

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

FAO No.2800 of 2011 (O&M)

Date of Decision.02.12.2019

Indrawati and others

...Appellants

Vs

Aash Mohammad and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. H.S. Gharoo, Advocate for
Mr. Amit Kumar Goyal, Advocate
for the appellants.

Mr. Rampal Kohle, Advocate for
Mr. Tajinder K. Joshi, Advocate
for the insurance company.

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JAISHREE THAKUR J. (ORAL)

1. This is an appeal that has been filed seeking to challenge the award passed by the Motor Accident Claims Tribunal, Sonapat whereby while entertaining the claim petition under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) the Tribunal has awarded a compensation of ₹4,36,000/- on account of death of one Raj Kumar, aged 35 years.

2. According to facts as stated, deceased along with his brother was going in vehicle Eicher make bearing registration No.HR-69-4588 when a truck bearing No.HR-55B-7635 being driven by respondent No.1 in a rash and negligent manner dashed against their vehicle. Due to impact of accident, the deceased received multiple injuries and he was declared brought dead in the hospital. A criminal case bearing FIR No.165 dated 9.5.2008 under Sections 297, 337 and 304-A IPC was also registered at Police Station Delhi Cantt. The deceased was stated to be earning ₹40,000/-

per annum.

3. The Tribunal in the absence of any documentary evidence, took the income of the deceased as ₹3000/- per month, allowed a deduction of 1/3rd and adopted a multiplier of 16 to assess the loss of dependency as ₹4,26,672/-. In addition to this, a sum of ₹9500/- was also provided towards funeral expenses, loss of estate and loss of consortium as per Schedule II of Section 163-A of the Act of 1988, thus, in total, a compensation of ₹4,36,000/- was assessed.

4. Learned counsel appearing on behalf of the appellants seeks to challenge the award on the ground that the compensation that has been awarded under Section 163-A of the Act of 1988 is wholly inadequate. It is argued that the compensation ought to have been assessed as per the parameters laid down by the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others (2017) 13 SCALE 12, 2017 (4) RCR (Civil) 1009.**

5. Per contra, learned counsel appearing on behalf of the insurance company vehemently opposed the contentions raised by counsel appearing for the appellants. He argued that the Tribunal has followed Schedule-II attached to Section 163-A of the Act of 1988 and all the heads have been correctly assessed.

6. I have heard learned counsel for the parties and have perused the paper book. Admittedly, the appellants-claimed had filed the claim petition under Section 163-A of the Act of 1988. Conversion of claim petition filed under Section 163-A to Section 166 of the Act of 1988 is not permissible as per the law laid down by Hon'ble Supreme Court in **Deepal Girishbhai Soni Vs. United India Insurance Company Limited (2004) 5**

SCC 385. However, considering the fact that the claim petition had been filed under Section 163-A, which specifically states that Second Schedule has to be adhered to while allowing the compensation, this Court has to only see whether Second Schedule as specified under Section 163-A has been followed correctly or not. This Court will take the income of the deceased as ₹40,000/- per annum as pleaded by the claimants and a deduction of 1/3rd is allowed towards personal expenses. The deceased was stated to be aged 35 years at the time of his death, therefore, a multiplier of 17 is required to be made. In addition to this, a sum of ₹9500/- is to be provided for funeral expenses, loss of consortium and loss of estate.

7. In all, the compensation payable shall be ₹4,62,839/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @7.5% from the date of filing of claim petition till its realization. The enhanced amount shall be provided to appellant No.2 i.e. widow of the deceased. The liability shall remain the same as has been fastened by the Tribunal.

8. The award stands modified and the appeal is allowed to the above extent.

(JAISHREE THAKUR)
JUDGE

December 02, 2019

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No