

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 14.02.2019

1. FAO No. 2640 of 2002 (O&M)

National Insurance Co. Ltd.

..... Appellant

VERSUS

Urmila @ Raj Kali and others

..... Respondents

2. FAO No. 5051 of 2002 (O&M)

Urmila @ Raj Kali and others

..... Appellant

VERSUS

Balbir Singh and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Akshay Jindal, Advocate,
for the appellant(s) in FAO No. 5051 of 2002,
for the respondent(s) in FAO No. 2640 of 2002.

Mr. Naveen Kapoor, Advocate,
for the appellant(s) in FAO No. 2640 of 2002,
for the respondent(s) in FAO No. 5051 of 2002.

JAISHREE THAKUR, J.

1. This Court proposes to dispose of the above referred two
appeals : one by the claimants and the other by the Insurance
Company, which arise out of the same award dated 22.01.2002 passed

by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal').

2. For brevity, facts are being extracted from FAO No. 5051 of 2002.

3. The claim petition came to be filed by Urmila @ Raj Kali widow of late Sh. Babu Lal, Rajesh and Rakesh sons of late Sh. Babu Lal and Ms. Suman daughter of late Sh. Babu Lal under Section 163-A of the Motor Vehicles Act, wherein it was alleged that the deceased Babu Lal was an employee of the Market Committee, Gharaunda, who met with an accident on 26.03.1999 after having been hit by a tractor bearing No. HR-05-G-5512, which was being driven in a rash and negligent manner without observing traffic rules. Deceased died on the spot due to the injuries received and a case was registered in the Police Station, Gharaunda. Thereafter, a claim petition was filed seeking compensation under Section 163-A of the Motor Vehicles Act.

4. The claim petition was contested by denying all the allegations while stating that the accident was not caused on account of any negligence of the tractor driver and an additional plea was taken by the Insurance Company that the driver of the offending tractor was not holding any valid driving licence. Thereafter, issues were framed and the claimant-appellant Urmila herself stepped into the witness box as PW-1 and also examined Prem Sagar as PW-2, Jitender Kumar as PW-3 and Ashok Kumar as PW-4 apart from

tendering relevant documents. On appreciation of evidence, the Tribunal held that the deceased Babu Lal sustained injuries in the accident which occurred with tractor bearing No. HR-05-G-5512 at the instance of the driver, who was driving rashly and negligently. Taking note of the fact that Babu Lal was an employee of the Market Committee, Gharaunda and based on the statement of PW-2 Prem Sagar, Clerk, his salary was taken to be ₹ 4,870/- per month at the time of death. The Tribunal took note of the fact that the claim petition had been filed for compensation under Section 163-A of the Motor Vehicle Act and under this provision, compensation could not be calculated on the entire income of the deceased, since Schedule II of the Act provides structural formula where the income of the deceased did not exceed ₹ 40,000/- per annum. Restricting the income of the deceased to ₹ 40,000/- and applying the structured formula under Schedule II of the Act, compensation was assessed at ₹ 3,02,900/- along with interest @ 9% per annum w.e.f. filing the petition till payment was made. The multiplier of 11 was applied since the deceased was more than 50 years of age and 1/3rd deduction was allowed for his own expenses. After deducting 1/3rd, the dependency-cum-loss of income to the claimants become ₹ 2,93,000/- and general damages were allowed to the extent of funeral expenses, loss of consortium and loss of estate etc. Aggrieved against the said award, two appeals have been filed: one by the claimants and other by the Insurance Company.

5. The basic argument raised by learned counsel for the appellant Insurance Company is that the claimants, who are legal heirs of the deceased Babu Lal filed a claim petition under Section 163-A of the Motor Vehicles Act and that remedy under the said Section is available only to those whose income is upto ₹ 40,000/- per annum. Learned counsel for the appellant would rely upon the judgment rendered by the Hon'ble Supreme Court in ***New India Assurance Company Ltd. vs. Latabai, 2009 ACJ 1387*** and ***Deepal Girishbhai Som and others vs. United India Insurance Co. Ltd. 2004 ACJ 934***. It is argued that the very claim petition would not be maintainable since the income of the deceased herein has been established to be ₹ 4,870/- per month which total would come to ₹ 58,440/- per annum. It is argued that the claimants are not entitled to the compensation as assessed.

6. I have heard learned counsel for the parties.

FAO No. 2640 of 2002

7. No doubt, the law is well settled that remedy under Section 163-A of the Act is available only to those whose income is upto ₹ 40,000/- per annum as has been held by the Hon'ble Supreme Court in ***Deepal Girishbhai Som and others*** case (supra) but the argument raised that the claimants are not entitled to receive the compensation, is without any merit. The fact can not be lost sight that the Tribunal was aware of Schedule II of the Act which specifies that only those claims would be maintainable where the income of the

deceased is upto ₹ 40,000/- per annum, had taken the income of the deceased to be ₹ 40,000/- per year instead of ₹ 58,440/-. The compensation that was assessed thereafter was based on the formula as described under Schedule II of the Act. Finding no infirmity with the award of the Tribunal who had assessed the compensation taking the income of the deceased to be ₹ 40,000/- per annum, this Court find that compensation has rightly been awarded.

FAO No. 5051 of 2002

8. The appellants herein are seeking enhancement of the compensation awarded, however, since they had applied for compensation under Section 163-A of the Act and not under Section 166 of the Act, the compensation as assessed by taking his income of ₹ 40,000/- per annum and applying the Schedule II of the Act, compensation has rightly been assessed, which does not call for any interference by this Court.

9. Both the appeals are dismissed.

10. A photocopy of this order be placed on the file of the connected case.

14.02.2019*Satyawan***(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.