

FAO No. 4131 of 2014

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

FAO No. 4131 of 2014

Date of Decision: September 11, 2019

Kuljit Kaur and others

..... Appellants(s)

Versus

Maninder Singh and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. C.L. Verma, Advocate
for the appellants.

None for respondents no.1 and 2.

Mr. Suvir Dewan, Advocate
for respondent no.3-insurance company.

LISA GILL, J.

This appeal has been filed seeking enhancement of the compensation awarded to the appellants/claimants vide award dated 02.01.2014, passed by learned Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as 'the Tribunal).

Appellants-claimants filed a petition under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act), seeking compensation on account of death of Kuldeep Singh, due to the injuries suffered by him in the motor vehicle accident, which took place on 21.05.2013, involving Tata Tipper/truck bearing registration No.PB-05-W-9541. Income of the deceased was claimed to be Rs.3,300/- per month.

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Learned Tribunal on considering the evidence on record concluded that Kuldip Singh lost his life due to the injuries received by him in the accident in question, which took place on 21.05.2013 due to the use of Tipper/truck bearing registration No. PB-05-W-9541. Learned Tribunal while assessing the income of the deceased to be Rs.3,300/- per month, awarded a sum of Rs.4,31,900/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income 3300 x 12	39,600/- per annum
2.	Income after deducting 1/3 rd as personal living expenses of the deceased	39,600 - 1/3 rd = 26,400/- per annum
3.	Dependency after applying multiplier of 16	26,400 x 16 = 4,22,400/-
4.	Loss of estate	2,500/-
5.	Loss of consortium to claimant no.1	5,000/-
6.	Funeral expenses	2,000/-
	Total	4,31,900/-

Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants submits that the petition though filed under Section 163-A of the Motor Vehicles Act, 1988, in fact be treated as a petition under Section 166 of the Act and the compensation be assessed accordingly. It is further submitted that a specific issue in this regard has been framed by the learned Tribunal and it has been held by a Division Bench of Calcutta High Court in *Smt. Fulmani Hemram alias*

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Hembram Vs. The Divisional Manager, New India Insurance Co. Ltd. and another 2007(1) CalLJ 793, that once an issue has been framed regarding negligence of the offending vehicle, principles of assessment and determination of income under Section 166 of the Motor Vehicles Act, 1988, should be followed and compensation awarded accordingly. It is thus prayed that this appeal be allowed.

Learned counsel for the insurance company, however, refutes the above said arguments and prays for dismissal of this appeal.

I have heard learned counsel for the parties and have gone through the file.

It is a matter of record that the appellants/claimants chose to file a petition under Section 163-A of the Motor Vehicles Act, 1988. Issues framed by the learned Tribunal read as under:-

- 1. Whether Kuldip Singh son of Sh. Ajaib Singh, suffered injuries in a road side accident which took place on 21-5-2013 at about 9-30 A.M. In the area Asr-Batala Road, PS Kamboj, involving vehicle truck No. PB-05-W-9541 being driven by Massa Singh, respondent no.2, owned by respondent no.1, to which he succumbed? OPP*
- 2. Whether the petitioners/claimants are entitled to recover any compensation, if so, the amount and from whom? OPP*
- 3. Whether the petition is not maintainable? OPR*
- 4. Whether the respondent no.2 was not having a valid and legal driving licence at the time of accident, if so, its effect? OPR-3*
- 5. Whether the respondent no.1 insured has violated the terms and conditions of insurance policy, if so, its effect? OPR-3*
- 6. Whether the petition is bad for misjoinder and non-joinder of the necessary parties? OPR*
- 7. Relief.*

It is a matter of record that no issue regarding negligence of the offending vehicle has been framed in this case and neither have the claimants proceeded on this premise. Therefore, reliance on the *Fulmani Hemram's* case (supra) is clearly mis-placed. Moreover, the Hon'ble Supreme Court in *Deepal Girishbhai Soni And Ors vs. United India Insurance Co. Ltd.* 2004(5) SCC 385, has specifically held that:-

“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.

In Kodala (supra) the contention of the claimant that right to get compensation is in addition to the no-fault liability was, thus, rightly rejected. In agreement with Kodala (supra) we are also of the opinion that unlike [Sections 140](#) and [141](#) of the Act the Parliament did not want to provide additional compensation in terms of [Section 163-A](#) of the Act.

The question may be considered from different angles. As for example, if in the proceedings under [Section 166](#) of the Act, after obtaining compensation under [Section 163-A](#), the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefor as a consequence whereto the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation

already paid on the basis of structured formula? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under [Section 166](#) of the Act, would it be at liberty to award compensation in terms of [Section 163-A](#) thereof.

The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under [Section 163-A](#) of the Act is interim in nature.

It is, therefore, evident that whenever the Parliament intended to provide for adjustment or refund of the compensation payable on the basis of no-fault liability, as for example, [Sections 140](#) and [161](#) in case of hit and run motor accident, from the amount of compensation payable under the award on the basis of fault liability under [Section 168](#) of the Act, the same has expressly been provided for and having regard to the fact that no such procedure for refund or adjustment of compensation has been provided for in relation to the proceedings under [Section 163-A](#) of the Act, it must be held that the scheme of the provisions under [Sections 163-A](#) and [166](#) are distinct and separate in nature.”

The argument for treating the petition to be one under [Section 166](#) of the Motor Vehicles Act, is, thus, rejected being devoid of any merit.

A perusal of the impugned award reveals that income of the deceased as claimed by the appellants i.e. Rs.3,300/- per month, has been accepted as such. Compensation has been assessed strictly in terms of the Second Schedule of the Act as is required. Learned counsel for the

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appellants is unable to point out any illegality, perversity or infirmity in the impugned award 02.01.2014, passed by the learned Motor Accidents Claims Tribunal, Amritsar, which calls for any interference by this Court at the instance of the appellants-claimants.

No other argument has been addressed.

Appeal is accordingly dismissed with no order as to costs.

**(LISA GILL)
JUDGE**

September 11, 2019.

Sunil

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