

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

FAO No.4844 of 2014
Date of Decision.24.01.2018

Vijay Pal

.....Appellant

Vs

Ved Parakash and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Jain, Advocate
for the appellant.

Mr. M.B. Jain, Advocate
for respondent No.2.

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AMIT RAWAL J.

The present appeal has been preferred for enhancement of compensation on account of injuries suffered in a motor vehicular accident against the award passed by the Tribunal in a claim petition filed under Section 163-A of the Motor Vehicles Act. The appellant-claimant namely Vijay Pal was a pillion rider of motor cycle bearing registration No.HR-36L-6236 driven by respondent No.1-Ved Parkash on the ill-fated day of 10.02.2011 and when they were 1KM short from their village, a stray dog dashed into their motor cycle on account of which they fell down and received multiple injuries. The claimant, who received grievous head injuries, was moved to Shri Krishna Hospital, Garhi Bolni Road, Rewari where he was advised for CT Scan and after examining the CT Scan, doctor advised him to be admitted in Paras Hospital, Gurgaon with promptitude. He remained admitted in Paras Hospital from 10.02.2011 to 14.02.2011 and spent ₹1,79,477/- on his treatment as hospitalization charges and medicines.

The Tribunal while passing the award dated 17.01.2014 assessed a compensation of ₹70,000/- under the following heads:-

(i)	Compensation on account of expenses for getting medical treatment which includes hospitalization charges, expenses in purchasing medicines etc. (as per provision provided under Section 163-A M.V.Act)	-₹15,000/-
(ii)	Compensation on account of pain and suffering	-₹5000/-
(iii)	Compensation on account of disability to the to the extent of 25%	-₹50,000/-
Total		-₹70,000/-

Mr. Ajay Jain, learned counsel appearing on behalf of the appellant submitted that the Tribunal while awarding a compensation of ₹70,000/- has provided a sum of ₹15,000/- under the head of medical expenses. He vehemently argued that once the appellant has proved on record that he spent a sum of ₹1,79,477/- on his medical treatment, awarding a meager sum of ₹15,000/- just because the claim petition was filed under Section 163-A is gross miscarriage of justice. In support of his contention, he relied upon the judgment of a Coordinate Bench of this Court passed in FAO No.951 of 2009 on 30.08.2012 titled as **“Oriental Insurance Company Ltd. Vs. Gurdev Singh and others”** wherein this Court dismissed the appeal filed by the insurance company against the award of ₹4,63,400/- under Section 163-A on the same ground. He also relied on a judgment of Gauhati High Court passed in **New India Assurance Co. Ltd. Vs. Lalawmpunia and others 2012 ACJ 271** wherein it did not deem appropriate to interfere with an amount of ₹1,20,843/- provided by the Tribunal towards medical expenses under Section 163A of the Motor Vehicles Act.

He further argued that the amounts provided for pain and suffering and permanent disability is also on lower side, thus, urges this Court for enhancement of compensation.

Per contra, Mr. Jain, learned counsel appearing on behalf of the insurance company submitted that the amount of ₹15,000/- provided for medical expenses is perfectly legal, justified and as per scope and mandate of Section 163-A of the Motor Vehicles Act. In support of his contention, he relied upon the judgments of this Court passed in **Gulab Singh VS. Mr. Shubeg Singh and another Vol.CLXXIII (2014-1) PLR 650** and **Mohit Garg and another Vs. Afrojan and others Vol.CLXXVI (2014-4) PLR 160** wherein this Court held that breach of Schedule II Formula is impermissible and the limit fixed for medical expenses cannot be bypassed in any manner, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that the award passed by the Tribunal on account of amount provided towards pain and suffering and permanent disability is fair and just. Now the only question posed before this Court is whether the Courts should see the head of medical expenses through the prizm of Second Schedule of Section 163-A of the Motor Vehicles Act or any deviation from the same to do the Scales of Justice even for making fruitful the scope and object of Motor Vehicles Act being a welfare legislation and portray the interpretation of just and fair compensation in a true sense is justified or not?

Before answering the question posed above and adverting to the rival contentions of the parties, I would like to go into the history of Section 163-A of the Motor Vehicles Act. The Motor Vehicles Act was enacted in the year 1988 but Section 163-A of the Motor Vehicles Act along with

Schedule called Second Schedule was introduced on 14.11.1994 by way of Act 54 of 1994 to provide compensation on a structured formula. What was the need to introduce this Section after six years of a full-fledged and complete Code in itself called the Motor Vehicles Act, 1988? Did the Legislature found with the passage of time that there is something amiss for a segment of society which is depriving them from the fruits of this Code?

