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

**FAO No.516 of 2005 (O&M)
Date of Decision: 07.01.2019**

Smt. Sumitra Devi and others

Appellants

Versus

Balwan Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajesh Goyal, Advocate for
Mr. Pritam Saini, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 01.10.2004 passed by the Motor Accident Claims Tribunal, Ambala [hereinafter referred to as 'the Tribunal'] has been assailed in appeal by the legal heirs of Shukla Chauhan being aggrieved of the dismissal of the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The driver of bus bearing registration No.HR-63-0295 [hereinafter referred to as 'offending vehicle'], owner and insurer (i.e. National Insurance Company Ltd.) of the offending vehicle have

been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts of the case are that on 05.12.2002, Shukla Chauhan was returning from Ambala Cantt. to his house situated in village Jundli on his bicycle. On his way, he alighted from his bicycle and was hit by offending vehicle. He was taken to Civil Hospital, Ambala City where he was declared dead. FIR No.481 was registered at Police Station Baldev Nagar.

A claim petition was filed under Section 166 of the Act, but later converted to Section 163-A of the Act on request of counsel for the claimants. In the claim petition, it was pleaded that the deceased was 53 years old at the time of accident and employed as Gardener in the Cantonment Board. Salary of the deceased was proved as ₹5,696/- by producing the Salary Certificate.

The claimants failed to prove that the accident took place due to rash and negligent driving of the offending vehicle and on the request of claimants, claim petition was converted from Section 166 to Section 163-A of the Act.

The claim petition under Section 163-A of the Act was dismissed by the Tribunal relying upon the decision of the Supreme Court in the case of **Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd., Baroda, 2004 (5) SCC 385.** The claim petition was dismissed as annual income of the deceased was more than ₹40,000/-. Aggrieved of the dismissal of the claim petition, the claimants have filed the present appeal.

Learned counsel for the appellants argues that the

Tribunal erred in dismissing the claim petition under Section 163-A of the Act. He contends that the income of the deceased should have been capped to ₹40,000/- and thereafter, compensation should have been awarded.

The contention raised by learned counsel for the appellants lacks merit. The issue is no longer *res-integra*. The issue is well settled that the claim petition under Section 163-A of the Act is for that strata of the society where the annual income of the deceased is less than ₹40,000/- and the said amount cannot be used for capping the income.

The Supreme Court in case of **Deepal Girishbhai Soni** (supra) 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 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 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 can be resorted to where the annual income of the deceased was below ₹40,000/-.

In the present case, it was proved from the Salary

Certificate (Ex.PA) produced before the Tribunal that the deceased was earning ₹5,805/- per month. No shadow can be cast upon the findings recorded by the Tribunal dismissing the claim petition. The present is a case where the claimants failed to fulfil the requirements of Section 166 of the Act i.e. accident took place due to rash and negligent driving of the offending vehicle, who lateron failed under the proceedings of Section 163-A of the Act as the income of the deceased was more than ₹40,000/- per annum. In any case, the claimants are entitled to ₹50,000/- under Section 140 of the Act on account of 'no fault liability'.

There is no dispute that the offending vehicle was involved in the accident, hence, the said amount should be paid by the insurer of the offending vehicle. The Insurance Company is directed to pay the amount of ₹50,000/- to the claimants within six weeks from the date of receipt of this order, failing which, the claimants shall be entitled to interest @ 9% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is disposed of in aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

January 07th, 2019

pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |