

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

FAO-967-2010(O&M)

Date of decision:-25.2.2019

Balbir Kaur and another

...Appellants

Versus

Randhir Singh through legal representative and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.S. Manaise, Advocate
for the appellants.

Mr.K.S. Dhillon, Advocate
for respondent No.1.

Mr.Harsh Aggarwal, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, facts of the case are that one Gurdev Singh son of Balwinder Singh and Balbir Kaur had expired in a motor vehicular accident, which took place on 21.2.2005 at about 8:30 p.m. in the area of near village Waraich. The parents of deceased, namely, mother – Balbir Kaur and father – Balwinder Singh had brought a claim petition under Section 166 of the Motor Vehicles Act for grant of compensation against respondents i.e. Randhir Singh – driver, Rakesh Kumar – owner and The

Oriental Insurance Company, Amritsar - insurer of truck having registration No.PB-02-9717 (hereinafter referred to as the offending vehicle).

In the said petition, they had claimed that the deceased was earning Rs.9,000/- per month. Subsequently, they got the petition amended to one under Section 163-A of Motor Vehicles Act, however, during pendency of the said petition and during the course of evidence of claimants Smt.Balbir Kaur – petitioner No.1 got her statement recorded as AW1 and submitted her affidavit Ex.AW1/A, in which she contended that Gurdev Singh deceased was aged 21 years at the time of accident and he was working with M/s Joginder Construction Company, Barmana as a Welder and his monthly salary was Rs.6,000/- plus ration money of Rs.3,000/-.

After contest, while adjudicating such claim petition vide award dated 16.9.2009, the Tribunal rejected the claim petition observing that the claim petition was not maintainable since the claimants had led evidence on file that income of the deceased was Rs.9,000/- per month i.e. Rs.6,000/- as pay and Rs.3,000/- as ration money and that a photostat copy of the certificate issued by M/s Joginder Construction Company, Barmana had been placed on file showing that he was earning a sum of Rs.9,000/- per month, as such it could not be said by any stretch of imagination that money income of deceased was Rs.3,000/-. The Tribunal has further observed that even after amendment of the petition, the claimant had filed an affidavit by way of examination-in-chief to the effect that income of the deceased was Rs.9,000/- per month. The

Tribunal observed that a petition under Section 163-A of the Motor Vehicles Act is not maintainable when the income of the deceased was more than Rs.4,000/- per month. The Tribunal has referred to authority **National Insurance Company Ltd. Versus Baljit Kaur and others, 2007 ACJ 1799** in that regard. The Tribunal has noted that there was nothing on the file to show that income of the deceased Gurdev Singh was less than Rs.4,000/-, as such the petition was not maintainable and mainly for that very reason, the claim petition was dismissed.

This award left the claimants aggrieved and they have approached this Court by filing the present appeal.

Notice of the appeal was given to respondents. Respondents No.1 and 3 had put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the appellants has submitted that the parents could scale down the income of deceased so as to bring it within purview of Section 163-A of the Motor Vehicles Act and they accordingly did so and their claim was wrongly rejected by the Tribunal. In support of his such contention, he has referred to authority **Rani Devi and Ors. Versus Rai Singh and Ors., 2006(45)RCR(Civil) 594** wherein a Co-ordinate Bench of this Court has observed that a right is there with the claimants under Section 163-A of the Motor Vehicles Act to claim income of deceased upto to Rs.40,000/- per annum by scaling down income of deceased from Rs.4,000/- per month to Rs.3,300/- per month and respondents were not prejudiced in any way since lesser compensation

was being claimed. He has further referred to authority **Gurmeet Kaur and others Versus Hardeep Singh and another, 2005(2) RCR(Civil) 149** by another Co-ordinate Bench of this Court as well as a judgment by Division Bench of this Court i.e. **Oriental Insurance Co. Ltd. Versus Smt.Saroj and others, 2007(1) RCR(Civil) 152** in that regard.

Whereas learned counsel for the respondents has vehemently contested such contentions of learned counsel for the appellants/claimants submitting that it is not just a case of scaling down of income of the deceased, rather claimant Balbir Kaur while getting her statement recorded in the Court had submitted her affidavit clearly mentioning the monthly income of deceased to be Rs.9,000/- per month and even copy of salary certificate in that regard had been placed on record. It being so, the petition was not maintainable and was rightly rejected by the Tribunal. In support of such contentions, learned counsel for the insurance company has referred to judgment by the Apex Court i.e. **Deepal Girishbhai Soni and ors. Versus United India Insurance Co. Ltd., Baroda, 2004(2) RCR(Civil) 466** by three Judges Bench of Hon'ble Supreme Court wherein it was observed that the object and purpose of incorporating Section 163-A was to provide a speedy remedy to the victims or their dependents but has been made final and absolute in itself. It has further observed that switching over to Section 166 after exercising one under Section 163-A of the Motor Vehicles Act is not permissible. Learned counsel representing respondent No.1 has pressed into service authority **Himachal Road Transport Corporation and another Versus Sh.Ashok Kumar Sharma and another, 2016(3) PLR 43** by a Co-ordinate Bench of

this Court wherein it was observed that when initially a petition is filed under Section 166 of the Motor Vehicles Act, however later on it was treated as petition under Section 163-A of the Act as per request made by counsel for the claimant that could not have been done in view of the law laid down by the Apex Court.

After hearing the rival contentions of learned counsel for the parties, I find that the Tribunal was justified in dismissing the claim petition for the reason that in claim petition under Section 163-A of the Motor Vehicles Act, the claimants had persisted with their submission that deceased was earning Rs.9,000/- per month, whereas for adjudication of claim petition under Section 163-A of the Motor Vehicles Act, the annual income of the deceased should not have been more than Rs.40,000/- per annum.

Under the circumstances, I do not find any illegality of infirmity in the award passed by the Tribunal. Rather the same is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

Finding no merit in the appeal, the same stands dismissed.

25.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No