

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

Date of Decision: 08.04.2019

(1)

FAO-5914-2014 (O&M)

IFFCO Tokio General Insurance Co. Ltd.

.....Appellant

Versus

Nisha Devi and others

.....Respondents

(2)

FAO-5915-2014 (O&M)

IFFCO Tokio General Insurance Co. Ltd.

.....Appellant

Versus

Sonia and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. Rajesh Bansal, Advocate
for the appellant in both the appeals.

Mr. K.S. Dhanora, Advocate for
respondents No.1 to 4 in
FAO No.5914-2014 and
for respondents No.1 to 5
in FAO No.5915-2014.

None for respondents No.5 and 6
in FAO No.5914-2014 and
respondents No.6 and 7
in FAO No.5915-2014.

ARUN KUMAR TYAGI, J.

1. This order disposes of **FAO-5914-2014 (O&M)** filed against award dated 16.04.2014 passed by learned Motor Accidents Claims Tribunal, Kaithal (for short 'the Tribunal') in **MACT case No.64 of 2013 titled Nisha Devi and others Vs.**

Satbir and others and **FAO-5915-2014 (O&M)** filed against above-said award passed by the above-said Tribunal in **MACT Case No.65 of 2013 titled Sonia and others Vs. Satbir and others**, as both the above-said claim petitions arose out of the same accident and common questions of facts and law are involved in the above-said appeals.

2. Both the above-said claim petitions were filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') for award of compensation for death of Naresh Kumar and Mukesh Kumar, respectively due to injuries suffered in accident arising out of the use of three-wheeler bearing registration No.HR-64-7528. The common factual matrix emerging from the abovesaid claim petitions is that on 14.06.2013 deceased-Naresh Kumar and Mukesh Kumar along with Ved Parkash and Sonu were going from Kaithal to Pundri in three-wheeler bearing registration No.HR-64-7528 driven by respondent No.1. After they had crossed distance of about 2 km. from Karnal bye-pass chowk to the Pundri side, an unknown truck came from opposite side driven at a very fast speed and in a rash and negligent manner and hit against the three-wheeler due to which all the occupants of the three-wheeler received multiple serious and grievous injuries. Naresh Kumar and Mukesh Kumar succumbed to their injuries. FIR No.121 dated 14.06.2013 was registered under Sections 279, 337, 427 and 304-A of the Indian Penal Code, 1860 in Police Station Civil Lines, Kaithal regarding the accident.

3. In MACT Case No. 64 of 2013 titled Nisha Devi and others Vs. Satbir and others claimants Nisha Devi and others pleaded that deceased-Naresh Kumar was aged about 23 years at the time of his death and earning ₹3,300/- per month by working as labourer. The claimants spent amount of ₹50,000/- on his last rites. The claimants being dependents and legal heirs of deceased-Naresh Kumar are entitled to payment of compensation for his death with costs and interest from respondents No.2 and 3-owner and insurer.

4. In MACT 65 of 2013 titled Sonia and others Vs. Satbir and others claimants Sonia and others pleaded that deceased-Mukesh Kumar was aged about 23 years at the time of his death and earning ₹3,300/- per month by doing labour work. They spent amount of ₹50,000/- on his last rites. The claimants being dependents and legal heirs of deceased-Mukesh Kumar are entitled to payment of compensation for his death with costs and interest from respondents No.2 and 3-owner and insurer.

5. Notice of the claim petitions was issued to the respondents. Respondent No.2-owner suffered himself to be proceeded against ex-parte. The claim petitions were contested by respondent No.1-driver and respondent No.3-Insurance Company.

6. In his written statements filed in both the cases respondent No.1 took preliminary objections regarding maintainability, locus standi, mis-joinder of parties, suppression of true and material facts etc., denied the accident and his liability

while pleading that he was having valid and effective driving licence and that the three-wheeler was insured with respondent No.3.

7. In its written statements filed in both the cases, respondent No.3 took objections as to maintainability, mis-joinder and non-joinder of parties, want of cause of action, estoppel, collusion, respondent No.1 not having valid and effective driving license, breach of terms and conditions of the insurance policy by respondent No.1 etc., controverted the material averments made in the petition and denied its liability.

