However, no such evidence was brought on record by the claimants that he was imparting tuitions to any student and there is no reference of any student even remotely. Therefore, the deposition of appellant-claimant Swaran Kanta as PW2 in her cross-examination that income of the deceased was Rs.10,000/- per month, is nothing but her misunderstanding of the question so posed to her by the opposite counsel.

Further, this Court cannot overlook the fact that a student of 10+2 class can hardly earn Rs.10,000/- per month by imparting tuitions to other students. Moreover, in the claim petition filed by the claimants as well as in the examination-in-chief of claimant Swaran Kanta as PW2, there is a consistent stand of the claimants that the deceased was a student of 10+2 and his income has been mentioned as Rs.3,000/- per month.

Therefore, having considered the fact that it was only because of misunderstanding the question, claimant Swaran Kanta as PW2 had stated in her cross-examination that the deceased was earning Rs.10,000/- per month, otherwise in the claim petition as well as in her examination-in-chief, it was specifically mentioned that the income of deceased was Rs.3,000/- per month, this Court finds that the claim petition filed by the claimants under Section 163-A of the Act was maintainable. Accordingly, the appellant-claimants are entitled to the amount of compensation as provided in the Second Schedule of

the Act, which deals with the quantum of compensation to be awarded in the claim petitions involving fatal accidents and filed under Section 163-A of the Act.

Considering the age of the deceased as 20 years and his income as Rs.3,000/- per month and Rs.36,000/- per annum, this Court finds that as per the Second Schedule of the Act, the compensation comes to Rs.6,48,000/- . Further, as per the note provided in the Second Schedule of the Act, the amount of compensation so arrived at in the case of fatal accident claims shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. As such, after applying 1/3rd deduction, the appellant-claimants are entitled to Rs.4,32,000/- (6,48,000 – 2,16,000) as compensation. Besides this, as per the Second Schedule of the Act, the appellant-claimants are also entitled to Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate.

Thus, the appellant-claimants are entitled to a total amount of Rs.4,36,500/- (Rs.4,32,000 + 2,000 + 2,500) as compensation on account of death of their son.

Accordingly, the impugned award dated 22.03.2013 passed by the Tribunal is set aside and the present appeal is allowed. Consequently, the appellant-claimants are awarded a total compensation of Rs.4,36,500/- (Rupees four lakhs thirty six thousand and five hundred) along with interest @ 7.5% from the date of filing of the claim petition till its realization. The amount of compensation shall be disbursed to the claimants in equal share being the parents of the deceased. Respondent No.1 being the driver,

respondent No.2 being the owner and respondent No.3 being the insurer of the offending truck shall be jointly and severally liable to pay the amount of compensation.

February 22, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No