

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 9882 of 2014

Date of decision:- 29.08.2019

Vikram

...Appellant

Versus

Deepak Yadav and anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Arun Yadav, Advocate
for the appellant.

Mr. Rajnish Malhotra, Advocate
for the respondent/Ins. Co.

RITU BAHRI J. (Oral)

The present appeal has been preferred by the injured-appellant (for short 'the appellant'), against award dated 11.09.2014 passed by the learned Motor Accident Claims Tribunal Rewari (for short, 'the Tribunal') to the tune of Rs.93,460/-.

On 20.10.2015, this Court passed the following order:-

*1. A Cleaner who had suffered facial injury said to have sustained 15% disability applied under Section 163-A of the Motor Vehicles Act, 1988 (for short the '**the Act**') for compensation on 'no fault basis'. The claimant is reported to have incurred expenditure to the tune of ₹82,000/- and the Tribunal allowed for an additional amount of ₹6,000/- for disability and pain and suffering and granted compensation at ₹93,460/-.*

2. Learned counsel argues that the assessment has not been properly done as regards the disability and pain and suffering and provision made for only of ₹6,000/- is grossly low. The counsel would state that the provision under Section 163-A of the

Act may be discarded for assessment, in view of several defects contained in the said provision and the criteria for determining the award under Section 163-A of the Act would require to be relaxed and placed reliance on Krishan Gopal and another Versus Lala and others 2013 AIR SC (Civil) 2465. A three member Bench of the Supreme Court in U.P.SRTC V. Trilok Chandra 1996 (4) SCC 362 found several errors in Schedule II of the Act and there has been several decisions subsequently urging the government to modify the Schedule and remove the defects found in the Schedule. In yet another judgment in Sarla Verma Versus Delhi Transport Corporation 2009 (6) SCC 121, the Supreme Court has pointed out to the multiplier as prescribed in Schedule II and the amounts that had been assessed as payable contained arithmetical mistakes of multiplication itself. A three member Bench of the Supreme Court later in Reshma Kumari Vs. Madan Mohan 2013 (9) SCC 65 marked a special exception for determination of compensation for the children and redefining the multiplier for the children upto the age of 15 and directed that the multiplier in Schedule II will be substituted by the value of the multiplier given in the judgment. These are all the situations when the Schedule II could be tampered with.

3. In Kishan Gopal's case (supra), the Supreme Court was considering the case of a death of a child and provided for compensation of ₹5 lakh. The order passed by the Supreme Court must be taken as an order passed by this court that was possible under Article 142 of the Constitution. I cannot infer from this judgment a proposition that the High Court would be competent to discard Section 163-A of the Act or its formula other than a specific ruling in Reshma Kumar's case (supra) modifying the value of multiplier as provided under Schedule II and stating so in expressed words that the court shall thereafter apply the value as laid down in the said judgment.

4. As far as this court is concerned, a provision for all the

medical expenses incurred will be incompetent, in view of the statutory ceiling amount of ₹15,000/- under Section 163-A of the Act. The disability assessed cannot immediately result in an assessment that it involves an equal extent of loss earning capacity. That will have to be assessed with reference to how the injury has impacted the earning skills. Since there has been no assessment of loss of earning capacity and the court has provided only for ₹6,000/-, I will re-work the compensation in the manner that Section 163-A itself de-alienates but that exercise could be done only after serving notice on the respondents and assessing the actual loss of earning capacity. I have set out the facts and other details of consideration even at the outset so that the inquiry would stay limited for what the notice is sent for.

5. Notice of motion for 14.3.2016, on the issue of assessment of loss of earning capacity and the resultant compensation that is claimable under the said head.

After going through the award passed by the Tribunal, the appellant is only entitled for compensation of Rs.30,000/- on account of 15% disability and Rs. 20,000/- on account of pain and suffering (Total Rs.50,000/-) (over and above the amount already paid by the Tribunal) .

The above said amount of Rs.50,000/- be given to the appellant along with 9% interest per annum from the date of filing of the claim petition, in view of judgment of Hon'ble the Apex Court in ***Civil Appeal No. 4528-2019 titled as Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019.*** The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

The Insurance Company will deposit the amount of Rs.50,000/- along with 9% per annum before the Lok Adalat of this Court, within a

period of four weeks and thereafter, the Lok Adalat Branch shall release the amount to the appellant

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

29.08.2019
G Arora

(*RITU BAHRI*)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>