8. The Tribunal framed the issues and recorded the evidence produced by the parties. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties, the claim petitions were allowed by the Tribunal vide common award dated 16.04.2014 wherein the Tribunal held that Naresh Kumar and Mukesh Kumar died due to accident arising out of the use of three-wheeler bearing registration No.HR-64-7528. In MACT Case No. 64 of 2013 titled Nisha Devi and others Vs. Satbir and others, the Tribunal assessed income of deceased Naresh Kumar as ₹3,300/- per month, deducted 1/4th towards personal expenses, applied multiplier of 18, added amount of ₹20,000/- towards funeral expenses and ₹75,000/- towards loss of consortium and awarded compensation of ₹6,29,600/- with costs and interest at the rate of 7.5% per annum from the date of filing of the claim petition till payment to the claimants. In MACT Case No.65 of

2013 titled Sonia and others Vs. Satbir and others the Tribunal assessed income of Mukesh Kumar as ₹3,300/- per month, deducted 1/4th towards personal expenses, applied multiplier of 18, added amount of ₹20,000/- towards funeral expenses and ₹75,000/- towards loss of consortium and awarded compensation of ₹6,29,600/- with costs and interest at the rate of 7.5% per annum from the date of filing of the claim petition till payment to the claimants. The Tribunal held the respondents to be jointly and severally liable for payment of the above said compensation amounts to the claimants.

9. Feeling aggrieved, the insurance company has preferred present appeals against the above said award.

10. I have heard arguments addressed by the learned Counsel for the appellant-Insurance Company and learned Counsel for the respondents-claimants.

11. Learned Counsel for the appellant-Insurance Company has argued that the common award dated 16.04.2014 passed by the Tribunal in both the above-said claim petitions suffers from material irregularities. The Tribunal wrongly deducted 1/4th instead of 1/3rd towards personal expenses of the deceased, wrongly applied multiplier of 18 instead of 17 and wrongly awarded a sum of ₹75,000/- instead of ₹5,000/- towards loss of consortium and ₹20,000/- instead of ₹2,000/- towards funeral expenses which is not permissible under Section 163-A of the M.V. Act, 1988. Impugned award is liable to be modified and the compensation awarded is liable to be reduced. In support of his

arguments learned Counsel for the appellant has placed reliance on the decision of an Hon'ble Coordinate Bench of this Court in **FAO No.3460 of 2004 titled as Mohit Garg and another Vs. Afrojan and others** and **FAO No.4579 of 2004 titled as Afrojan and others Vs. Mohit Garg and another** decided on **15.05.2014**.

12. On the other hand, learned Counsel for the respondents-claimants has argued that the Tribunal has awarded just compensation which is not liable to be reduced. The impugned award does not call for any modification and the appeals may be dismissed.

13. It may be observed, at the very outset that in the present case, the findings of the Tribunal, as to death of Naresh Kumar and Mukesh Kumar due to accident arising out of the use of three-wheeler bearing registration No.HR-64-7528, owned by respondent No.2 and insured with respondent No.3 and entitlement of the claimants to payment of compensation from respondent No.2-owner and respondent No.3-Insurance Company jointly and severally have not been challenged by the appellant-Insurance Company.

14. It is pertinent to mention here that the respondents-claimants filed cross-objections in both the above-said appeals for enhancement of the compensation awarded. However, the respondents-claimants subsequently prayed for dismissal thereof as withdrawn on which the cross-objections were dismissed as withdrawn vide order dated 07.01.2019.

15. In both the cases, the Tribunal ordered payment of the compensation amounts with interest at the rate of 7.5% per annum from the date of filing of the petition till its realization. The claimants had filed cross-objections to both the appeals seeking enhancement of the compensation awarded by the Tribunal and also seeking award of interest at the rate of 18% per annum but subsequently the claimants got the cross-objections dismissed as withdrawn with the consequence that the question of adequacy of interest awarded by the Tribunal is not required to be, and even cannot be, adjudicated upon.

16. On perusal of the material on record and consideration of the submission made by the learned Counsel for the parties, I am of the considered view that the appeals deserved to be allowed and the compensation awarded is liable to be reduced and impugned award is liable to be modified.

17. Sub Section (1) of Section 163-A of the M.V. Act provides as under:-

“Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.”

18. Para 1 of Second Schedule of the M.V. Act provides for calculation of compensation by applying multiplier as per age of the deceased to his income. Note to Para 1 of the Second Schedule of the M.V. Act provides for deduction of 1/3rd of the

amount of compensation so arrived at in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. Para 3 of Second Schedule of the M.V. Act empowers the Tribunal to award amount of ₹5,000/- to widow towards loss of consortium and amount of ₹2,000/- towards funeral expenses and amount of ₹2,500/- towards loss of estate.

19. In the present case, the deceased were proved to be aged about 23 years and to be having income of ₹3300/- per month at the time of their death. Due to there being no provision in Second Schedule of the M.V. Act for addition in income towards future prospects, no addition was required to be made in the income of the deceased towards future prospects and the Tribunal rightly did not make any addition to income of the deceased towards future prospects. However, the Tribunal deviated from the provisions made in Second Schedule of the M.V. Act and made deduction of 1/4th towards personal expenses of the deceased and applied the multiplier of 18 in view of age of the deceased being 23 years on the basis of directions given by Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009 (3) R.C.R. (Civil) 77**. The Tribunal awarded amount of ₹75,000/- to claimant No.1- widow of the deceased and awarded amount of ₹20,000/- towards expenses incurred on last rites to the claimants in both the claim petitions respectively on the basis of decision of an Hon'ble Coordinate Bench of this Court in **FAO No.951 of 2009 titled**

Oriental Insurance Co. Ltd. Vs. Gurdev Singh etc. decided on 30.08.2012 and decision of Hon'ble Supreme Court in **Rajesh and others Vs. Rajbir Singh and others : 2013(3) Civil Court Cases 15.**

20. The question which arises is as to whether the structured formula given in Second Schedule of the M.V. Act can be deviated from in assessing compensation payable to the claimants in petition filed under Section 163-A of the M.V. Act.

