

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

**FAO No.1470 of 2006 (O&M)
Date of decision: 19.08.2019**

Shyam Murari Goyal

....Appellant

Versus

Ved Parkash and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Jain, Advocate,
for the appellant.

Mr. D.R. Bansal, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed against the Award dated 02.12.2005 passed by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as 'the Tribunal') dismissing the claim petition under Section 163-A of the Motor Vehicle Act, 1988, filed by the claimant-appellant seeking compensation on account of injuries received by him in a motor vehicular accident which took place on 10.08.2003.

Brief facts of the case are that on 10.08.2003, Shyam Murari Goyal-appellant was going from his house towards Janta Maternity Home, Sirsa on a scooter No. HR-24-C-944 in order to meet his elder brother Radha Kishan, who was admitted there. When he reached near Sangwan Chowk at National Highway No.10, a car bearing No. DL-3-CK-9258 being driven by respondent No.1-Ved Parkash in a rash and negligent manner, came from behind and hit the scooter, as a result of which, claimant-

appellant fell down and sustained injuries. The accident was witnessed by Ashok Kumar Goyal, Advocate. With regard to the accident, FIR No.651 dated 21.08.2003, under Sections 279/336/337/338 IPC was registered against respondent No.1 at Police Station, City, Sirsa. Consequently, claimant-appellant filed a claim petition before the Tribunal.

Upon notice, respondent Nos.1 to 3 filed their separate written statements and denied the accident as well as allegations made by the claimant in his claim petition. Ultimately, prayer for dismissal of the claim petition was made.

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

1. Whether the accident was caused by the use of car No.DL-3-CK-9258, driven by respondent No.1 resulting in to causing of injuries to the petitioner as alleged? OPP
2. Whether the petitioner is entitled to receive any compensation amount, if so, how much and from whom? OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Whether the petitioner has no cause of action and locus standi to file the present petition? OPR
5. Whether respondent No.1 was not holding a valid and effective driving license to drive the car at the time of alleged accident? OPR
6. Relief.

On the basis of evidence led by the parties, the Tribunal has returned finding on issue no.1 against the claimant-appellant that he did not suffer any injury on account of the accident and the case of claimant was found to be doubtful. In this backdrop, the claim petition was dismissed.

that driver-respondent No.1, after facing criminal trial, has since been acquitted.

Learned counsel for respondent No.3 has argued that the claimant was working as Canal Patwari and was getting salary of Rs.8331/- per month. Hence, his salary was more than Rs.40,000/- per annum, therefore, a claim petition under Section 163-A of the Act, in itself, was not maintainable. He has referred to the judgment passed by Hon'ble the Supreme Court in **Deepal Girishbhai Soni and others vs. United India Insurance Co. Ltd., Baroda**, 2004 (2) PLR 271, wherein it has been held that only those persons, whose annual income is upto Rs.40,000/-, can take the benefit of petition under Section 163-A of the Act. It has been further observed that 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.

Since income of the appellant, who was working as Canal Patwari, was more than Rs.40,000/- per annum, claim petition under Section 163-A of the Act in itself was not maintainable.

Learned counsel for the appellant, at this stage, states that he may be given liberty to approach the Tribunal again by filing a claim petition under Section 166 of the Act.

Even this aspect has been considered by Hon'ble the Supreme Court in **Deepal Girishbhai Soni's** case (supra) and observed as under:-

“54. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.”

As per ratio of the above judgment, at this stage, claimant-appellant cannot be permitted to file a claim petition under Section 166 of the Act because he has already availed remedy by filing a petition under Section 163-A of the Act.

After hearing learned counsel for the appellant and going through the impugned award, it is apparent that claimant has failed to lead any substantial evidence to prove his case. He has also failed to prove that he has received injuries in the accident, which allegedly took place due to rash and negligent driving of the offending vehicle by its driver-respondent No.1. After going through the impugned Award, this Court is of the view that in the absence of any cogent and convincing evidence, the Tribunal has rightly dismissed the claim petition. No ground is made out to interfere therein.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

19.08.2019
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No