IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 8909 of 2014 (O&M)

Date of Decision: 06.05.2019

Attar Singh and another

.......Appellants

Versus

Narender and another

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Mohit, Advocate for
Mr. R.A. Sheoran, Advocate
for the appellants.

Mr. Vishal Sharma, Advocate for
Mr. Sachin Ohri, Advocate
for respondent No.2.

AVNEESH JHINGAN, J.(oral)

The award dated 13.8.2014 passed by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') has been assailed by parents of Manjit Kumar, being aggrieved of dismissal of claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act'), on the ground that the income of the deceased exceeded ₹ 40,000/- per annum.

The facts emanating from the record are that on 9.3.2013, Narender was driving a motorcycle bearing registration No.HR-19G-3475 and Manjit Kumar was the pillion rider. On their way, near village Goripur turn, a dog came in front of the motor cycle, as a result of which the driver lost balance. Both, the riders of the motorcycle fell down. Manjit Kumar suffered grievous injuries. He was taken to Anand Hospital, Bhiwani from where he was referred to PGIMS, Rohtak, where he succumbed to the injuries. DDR No. 15 dated 9.3.2013 was recorded.

A claim petition was filed under Section 163-A of the Act by the parents. It was claimed that the deceased was running a mobile and computer repair shop. The occurrence of accident was proved by deposition of Attar Singh-PW1 father of the deceased and by the contents of DDR recorded on the statement of Narender. During deposition, the father of the deceased stated that his son was carrying repair work in a rented shop. The rent of the shop was ₹ 1000/- per month and thereafter he was paying ₹ 3000/- to ₹ 3250/- per month to him. Narender Singh appeared as RW1 and stated that he along with deceased was running computer and mobile repair shop, there was sufficient work with them and they were earning ₹ 10,000/- each from the shop. No documentary evidence was produced but the fact remains that the father of the deceased clearly stated that he was being paid ₹ 3000/- per month by his son. The deceased apart from incurring his own expenses and after paying rent, was paying ₹ 3000/- monthly to his father. Thus this itself proves that his income was more than ₹ 40,000/- per annum.

In the claim petition filed under Section 163-A of the Act, rash and negligent driving of the offending vehicle is not required to be proved by the claimants. The restriction is that the earning of the deceased should be less than ₹ 40,000/- per annum. The income of ₹ 40,000/- per annum is not to be considered for capping purposes, the provision is for that strata of society whose income is less than ₹ 40,000/- per annum.

The Supreme Court in ***Deepal Girishbhai Soni v. United India Insurance Co. Ltd. AIR 2004 SC 2107*** *h*as held as under:

"62. 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 annual 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 uptoRs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act."

In the present case it is not merely pleaded that the earning of the deceased was more than ₹ 40,000/- per annum rather the evidence adduced in the claim proceedings also shows that the earning of the deceased was more than ₹ 40,000/-. No shadow can be cast upon the findings recorded by the Tribunal dismissing the claim petition filed under Section 163-A of the Act.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

06.05.2019
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Whether speaking/reasoned Yes
Whether Reportable: No