21. In **Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala : 2001(2) RCR (Civil) 629** Hon'ble Supreme Court rejected the contention of the claimant that right to get compensation under Section 163-A of the M.V. Act is in addition to the no-fault liability. Hon'ble Supreme Court held that the procedure of giving compensation under Section 163-A is inconsistent with the procedure prescribed for awarding compensation on fault liability. Under section 163-A compensation is awarded without proof of any fault while for getting compensation on the basis of fault liability claimant is required to prove wrongful act, neglect or default of the owner of the vehicle or vehicles concerned. In view of the non-obstante clause "notwithstanding anything contained in this Act" the provisions of Section 163-A would exclude determination of compensation on the principle of fault liability.

22. In **Deepal Girishbhai Soni and Ors. v. United India Insurance Co. Ltd., 2004(2) R.C.R. (Civil) 466** Hon'ble Apex Court observed that in Section 163-A the expression

"notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non-obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of. The conclusion given in Para No.62 of **Deepal Girishbhai Soni's case (supra)** is as under:-

"We, therefore, are of the opinion that Kodala (supra) 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 annum 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."

23. Para No.67 of **Deepal Girishbhai Soni's case (supra)** is also extracted as hereunder:-

"Section 163-A was introduced in the year 1994. The executive authority of the Central Government has the requisite jurisdiction to amend the Second Schedule from time to time. Having regard to the inflation and fall in the rate of bank interest; it is desirable that the Central Government bestows serious consideration to this aspect of the matter."

24. Hon'ble Supreme Court observed in **Oriental Insurance Company Limited v. Meena Variyal & Ors., 2007(2) R.C.R. (Civil) 698** as under:-

"We think that the law laid down in **Minu B. Mehta & Anr. v. Balkrishna Ramchandra Nayan & Anr.** (supra) was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as **indicated in the Second Schedule**, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163A of the Act, the compensation will be awarded **in terms of the Schedule** without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle." (emphasis supplied)

25. In **FAO No.3460 of 2004 titled as Mohit Garg and another Vs. Afrojan and others** and **FAO No.4579 of 2004 titled as Afrojan and others Vs. Mohit Garg and another decided on 15.05.2014** an Hon'ble Coordinate Bench of this Court while noticing that in several cases Hon'ble Supreme Court pointed out the defects in Section 163-A and Second Schedule of the M.V. Act but the Hon'ble Supreme Court did not go as far as re-writing Section 163A or Schedule II and on the other hand exhorted the legislature to set right the provisions observed that departure from Section 163A and Second Schedule of the M.V.

Act except in the circumstances and the restricted field concerning child permitted by the Hon'ble Supreme Court in **Master Mallikarjun Vs. Divisional Manager, The National Insurance Company limited and another 2013 ACJ 2445 (SC)** is not permissible as the same would mean judicial impertinence to a legislative mandate.

26. In **Bajaj Allianz General Insurance Company Limited Vs. Sonu and another : 2016(3) PLR 701** an Hon'ble Coordinate Bench of this Court observed that Section 163-A is a legislative innovation providing for strict liability that relieves the claimant of having proved the normal principles of fault that is normative basis for claiming compensation on the principle of tort. The section contains, therefore, certain inherent limitation on its applicability. The limitation set down under Section 163-A cannot be crossed over on imaginative grounds which are opposed to the statutory provision. In view of the law laid down by Hon'ble supreme Court in **Hansrajbai V. Kodala's case (supra)**, **Deepal Girishbhai Soni's case (supra)** and **Meena Variyal's case (supra)**, in the considered opinion of this Court, if a petition is filed under Section 163-A of the Act, the compensation has to be awarded in terms of the Second Schedule and there can be no deviation from the same.

