IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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(1) **FAO-768-2013 (O&M)**
Date of decision: 30.05.2022

Bhagwani and others .....Appellants

Versus

Narender Bishnoi and another .....Respondents

(2) **FAO-769-2013 (O&M)**
Date of decision: 30.05.2022

Urmila and others .....Appellants

Versus

Narender Bishnoi and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. B.S. Mamli, Advocate
for the appellants in both appeals.

Mr. Robin Lohan, Advocate
for respondent No.1 in both appeals.

Mr. R.K. Bashamboo, Advocate
for respondent No.2-insurance company in both appeals.

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MANJARI NEHRU KAUL, J. (ORAL)

This order shall dispose of the above appeals as they both pertain to the same accident which occurred on 25.09.2011, in which Chhotu Ram, aged 36 years and Ram Niwas, aged 25 years, lost their lives. The claimants/appellants in FAO-768-2013 are widow and two minor children of deceased Chhotu Ram and the claimants/appellants in FAO-769-2013 are widow, minor daughter and parents of deceased Ram Niwas, who are impugning the award dated 06.12.2012 passed by learned Motor Accidents Claims Tribunal, Fatehabad (for short, 'the Tribunal') wherein the following compensation was awarded to them in their claim petitions filed by them under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the M.V. Act') :-

Compensation on account of death of Chhotu Ram:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.3,300/-
2.	Annual dependency of the claimants after deducting 1/10 of the income	Rs.36,000/-
3.	Compensation after applying multiplier of 15	Rs.5,40,000/-
4.	Last rites and loss of consortium	Rs.10,000/-
	Total compensation	Rs.5,50,000/-

Compensation on account of death of Ram Niwas:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.3,300/-
2.	Annual dependency of the claimants after deducting 1/10 of the income	Rs.36,000/-
3.	Compensation after applying multiplier of 17	Rs.6,12,000/-
4.	Last rites and loss of consortium	Rs.10,000/-
	Total compensation	Rs.6,22,000/-

The claimants/appellants were held entitled to 50% of the compensation amount on account of contributory negligence.

As per the pleaded case of the claimants/appellants when both the deceased i.e. Chhotu Ram and Ram Niwas accompanied by Radhey Shyam, were returning to their village on their motorcycle bearing registration No.HR-22F-1322, on 25.09.2011, at about 02:30

P.M., the offending vehicle registration No.HR-20N-8344 being driven rashly and negligently by respondent No.1-Narender Bishnoi came from the opposite direction and struck against the motorcycle of the deceased as a result of which all the three occupants of the motorcycle fell down and received serious injuries. While Chhotu Ram and Ram Niwas succumbed to their injuries, Radhey Shyam was referred to the hospital for treatment. FIR No.288 dated 25.09.2011 under Sections 279 and 304-A IPC was registered against respondent No.1.

It was claimed that deceased Chhotu Ram was 36 years of age on the date of accident and was earning Rs.3,300/- per month. The claimants/appellants were totally dependent upon him. Deceased Ram Niwas was stated to be 25 years of age at the time of the accident and he too was stated to be earning Rs.3,300/- per month. His family was also stated to be totally dependent upon him.

Learned counsel for the appellants/claimants submits that the learned Tribunal erroneously deducted 50% of the compensation on account of contributory negligence of the deceased which was against the legislative intent behind the enactment of Section 163-A of the M.V. Act. Learned counsel further submits that once the claimants had proved the involvement of the offending vehicle in the accident in question, the deductions as made to the extent of 50% by the Tribunal could not have been done moreso, when the rash and negligent driving of the vehicle involved was not required to be proved. In support, learned counsel has placed reliance upon ***Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd. and others :***

2018(5) RCR (Civil) 342.

Learned counsel for respondent No.1 while controverting the submissions made by the counsel opposite submits that the impugned award is in consonance with the settled law and hence does not warrant any interference.

Learned counsel for respondent No.2-insurance company submits that irrespective of the fact as to whether the claim petition was filed under Section 166 or 163-A of the M.V. Act, whenever contributory negligence was pleaded and proved, the Tribunal was bound to make deductions towards contributory negligence.

I have heard learned counsel and perused the relevant material on record.

Admittedly, the claim petitions have been filed by the claimants/appellants under Section 163-A of the M.V. Act. It would be relevant to reproduce Sub Section (2) of Section 163-A of the M.V. Act, so as to deal with the controversy in hand, which reads as follows:-

> *"(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person."*

A reading of the aforementioned provisions make it abundantly clear that the claimants are neither required to plead nor are they required to prove the negligence of the owner or driver of the vehicle involved in the accident. For a claim petition under Section 163-A of the M.V. Act to succeed, only the involvement of a motor vehicle has to be established.

It would be relevant to observe here that in a claim petition under Section 163-A of the M.V. Act no deductions towards contributory negligence can be made. The Hon'ble Supreme Court in Shivaji's case (supra) has held as under:-

> *"5 The issue which arises before us is no longer res integra and is covered by a recent judgment of three judges of this Court in **United India Insurance Co. Ltd. v. Sunil Kumar & Anr., 2018(1) R.C.R. (Civil) 680 : AIR 2017 SC 5710** wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time". The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163A of the Act, it would "bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self- contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation."*

In the light of the above settled law, this appeal is disposed of by holding that the claimants/appellants shall be entitled to the entire amount of compensation as assessed by the learned Tribunal without there being any deductions towards contributory negligence. The impugned judgment and decree stands modified accordingly.

30.05.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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