Even before that I would like to refer a judgment of Hon'ble Supreme Court in **N.K.V. Bros (P) Ltd. VS. M. Karumal and others 1980 ACJ 435** Wherein the highest wisdom of the country as early as in 1980 sensing that procedural intricacies and technicalities of law are intercepting the object of quick and speedy justice to the needy and downtrodden slice of society and there is a need to evolve a mechanism to provide justice without a long drawn procedure, in paragraph 3 of the judgment observed as under:

*"3. Road Accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Claims Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. **Indeed the State must seriously consider no-fault liability by legislation.** A second aspect which pains us is the*

inadequacy of the compensation or due parsimony practised by Tribunals. We must remember that judicial Tribunals are State organs and [Article 41](#) of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of Tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

Now coming back to augmentation of Section 163-A, it will be relevant here to refer to statement of objects and reasons whereby Section 163-A was introduced by the Parliament and the factors which were taken into consideration by the Parliament. They are in paragraph 2 of the Statement of Objects and Reasons which reads as under:

“STATEMENT OF OBJECTS AND REASONS

"2. After the coming into operation of the Bill or Committee, Government received a number of representations and suggestions from the State Governments, transport operators and members of public regarding the inconvenience faced by them because of the operation of some of the provisions of the 1988 Act. A review Committee was therefore constitute by the Government in March 1990 to examine and review the 1988 Act”.

The recommendations of the Review Committee are in paragraph 3. The relevant part whereof reads as under:

“3. The recommendation of the Review Committee were forwarded to the State Governments for comments and they generally agree with these recommendations. The Government also considered a large number of representations received,

after finalization of the Report of the Review Committee, from the transport operators and public for making amendments in the Act. The draft of the proposals based on the recommendation of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their view in the matter. The important suggestions made by the Transport Development Council relate to, or are on account of:-

(b) providing adequate compensation to victims of road accidents without going into long drawn procedure;"

Based on this, proposed bill was prepared and that bill provided for increase in the amount of compensation to the victims of hit and run cases, removal of time limit for filing of application by road accident victims for compensation and a new predetermined formula for payment of compensation to road accident victims on the basis of age/income which is more liberal and rational. A further amendment was also sought about the jurisdiction of the Tribunal and it was sought that the Claims Tribunal within the local limits of whose jurisdiction, the claimant resides or carries business may also have jurisdiction to entertain the claim application. It will be relevant to refer to the notes on the relevant clauses whereby Section 163-A was proposed to be introduced and the consequences which it may carry on the award that may be made under Section 140 of the Act. Clause 43 refers to necessary amend in Section 140 of the Act on introduction of Section 163-A and Clause 51 refers to insertion of Section 163-A. Clauses 43 and 51 reads as under:

" Clause 43 seeks to amend Section 140 so as to increase the amount of compensation from twenty-five thousand rupees to fifty thousand in the case of death and from twelve thousand

rupees to twenty-five thousand rupees in case of permanent disability. It also provides that the compensation under this section shall be in addition to what the owner of the vehicle is liable to pay as compensation for relief under any other law. However, the amount payable under Section 140 or the proposed Section 163-A shall be reduced by the amount of compensation for relief given by the owner under the said other law.

Clause 51 seeks to insert new Section 163-A to provide for payment of compensation in motor accident cases on a predetermined formula given in the Second Schedule. The Central Government has been empowered to amend the Second Schedule as and when considered necessary."

In this background, in order to provide for a quicker means of securing compensation on a structured formula to the relatively poor class of persons by discounting the principles of fault liability, Section 163-A was introduced which reads as under:-

"163A. Special provisions as to payment of compensation on structured formula basis.—

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent

disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

A Schedule called the Second Schedule was also attached with Section 163-A providing a structured formula to assess compensation containing pecuniary and general damages. In case of injuries and disabilities, the general damages were provided as under:-

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|------|---------------------------------------|------------|
| (i) | Pain and Sufferings | |
| | (a) Grievous injuries | -₹5000/- |
| | (b) Non-grievous injuries | -₹1000/- |
| (ii) | Medical expenses-actual expenses | |
| | Incurred supported by bills/vouchers | |
| | but not exceeding as one-time payment | -₹15,000/- |

Now coming to the issue at *lis*, I am of the view that deviation and departure from the provisions of Second Schedule is justified for the following reasons:-

- (i) With the moving wheels of time, neither the income is static nor the expenditure. The Second Schedule was incorporated in the year 1994 i.e. 23 years ago. The fee of the medical practitioners have increased manifold so the cost of medicines. In a road accident if a person suffers multiple fracture/spine injury/head injury, which may require major surgeries or a series of surgeries, with no stretch of imagination it can be believed that the medical expenses would be limited to ₹15,000/-.