27. In **FAO No.951 of 2009 titled Oriental Insurance Co. Ltd. Vs. Gurdev Singh etc. decided on 30.08.2012** an Hon'ble Coordinate Bench of this Court observed that the decisions of the Hon'ble Supreme Court in **Sarla Verma's Case (Supra)** and **Raj**

Kumar vs Ajay Kumar and Another : (2011) 1 SCC 343 case can be suitably applied even in cases falling under section 163-A and a deviation may be made from the formula given in Second Schedule of the M.V. Act in assessing/ awarding compensation under the heads medical expenses, funeral expenses, loss of consortium/ loss of estate. In this regard courts can resort to the ratio of the decisions of the Hon'ble Supreme Court in **Sarla Verma's Case (Supra)** and **Raj Kumar's Case (Supra)** but with due respect, the view taken by the Hon'ble Bench in the above-said case being in conflict with the decisions of Hon'ble Supreme Court in **Hansrajbai V. Kodala's case (supra)**, **Deepal Girishbhai Soni's case (supra)** and **Meena Variyal's case (supra)** does not lay down the correct proposition of law.

28. The position of law which emerges from the above referred judicial precedents is that in claim petition filed under Section 163-A of the M.V. Act, amount of compensation has to be assessed as per the structured formula embodied in the Second Schedule of the M.V. Act which cannot be deviated from except in case of child as directed by Hon'ble Apex Court in **Master Mallikarjun's Case (Supra)**.

29. In claim petition filed under Section 163-A of the M.V. Act multiplier has to be applied on the basis of age of the deceased as per the structured formula provided for in the Second Schedule of the M.V. Act. The decision in **Smt. Sarla Verma's Case (Supra)** was restricted in applicability to claim petitions filed under Section 166 of the M.V. Act and was not

applicable to the present claim petitions under Section 163-A of the M.V. Act. Therefore, multiplier has to be applied as per the provisions of Second Schedule of the M.V. Act and not as per the directions given in **Smt. Sarla Verm's Case (Supra)**. Since, the deceased were aged about 23 years at the time of their death, multiplier of 17 was applicable for assessment of the amount of compensation as per Second Schedule of the M.V. Act and the Tribunal wrongly applied the multiplier of 18. When so applied the amount of death compensation comes to ($\text{₹}3300 \times 12 \times 17 =$) $\text{₹}6,73,200/-$. Out of the above said amount $1/3^{\text{rd}}$ was liable to be deducted towards personal expenses of the deceased as per Note I to Para I of the Second Schedule of the M.V. Act and the Tribunal wrongly deducted $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$ of the income of deceased towards their personal expenses. On deduction of $\text{₹}2,24,400/-$ being $1/3^{\text{rd}}$ of the above-said amount towards personal expenses of the deceased, amount of compensation payable to the claimants comes to $\text{₹}4,48,800/-$.

30. As per the provisions made in the Second Schedule to the M.V. Act amount of $\text{₹}2,000/-$ is payable towards funeral expenses, amount of $\text{₹}5,000/-$ is payable towards loss of consortium if beneficiary is spouse and amount of $\text{₹}2500/-$ is payable towards loss of estate. The observations made by the Apex Court in **Pranay Sethi's Case (Supra)** as to award of amount of $\text{₹}15,000/-$ towards loss of estate, $\text{₹}40,000/-$ towards loss of consortium and $\text{₹}15,000/-$ towards funeral expenses and

the observations in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333** as to award of ₹40,000/- each towards loss of parental, spousal and filial consortium, being restricted in applicability to claim petitions filed under Section 166 of the M.V. Act are not applicable to the present claim petitions under Section 163-A of the M.V. Act. In view of the provisions made in Second Schedule of the M.V. Act, the claimant No.1-widow in both the claim petitions were entitled to payment of amount of ₹5,000/- respectively towards loss of consortium and the claimants in both the claim petitions were entitled to payment of ₹2,000/- towards funeral expenses and ₹2,500/- towards loss of estate and the Tribunal wrongly awarded amount of ₹20,000/- to the claimants towards expenses incurred on last rites and amount of ₹75,000/- to claimant No.1-widow towards loss of consortium in both the claim petitions respectively.

31. It follows from above discussion that the claimants are entitled to payment of compensation of ₹4,58,300/- in both the claim petitions respectively and the Tribunal committed material irregularity by awarding amount of ₹6,29,600/- to the claimants in both the claim petitions respectively which is liable to be reduced and the impugned award is liable to be modified accordingly and the excess amount paid to the claimants is liable to be refunded by them accordingly.

32. It may be observed here that in the present case the Tribunal directed the respondents No.1 to 3-driver, owner and insurer to pay the compensation amount jointly and severally but in view of the provisions made in Sub-Section (1) of Section 163-A, respondent No.1-driver is not liable to pay compensation and the impugned award is liable to be modified in this regard also.

33. The appeals are allowed with costs and the impugned award is modified to the effect that the claimants in both the claim petitions are entitled to payment of compensation of ₹4,58,300/- respectively from respondents No.2 and 3 with costs and interest at the rate of 7.5% per annum and the claimants shall be liable to refund the excess amount of compensation, if already paid to them, accordingly.

(ARUN KUMAR TYAGI)
JUDGE

08.04.2019

Kothiyal

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No