IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2672 of 2014
Date of Decision.01.02.2018

The New India Assurance Company Limited ....Appellant

Vs

Gulzar Singh and others ....Respondents

2. **FAO No.8486 of 2014**

Gulzar Singh and another ....Appellants

Vs

Mohinder Pal Singh and another ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.K. Prajapti, Advocate
for the appellant in FAO No.2672 of 2014 and
for respondent No.2 in FAO No.8486 of 2014.

Mr. Raman Mohinder Sharma, Advocate
for the appellants in FAO No.8486 of 2014 and
for respondent Nos.1 and 2 in FAO No.2672 of 2014.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two appeals bearing No.2672 of 2014 and 8486 of 2014. The former has been preferred at the instance of the insurance company against a compensation of ₹4,52,000/- awarded by the Tribunal in the claim petition filed under Section 163-A of the Motor Vehicles Act on account of death of one Shukar Singh and the latter at the instance of the claimants i.e. parents of the deceased for enhancement of compensation.

Mr. D.K. Prajapati, learned counsel appearing on behalf of the appellant-insurance company in FAO No.2672 of 2014 contended that originally the claim petition had been filed under Section 166 of the Motor Vehicles Act stating income of the deceased as ₹7000/-. The aforementioned claim petition was filed before the Motor Accident Claims Tribunal, Chandigarh in the year 2006 in respect of the accident having taken place on 03.05.2006 whereby one Shukar Singh died in a road accident. He was working as a Cleaner on truck bearing registration No.HR-37-A-5335 and while checking the air pressure of the truck, the respondent No.1 put the truck in neutral gear, resulting into death of the deceased. In this regard, a DDR bearing No.17 dated 4.5.2006 was also lodged. The aforementioned claim petition originally filed under Section 166 of the Motor Vehicles Act was withdrawn on 03.12.2011 and thereafter, the claim petition under Section 163-A of the Motor Vehicles Act was filed on 16.2.2012. The claimants mentioned the income of the deceased as ₹3300/- per month to bring the claim petition within the purview of provisions of Section 163-A of the Motor Vehicles Act. Such an approach on behalf of the claimants is not sustainable in the eyes of law in view of the *ratio decidendi* culled out by this Court in ***Sadhna and another Vs. Kuldeep Singh and others 2009(3) RCR (Civil) 754; National Insurance Company Ltd. Vs. Baljit Kaur and others 2007(1) RCR (Civil) 579; Mukhtiar Kaur Vs. Parminder Singh etc. 2010(1) RCR (Civil) 939*** and ***Himachal Pradesh Transport Corporation and another Vs. Baldev Kumar Nayyer and others***, thus, urges this Court for setting aside the award.

Per contra, Mr. Raman Mohinder Sharma, learned counsel appearing on behalf of the claimants submitted that the Tribunal ought to have applied a multiplier of 18 instead of 17, much less, did not provide any amount towards general damages, thus, there is scope for enhancement of compensation.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Prajapati. The claim petition filed by the claimants earlier under Section 166 of the Motor Vehicles Act was dismissed as withdrawn, in essence, the same was not decided on merits, therefore, the provisions of Civil Procedure Code would not apply to the proceedings initiated under the Motor Vehicles Act. Moreover, the insurance company ought to have challenged the order of the withdrawal of the petition under Section 166 of the Motor Vehicles Act. The claim petition under Section 163-A of the Motor Vehicles Act had been filed in the year 2012 and at that time, the income of the Cleaner would not have been more than ₹3300/- per month.

There is no dispute to the *ratio decidendi* culled out by this Court in the judgments referred to above by the counsel for the appellant-insurance company. In all the aforementioned judgments either a prayer was made to treat the income of the deceased less than ₹40,000/- per annum when originally it was claimed more than ₹40,000/- in the same claim petition or a claim petition was filed under Section 163-A when the income was more than ₹40,000/- per annum or a claim petition filed under Section 166 was sought to converted under Section 163-A. The case in hand is not of such nature. In the present case, the claim petition filed under Section 166 was dismissed as withdrawn first and after that only a fresh claim petition was filed under Section 163-A of the Motor Vehicles Act. Therefore, the *ratio decidendi* referred to above by the counsel for the appellant-insurance company does not apply to the present case. Moreover, the insurance company has failed to prove that the income of the deceased was actually more than ₹40,000/- per annum and it was scaled down only to take the benefit of the provisions of Section 163-A .

As regards the quantum, I am of the view that the Tribunal has rightly applied the parameters as provided under Second Schedule of Section 163-A. While taking the income of the deceased as ₹3300/- per month, the Tribunal applied a cut of 1/3rd towards personal expenses and adopted a multiplier of 17, which is a correct approach. It also provided ₹2,000/- for funeral expenses and ₹2500/- loss of estate.

In view of the aforementioned, I do not find any illegality and perversity in the award passed by the Tribunal. No ground for interference is made out. Resultantly, both the appeals are dismissed.

(AMIT RAWAL)
JUDGE

February 01, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No