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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-649-2012 (O&M)
Date of Decision : 14.09.2022

The New India Assurance Company Ltd. ...... Appellant

Versus

Smt. Girrajo and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

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Present : Mr. Neeraj Khanna, Advocate
for the appellant.

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JAGMOHAN BANSAL , J(ORAL)

1. The appellant-Insurance Company through the instant appeal is seeking setting aside of award dated 04.08.2011, passed by Motor Accident Claims Tribunal, Palwal (for short "Tribunal") whereby learned Tribunal has awarded a sum of Rs.4,47,000/- to respondents No.1 to 4-claimants alongwith interest @ 7% per annum.

2. Brief facts, emerging from record, are that on 30.08.2009, when Umed Singh (deceased) while driving tractor bearing registration No.HR-30E-2809, reached at Village Chandhat on Aligarh Road, the said tractor turned turtle which resulted into multiple injuries to Umed Singh. He succumed to injuries in Escort Hospital, Faridabad on 31.08.2009.

3. Respondents No.1 to 4-claimants in terms of Section 163-A of the Motor Vehicles Act, 1988 (for short "1988 Act") preferred a claim petition before the learned Tribunal, who awarded a sum of Rs.4,47,000/- as compensation to them.

4. Learned counsel for the appellant contended that the income of deceased has been assessed as Rs.36,000/- per annum and income towards personal expenses of deceased has been assessed as 1/4th whereas as per Schedule 2 of the 1988 Act, it should be 1/3rd. He further contended that respondents No.1 to 4-claimants had claimed income more than Rs.40,000/- per annum, thus claim petition should have been filed under Section 166 of the 1988 Act and not under Section 163-A of the 1988 Act.

5. Nobody appeared on behalf of respondent on 06.09.2022 and as on today, there is no change in the position. It is apt to mention here that a Coordinate Bench of this Court vide order dated 10.09.2012 had ordered to proceed *ex parte* against the respondents. Thus, this Court is left with no option except to adjudicate the present appeal with the able assistance of counsel for the appellant.

6. I have heard learned counsel for the appellant and perused the record.

7. Learned Tribunal assessed income of the deceased Rs.36,000/- per annum and as per Second Schedule of the 1988 Act, petition under Section 163-A of the 1988 Act is maintainable if income is upto Rs.40,000/- per annum. Though claimants claimed income of deceased Rs.40,000/- per annum, however, learned Tribunal has assessed income Rs.36,000/- per annum. I do not find any infirmity in the findings of learned Tribunal qua maintainability. Accordingly, the contention of learned counsel for the appellant qua maintainability of claim petition is hereby rejected.

8. I find force in the argument of learned counsel for the appellant that as per Second Schedule of the 1988 Act, there should be deduction on

account of personal expenses to the extent of $1/3^{rd}$ whereas learned Tribunal has wrongly made deduction of $1/4^{th}$. The order of learned Tribunal is modified to the extent that there shall be deduction on account of personal expenses to the extent of $1/3^{rd}$ and not $1/4^{th}$.

9. A Coordinate Bench of this Court vide order dated 06.02.2012 had ordered to disburse 50% of awarded amount. The respondents are entitled to balance amount of compensation after re-calculation.

10. In view of above findings, the appeal is partially allowed. Registry is directed to return the Lower Court record to the Court concerned. Learned Tribunal is directed to recalculate the amount of compensation. The respondent shall make payment of compensation within 08 weeks from the date of fresh decision made by learned Tribunal. It is further made clear that the amount already paid shall be deducted from the total compensation re-determined. The respondents shall be entitled to interest as awarded by the learned Tribunal.

14.09.2022 **(JAGMOHAN BANSAL)**
mamta **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No