Moreover, if a person is seriously injured and is battling between life and death, the prime concern of the family members at that time is to give best treatment to the injured in a famous and highest rated hospital which cost them dear. So putting a cap upon the medical expenses to the tune of ₹15,000/- when the actual expenditure proved on record by bills/vouchers is in lacs, is a gross miscarriage of justice and defeat the scope and ambit of Motor Vehicles Act, 1988 which is a beneficial legislation.

- (ii) The Motor Vehicles Act was introduced in 1988. The legislature amended the provisions of Section 140 and enhanced the amount of compensation on the principle of no fault liability from ₹25,000/- to ₹50,000/- for death and from ₹12,500/- to ₹25,000/- in case of permanent disablement in 1994. If there was a need felt to increase the compensation under the aforementioned provisions even after six years of coming into force of 1998 Act, then why not need of increase under Section 163-A of the Motor Vehicles Act is felt even after 23 years.
- (iii) There are two main options to seek compensation under the 1988 Act viz; (i) under Section 166 and (ii) under Section 163-A. The judicial pronouncements have revised the principles of determining compensation under Section 166 from time to time keeping in mind the age, increase in income, cost of living and price inflation from

Kerala SRTC Vs. Susamma Thomas (1994) 2 SCC 176;
U.P. SRTC VS. Trilok Chandra (1996) 4 SCC 362; New
India Assurance Co. Ltd. Vs. Charlie (2005) 10 SCC
720; Sarla Verma V. DTC (2009) 6 SCC 121, National
Insurance Company Limited Vs. Pranay Sethi and
others (2017) 13 SCALE 12 and *Raj Kumar Vs. Ajay*
Kumar and another (2011) 1 SCC 343 for both in death
 and injury cases. When under Section 166 keeping in
 view the revision in income and price index, the
 scales/principles for assessing compensation have also
 been revised then why not the same can be applied under
 Section 163-A, especially when the medical expenses are
 proved on record by bills.

- (iv) Clause 3 of Section 163-A provides that the Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule. Despite that no amendment has been made even after passing of 23 years.
- (v) Judiciary cannot be a partner in slumber of the legislature. The Hon'ble Supreme Court in *Puttamma and others Vs. K.L. Narayana Reddy and another (2013) 15 SCC 45* while observing that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current

rate of inflation and increased life expectancy held as under:-

“58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific directions to the Central Government through the Secretary, Ministry of Road Transport and Highways to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of the Second Schedule as proposed or may be made by Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of ₹1,00,000/- and persons more than 5 years of age shall be entitled for a fixed compensation of ₹1,50,000/- or the amount may be determined in terms of the Second Schedule, whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act.”

In view of the ratio decidendi referred to above, deviation from Second Schedule is perfectly justified in injury cases as well.

(vi) Coordinate Benches of this Court in **Brij Mohan Vs. Krishan Kumar @ Krishan Chand and others** passed in FAO No.952 of 2012 on 05.09.2017 and **United India Insurance Company Ltd. Vs. Ved Parkash** passed in FAO No.231 of 2008 on 22.03.2017 have also held that deviation from Second Schedule in awarding medical expenses beyond ₹15,000/- is justified.

Keeping in view the aforementioned facts and circumstances, I am of the view that the appellant is entitled to actual amount of compensation spent on his medical treatment i.e. ₹1,79,477/- instead of ₹15,000/-. Rest of the award is confirmed. Therefore, the appellant shall be entitled to an enhanced amount of ₹1,64,477/-. This amount shall also attract interest @6% from the date of filing of the appeal till realization. The liability shall remain the same as has already been assessed by the Tribunal.

The award passed by the Tribunal is modified to the above extent and the appeal stands allowed.

(AMIT RAWAL)
JUDGE

January 24, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes