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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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FAO No.7380 of 2018 (O&M)
Date of Decision : 30.04.2019

National Insurance Co. Ltd.

Appellant

Versus

Sahooni and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Garg, Advocate
for the appellant.

None for the respondents.

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AVNEESH JHINGAN, J (Oral)

The award dated 10.08.2018 passed by the Motor Accident Claims Tribunal, Mewat [for brevity 'the Tribunal'] has been assailed by the Insurer of vehicle bearing registration No. HR-28F-9496 [hereinafter referred to as 'offending vehicle'] being aggrieved of quantum of compensation awarded under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The claimants before the Tribunal were widow and parents of Talib. The driver, owner and insurer of the were respondents No.1 to 3 respectively before the Tribunal.

The facts necessary for adjudication of the present appeal are that on 17.01.2017, Talib alongwith Akbar was coming to village Manota from Village Pai, District Bharatpur on the offending vehicle as pillion rider. When they reached near village Jurhera, a Jackal came before the offending vehicle, as a result, Akbar who was driving the offending vehicle lost control and Talib jumped from the offending vehicle and struck against the hand-pump installed near the road and suffered injuries. He was admitted in Civil Hospital, Jurhera where doctors declared him dead. DDR No.1 of 2017 was registered in Police Station Jurhera, District Bharatpur.

A claim petition under Section 163-A of the Act was filed. The Tribunal considering the facts and appreciating the evidence adduced held that Talib died in the motor vehicular accident and the offending vehicle was involved in the accident. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal assessed monthly earning of the deceased as ₹3,300/- per month; 40% future prospects were awarded and multiplier of '17' was applied as the deceased was 32 years old at the time of accident (his date of birth according to Ex.P-3 was 01.01.1985). The Tribunal awarded ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- were awarded to the widow for loss of consortium. The Tribunal awarded compensation of ₹6,98,320/- alongwith interest @ 7% per annum.

Learned counsel for the appellant contends that the claim petition was filed under Section 163-A of the Act and the compensation should have been awarded as per structured formula provided in the Second Schedule to the Act.

There is no challenge with regard to income assessed; 1/3rd deduction made for self-expenses and multiplier of '17' applied.

In the proceedings under Section 163-A of the Act, rash and negligent driving of the offending vehicle is not required to be proved. No future prospects are to be awarded as compensation is to be calculated as per Second Schedule to the Act. The amounts under the conventional heads are also specified in Second Schedule to the Act.

The Supreme Court in case of ***Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd., Baroda, 2004 (5) SCC 385*** has held as under:-

> *"We, therefore, are of the opinion that Oriental Insurance Co. Ltd. Vs. Hansrajbhai V.Kodla and others, (2001) 5 SCC 175 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 ₹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 upto ₹40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act."*

In view of decision quoted above, ₹40,000/- limit mentioned in Section 163-A of the Act is not meant for capping the earning of the deceased. The provision has been made for that strata of the Society whose earning is less than ₹40,000/- per annum.

The compensation is to be calculated as per Second Schedule to the Act. No future prospects are awarded and amounts under conventional heads are awarded as per the Schedule.

In view of above discussion, the compensation is re-calculated as under:-

Particulars	**Amount (in ₹)**
Monthly income of the deceased	3,300/-
1/3rd deduction for self-expenses	1,100/-
Monthly dependency	2,200/-
Annual dependency	26,400/-
Applying multiplier of '17'	4,48,800/-
Funeral Expenses	2,000/-
Lost of Estate	2,500/-
Loss of consortium	5,000/-
Total Compensation	4,58,300/-

The award dated 10.08.2018 is modified to the extent that amount of ₹6,98,320/- awarded by the Tribunal is reduced to ₹4,58,300/-.

While issuing notice of motion, the recovery of compensation beyond ₹4,58,000/- was stayed. The claimants shall be entitled to the balance amount alongwith interest @ 7.5% per annum.

The appeal is allowed.

None has put in appearance on behalf of respondents inspite of service. In case they are aggrieved of order passed by this Court, they would be at liberty to revive the appeal by moving an application.

[AVNEESH JHINGAN]
JUDGE

April 30, 2019

pankaj baweja

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