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

FAO No. 2359 of 2012

Date of Decision: 01.07.2019

The National Insurance Company Ltd.

-Appellant

Vs

Smt. Geeta and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashwani Talwar, Advocate, with
Mr. Sahej Mahajan, Advocate,
for the appellant.

Mr. Mohd. Yousaf, Advocate,
for respondent No.7.

RAJ MOHAN SINGH, J. (ORAL)

1. This is an appeal preferred by the National Insurance Company Limited against the award dated 21.11.2011 passed by the Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar.

2. The claim petition was filed under Section 163-A of the Motor Vehicles Act on account of death of Dalbir Singh in the accident. The accident took place on 17.12.2004 when Dalbir Singh was driving the truck bearing No.PB-04-F-9918. The accident took place when the truck went off the road and fell in ditches and turn turtle. There was no involvement of any

second vehicle in the accident.

3. The Tribunal awarded a sum of Rs.4,17,500/- as compensation to the appellant. The liability to pay the compensation was joint and several. Respondent No.2 was directed to pay the compensation within a specified time, failing which claimants were held entitled to recover interest @ 7.5% per annum. The amount of compensation was ordered to be apportioned as mentioned in para no.19 of the award.

4. Notice of motion was issued on 24.07.2015. Interim stay in excess of Rs.3,05,775/- with interest was also granted. Respondents No.1 to 5 are the claimants who have been duly served but they did not appear and were proceeded exparte vide order dated 19.11.2012.

5. There is no representation on behalf of respondent No.6.

6. Learned counsel for the appellant submitted that the claimants are entitled for compensation only in one form. The petition under Section 163-A of Motor Vehicles Act was not maintainable as the driver himself died in the accident being a tort-feasor.

7. Since there was no involvement of any second vehicle, therefore, the Tribunal has committed wrong in treating him to be third party. The claim petition under Section 163-A of

the Act was not maintainable, rather under Section 140 of the Motor Vehicles Act, claimants were entitled only for an amount of Rs.50,000/- under No Fault Liability.

8. Learned counsel for the appellant further submitted that the claimants are entitled for the grant of compensation under the provisions of Workmen Compensation Act as the Insurance Policy is a package policy and risk of Workmen Compensation upto three employees is covered.

9. The Tribunal has assessed the income of the deceased to be Rs.3000/- per month. Keeping in view the age of the deceased to be 32 years at the time of accident, the relevant factor as per schedule of Employees Compensation Act is 203.85 and thus the compensation can be worked out to the tune of Rs.3,05,775/- after multiplying the relevant factor to half of the income of the deceased as per formula in terms of Section 4 of the Workmen Compensation Act. No proceedings have been initiated under Workmen Compensation Act.

10. The legislation being a welfare legislation can be considered even by converting the present appeal into an appeal arising out of Workmen Compensation Act in order to avoid further delay in the matter of granting requisite compensation in favour of the family of the deceased.

11. In the grounds set up by the appellant, alternative

mode of redressal has been suggested for converting the claim petition under Motor Vehicles Act into a claim petition under Workmen Compensation Act as the appellant cannot be left to suffer rigor of procedural vagaries in firstly filing the appeal and then to seek condonation of huge delay for seeking necessary compensation from this alternative remedy.

12. The stand of the appellant is fair enough to consider the claim of the appellant under Workmen Compensation Act as suggested by learned counsel for the appellant in para no.12 of the Grounds of Appeal.

13. To the extent of awarding an amount of Rs.3,05,775/- along with interest, learned counsel for the appellant has no objection. Keeping in view the composition of the claimants and the nature of loss suffered by them, I deem it appropriate to covert the proceedings into Workmen Compensation Act for the purpose of awarding just compensation to the claimants.

14. The findings recorded by the Tribunal in the context of income of the deceased are upheld and the income of the deceased is taken to be Rs.3000/- per month. The deceased was 32 years of age at the time of accident, therefore relevant factor as per schedule of Employees Compensation Act is taken to be 203.85. On necessary calculation, the payable compensation would come to be Rs.3,05,775/- along with

interest @ 7.5% per annum from the date of filing of claim petition till final realization of the amount.

15. Since respondents No.1 to 5 have not preferred to contest this appeal, still in the interest of justice, the necessary conversion of the remedy would suffice to serve their purpose of claiming just compensation.

16. Learned counsel for the appellant has also submitted that the amount in question has already been deposited with the Motor Accident Claims Tribunal and the claimants be advised to withdraw the aforesaid amount along with interest from the Executing Court/Tribunal. The Executing Court shall issue notice to the claimants and then follow up action shall be taken.

17. With the aforesaid modification, this appeal is disposed of.

01.07.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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