

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

F.A.O. No. 274 of 2019 (O&M)

Date of Decision: 16.01.2019

Israr

.....Appellant

Versus

Jakhar @ Jakhar Ali and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sagar Aggarwal, Advocate
for the appellant.

AVNEESH JHINGAN, J.(oral)

The present appeal has been filed by the claimant against the award dated 22.10.2018 passed by the Motor Accident Claims Tribunal, Karnal, (for short 'the Tribunal') dismissing the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act').

The facts in brief are that a motor vehicular accident took place on 2.12.2016. Claimant along with Jakhar Ali was riding on a motor cycle bearing registration No.HR-05-AK-8660. On their way a stray animal came in front of the motor cycle, as a result of which, Jakhar Ali, who was driving the motor cycle lost control. Claimant fell down and received multiple grievous injuries. He was taken to KCGMC Hospital, Karnal from where he was shifted to Sangwean Hospital, Panipat and from where he was referred to PGIMS Rohtak. His right leg above knee was amputated. DDR dated 13.1.2017 was registered at Police Station Taraori.

A claim petition under Section 163-A of the Act was filed claiming that the claimant was having a monthly earning of ₹ 3000/- per month and was a madari. Father of the claimant appeared as PW2 and deposed that his son was earning ₹ 3000/- to ₹ 4000/- per month. The claimant in cross-examination stated that he was earning ₹ 300/- daily.

The Tribunal dismissed the claim petition as the earning of the deceased was found to be more than ₹ 40,000/- per annum.

Aggrieved of the dismissal, the present appeal has been filed.

I have heard learned counsel for the appellant and perused the relevant statements produced.

Learned counsel for the appellant contended that the claimant had stated that he was earning ₹ 300/- per day but it should be considered that the said earning was only for 11 days in a month. In the alternative, he contended that the income of the claimant should be capped as ₹ 40,000/- per annum.

The contention raised by learned counsel for the appellant lacks merit. There is no yardstick to state that Madari would be earning only 11 days in a month. Even under the minimum wages, daily wages are multiplied by 26 days. It cannot be assumed that a person who is making his two ends meet by working as a Madari would be sitting idle for 19 days in a month. Even if it is taken that he may not be having his earning of ₹ 300/- on each day of the month, yet even if he earns the said amount for 15 days in a month, still his income would be more than ₹ 40,000/- per annum. The contention raised that the income should be capped as ₹ 40,000/- per annum deserves rejection.

The Supreme Court in case of **Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd., Baroda, 2004 (5) SCC 385** has held as under:-

“We, therefore, are of the opinion that Oriental Insurance Co. Ltd. Vs. Hansrajbhai V.Kodla and others, (2001) 5 SCC 175 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 annum 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 Supreme Court held that the provisions of Section 163-A are for that strata of society whose earning is less than Rs.40,000/- per annum and the said amount cannot be used for capping purposes.

The appeal being without merits is dismissed.

(AVNEESH JHINGAN)
JUDGE

16.01.2019
reema

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No