IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-705-2003
Date of Decision:05.03.2020

National Insurance Company Limited through Assistant Manager

...Appellant

Versus

Kamlesh Kumari and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Sandeep Suri, Advocate for the appellant.

Mr. Vipin Mahajan, Advocate for respondent Nos. 1 to 3.

SANT PARKASH, J.

This appeal has been filed by the Insurance Company challenging award dated 18.10.2002 passed by the Motor Accident Claims Tribunal, Gurdasur (hereinafter referred to as, 'The Tribunal'), whereby compensation has been awarded to the claimants/respondent Nos. 1 to 3 in a petition under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') filed by them.

It is the case of the claimants that on 11.03.2000 at about 3.00 PM, deceased-Kartar Singh along with his relative-Kuldip Singh was coming to their village after attending his duty at PAP Jalandhar Cantt. and when they reached near PAP `T' point, a Maruti Van bearing registration No.PCJ-983 came at a very high speed from Rama Mandi side and struck against Kartar Singh, on account of which, he sustained multiple injuries.

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He was taken to the Hospital but died on the way. He left behind widow and two daughters.

The claim petition filed by the claimants was resisted by the Insurance Company as well as driver and owner of the offending vehicle by filing separate written statements.

The learned Tribunal on consideration of the facts and evidence on record awarded the compensation while considering the claim petition under Section 166 of the Act a sum of Rs.6,94,320/- alongwith interest @ 9% per annum as compensation in the following manner:-

Annual income of the deceased:	Rs.63,120/-
Deduction for personal expenses:	1/3rd
Multiplier:	11

This Court has heard the learned counsel for the parties and perused the paper-book.

It is pertinent to mention here that vide order dated 29.01.2004, the learned Tribunal was directed to release an amount up-to Rs.4,00,000/- to the claimants as per their shares, already determined by the learned Tribunal.

The Tribunal has assessed the annual income of the deceased to be Rs.63,120/- after deducting personal expenses to the extent of 1/3rd and applied the multiplier of 11. Further, while calculating the compensation at Rs.6,94,320/-, the learned Tribunal has wrongly observed that in the claim petition under Section 163-A read with Second Schedule of the Act, maximum limit of income as prescribed in the Second Schedule could be taken. Thus, the learned Tribunal has not passed the award, in terms of

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Section 163-A read with Second Schedule of the Act and wrongly passed the award in terms of provisions of Section 166 of the Act.

It is not in dispute that petition under Section 163-A of the Act was filed by the claimants seeking compensation. It is a settled position of law that while granting compensation under Section 163-A of the Act, the Courts are to be guided strictly by the Second Schedule to the Act. The learned Tribunal ought not to have taken recourse to the provisions of Section 166 of the Act totally and outrightly ignoring the mandate of Section 163 A of the Act. The case was filed by the claimants themselves under Section 163 A of the Act and the learned Tribunal was not to go beyond that while assessing the annual income of the deceased. Resultantly, the observations of the learned Tribunal granting compensation under Section 166 of the Act in the instant case are totally erroneous and manifestly illegal.

The notification dated 22.05.2018 issued by the Central Government in exercise of power conferred by sub-section (3) of Section 163A of the Act, appears to have done away with the multiplier method of determination and quantum of compensation and prescribes lump-sum compensation. Separate lump-sum amounts have been introduced for claims arising out of death and injury replacing the structured formula, which was prevalent earlier. The Second Schedule after its amendment by the above-said notification prescribes lump-sum compensation in the following manner:-

1. (a) **Fatal accidents:**

Compensation payable in case of Death shall be five lakh

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rupees.

(b) **Accidents resulting in permanent disability:**

Compensation payable shall be = (Rs. 5,00,000.00 × percentage disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923)
Provided that the minimum compensation in case of permanent disability of any kind shall not be less than fifty thousand rupees.

(c) **Accidents resulting in minor injury:**

A fixed compensation of twenty five thousand rupees shall be payable:

2. On and from the date of 1st day of January, 2019 the amount of compensation specified in the clauses (a) to (c) of paragraph (1) shall stand increased by 5 percent annually.

It is not in dispute that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied.

Keeping in view the facts of the case, it is thus evident from the new schedule that Rs.5,00,000/- is payable under clause (1) of Second Schedule of the Act for claim arising out of death. The amount of compensation is to be increased by an amount of 5% per annum from 1st day of January 2019 as per clause (2) of the Schedule of the Act. Thus, the claimants are entitled to further a sum of Rs.50,000/-.

In view of the aforesaid discussion, the claimants are held entitled to compensation of a fixed sum of Rs.5,50,000/- on account of accidental death of the victim involving the use of a motor vehicle. Needless to say, the amount already released to the claimants shall stand deducted from the compensation awarded as above. The Insurance Company shall pay the balance amount along with interest @ 9% per annum

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from the date of filing of the claim petition till realisation.

The award of the Tribunal under challenge in this appeal is modified accordingly. The present appeal is disposed of, in terms as indicated above.

05.03.2020 **(SANT PARKASH)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

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