

235 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2873-2005(O&M)

Date of decision : 23.07.2019

Rama Devi and others

..... Appellants

versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.Ashwani Arora, Advocate
for the appellants.

Mr.Govind Rana, Advocate
for Mr.Harkesh Manuja, Advocate
for respondents No. 1 and 2.

Mr.D.K.Dogra, Advocate
for respondent No.4-insurance company.

KULDIP SINGH, J. (ORAL)

Claimants have filed this appeal against award dated 16.02.2005 passed by the Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') vide which the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') was dismissed.

Facts of the case are that on 02.11.2002 deceased Shambhu was going on road leading from Airport Chowk to Zirakpur. At about 7.00 p.m. when he reached near T.M. Motors Petrol Pump, a Chandigarh Transport Undertaking bus bearing registration No. CH-01-G-5855 being driven by its driver Dharam Pal-respondent No.3 struck against Shambhu as a result of

which he fell down on the road and received serious injuries. He was shifted to Government Medical College and Hospital, Sector 32, Chandigarh where he succumbed to the injuries.

In the reply respondents No.1 and 2 have taken the stand that when respondent No.3 was driving the offending bus he had seen a person lying in an injured condition on the road. Some unknown vehicle had hit that person. People present at the spot signalled the bus to stop. On the request of the public and on humanitarian grounds, the crew of the offending vehicle took the injured to the hospital where respondent No.3 was called by the police and his statement was recorded. It was pleaded that the offending bus had not hit the deceased.

Respondent No.4-insurance company also denied the accident.

From the pleadings of parties, following issues were framed:-

1. Whether Shambhu son of Bhoop Singh had died in a road side accident which had occurred on 2.11.2002 in the area of police station Dera Bassi (Punjab) on account of use of bus no. CH-01-G-5855 by respondent No.3 Dharam Pal in the employment of respondents No. 1 and 2 ?OPP
2. Whether the claimants are entitled to be compensated for the death of Shambhu having occurred in the accident?If so to what extent and by whom?OPP
3. Whether respondent No.3 was not holding a valid and effective driving licence at the time of accident? If so,its effect?OPR4
4. Relief.

While deciding issue No.1, the Tribunal held that the identity of the deceased as Shambhu is not established and consequently decided this issue against the claimants. While deciding issue No.2, the Tribunal assessed the income of the deceased to be Rs. 2500/- per month i.e. Rs.30,000/-per

annum and after applying a cut of $1/3^{\text{rd}}$ assessed the dependency of the claimants at Rs.20,000/-per annum. After applying the multiplier of '16' assessed the compensation to be Rs. 3,20,000/-(20,000 x16). Another sum of Rs.9500/- was allowed for loss of consortium and funeral expenses and thus total compensation was assessed at Rs. 3,29,500/-. However, on account of findings on issue No.1, the claim petition was dismissed.

I have heard learned counsel for the parties and perused the record with the help of their assistance.

The first and foremost contention before this Court is that the man who died in the accident was not Shambhu. Learned counsel for the insurance company has referred to the findings recorded by the Tribunal wherein it was observed that the age of deceased was mentioned to be 40 years whereas in the post mortem report the age of the deceased was shown to be 25-27 years. Statement of claimant no.1-Rama Devi that the deceased was her husband, was disbelieved and consequently the adverse findings were recorded. I have carefully gone through the post mortem report. Perusal of the same shows that the face of the petitioner was having several injuries and was presumably crushed. The deceased was taken to the hospital where he succumbed to the injuries. At that time no member of the family of the deceased was called. The doctor mentioned the age just from the appearance which was from a disfigured face. Therefore, the age mentioned from appearance cannot be accepted to be the final age of the deceased. Claimant Rama Devi, widow of the deceased had appeared as a witness to state that it was her husband Shambhu who had died in the accident. Claimant No.1 has six minor children who are also claimants. Presumably the body was also handed over to the claimants for cremation. By way of

additional evidence the claimant-appellants have produced on file a copy of the chargesheet which shows that Dharam Pal, driver of the offending bus was challaned after the investigation. In the investigation it was established that it was Shambhu who had died in the accident and Dharam Pal was challaned for causing the death of Shambhu by his rash and negligent driving. Once it is established in investigation that it was Shambhu son of Bhoop Singh, husband of claimant No.1, who had died, there is no reason to doubt the statement of the claimant that it was her husband Shambhu who had died. The findings of the Tribunal on issue No.1 are reversed. These findings are recorded in favour of the claimants and against the respondents.

It is not denied that the offending vehicle i.e. bus was insured with respondent No.4-insurance company. Hence, findings on issue no.3 are affirmed.

Now coming to the findings on issue No.2 regarding assessment of compensation. The income of the deceased was taken to be Rs.2500/-per month and annual income was assessed at Rs.30,000/- by the Tribunal. Learned counsel for the insurance company has argued that in the claim petition the income of the deceased was claimed to be Rs.6000/- per month. Therefore, the claim petition under Section 163-A of the Act is not maintainable. The matter was examined by the Apex Court in **Deepal Girishbhai Soni and ors vs. United India Insurance Co.Ltd., Baroda** 2004 AIR(SC) 2107 in which it was observed as under:-

“ We, therefore, are of the opinion that Kodala(supra) has correctly been decided. However, we do not agree with the findings in Kodala(supra) that if a person invoked provisions of Section 163-A, the annual income of Rs. 40,000/-per annual 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 up to 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 matter was also examined by a Division Bench of this Court in **FAO No.2971 of 2005 decided on 8.8.2006, United India Insurance Co.Ltd. vs. Muni Lal and others**, wherein it was observed as follows:-

“The judgment does not lay down a law that merely by setting up a claim on the basis of higher income, the claimants would be disqualified to lay a claim under Section 163-A of the Act. Moreover, it appears from the ratio of that judgment that the provisions of Section 163-A of the Act being beneficial piece of legislation in nature would not act as a bar in a case where the Tribunal comes to the finding that the income is below Rs.40,000/- yearly.”

Therefore, this Court is not to go by the income claimed in the petition but the income as determined by the Tribunal. Since the income of the deceased is only Rs. 30,000/-per annum, the claim petition filed under Section 163-A of the Act is maintainable.

Since the income of the deceased was Rs. 30,000/-per annum and there were seven dependents, therefore, 1/3rd amount is deducted towards the personal expenses of the deceased. In this way, the annual dependency comes to Rs.20,000/-.The Tribunal has assessed the dependency at Rs. 3,20,000/- after applying the multiplier of '16'. I do not find any illegality and infirmity in the same. Rs.9500/- on account of loss of consortium and funeral expenses as allowed by the Tribunal are also

affirmed. Thus the total compensation of Rs. 3,29,500/- as assessed by the Tribunal is upheld.

In view of the above discussion the appeal is allowed and the impugned award is set aside. Respondent No.4-insurance company is directed to pay the compensation of Rs.3,29,500/- to the claimants within a period of two months from the date of passing of the present order with interest at the rate of 7.5% p.a.from the date of filing of the claim petition till realisation. Out of the total amount of compensation, one half(1/2) shall go to the widow of deceased to run her day to day family affairs, bring up and educate her children and also to perform their marriage. The remaining amount shall be equally shared by the other claimants who were minors at time but must have become major by now.

(KULDIP SINGH)
JUDGE

23.07.2019
sunita

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