IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 77/2016(O&M)

Date of decision: 21.11.2022

Laxmi Devi and another

………..Appellants

Vs.

Surender Singh and another

………..Respondents

CORAM: <u>HON'BLE MS. JUSTICE NIDHI GUPTA</u>

Present:- Mr. Divay Sarup,Advocate for the claimants/appellants

Mr.R.N.Singhal,Advocate for respondent no.2-Ins.Co.

<u>Nidhi Gupta,J.</u>

This is an appeal filed by the claimants (parents) of deceased Jai Singh against the award dated 9.10.2015 passed by Motor Accident Claims Tribunal, Hisar whereby compensation to the tune of Rs.4,53,300/- was awarded on account of death of their son-Jai Singh in a motor vehicular accident that took place on 17.3.2014.

At the very outset, learned counsel for the claimants-appellants submits that the claim petition before the Tribunal was incorrectly filed under Section 163-A of the Motor Vehicles Act,1988 which ought to have been filed under Section 166 of the said Act. It is accordingly submitted that though the compensation awarded by the Tribunal is very much on the lower side inasmuch as only Rs.2000/- have been awarded for funeral expenses and only Rs.2500/- have been granted on account of loss of estate, deduction of 1/3rd towards personal expenses is on higher side, as also the Tribunal has ignored the fact that the deceased was 24 years of age and was working as a Salesman and was also doing mobile repairing work at a Mobile Shop and was earning Rs.3300/- per month yet, in all fairness learned counsel submits that enhancement of claim is limited to Rs.50,000/- in view of amendment of Schedule II of the Motor Vehicles Act,1988 where fixed Rs.5 lacs have to be awarded. In making this submission learned counsel for the petitioner relies upon judgment of the Supreme Court in **Puttamma and others v KL Narayana Reddy and another, 2014(1) RCR (Civil) 443**, wherein their Lordships have held that the old Schedule is redundant because it does not take into account increased costs of living, inflation etc. Learned counsel further submits that present case is before the amendment to Schedule. Relevant paras 51 to 54 of the said judgment read as under:-

> "51. Considering the current trend of inflation cost of food grains and all other items, Mr. P.P. Malhotra, Senior Advocate, Amicus Curiae submitted that for just compensation the multiplier should be enhanced to 24-25 years. Further, according to him, while calculating the compensation, the amount payable towards dependency should be increased as the life expectancy is upto 70-75 years and secondly after 10 years of earning capacity it should be doubled in view of escalation of cost of living and progressive increase in the income.
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> 52. Keeping in view the cost of living, the Central Government is required to amend the Second Schedule [See Section 163A (3)]. The Second Schedule was enacted by Act 54 of 1994 w.e.f. 14th November, 1994. Now more than 19 years have passed but no amendment has been made. Cost of living has gone up many fold.
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> 53. In view of finding recorded above, we hold that Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.
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> 54. A letter dated 5th December, 2012 issued by the Joint Secretary, Ministry of Road Transport & Highways, New Delhi has been brought to our notice by Mr. P.P. Malhotra. Giving reference to the present case therein, the officer has informed that the Motor Vehicles (Amendment) Bill, 2012, *inter alia,* to amend Section 163A of the Motor Vehicles Act, 1988 was passed by the Rajya Sabha on 8th May, 2012. The said Bill proposes to substitute Section 163A(3) of the Act by empowering the Central

> Government to revise the amount or the multiplier specified in the Second Schedule after every three years and furthermore, the Bill also seeks to substitute the Second Schedule so as to provide that for death of non-earning persons, a fixed compensation of L 1,00,000 for children up to 5 years of age and L 1,50,000/- for persons more than 5 years of age. It is informed that though the Bill has been passed by the Rajya Sabha and it is still pending consideration before the Lok Sabha for its approval".

Learned counsel for the respondents opposes the limited prayer made on behalf of the claimants/appellants and states that the amendment is not retrospective in nature and that the compensation awarded by the Tribunal is very much as per Schedule that was applicable when the petition was filed. In support counsel for the respondent relies upon judgment of this Court in **Jasbir Kaur v Darshan Lal and others (2017-4)188 PLR 765**. Head note and Para 3 of the said judgment reads as under:-

> **"Motor Vehicles Act,1988 (59 of 1988) Section 163-A- Being a petition under Section 163-a of the Act, the Second Schedule thereto will apply- Therefore, the compensation has to be determined on the basis of income of the deceased and his age at the time of the accident- Compensation is also payable under the usual heads of funeral expenses, loss of consortium, loss of estate and medical expenses as provided in the said Schedule of the Act-no increase in the amounts provided under the said Schedule is permissible by the Courts and only the Central Government is entitled to amend the Second Schedule of the Act keeping in view the cost of living-Jasvir Kaur v Budh Singh, 2015 (73) RCR(Civil)235, Judgment Per Incuriam-Disagree with the same.**
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> 3. Being a petition under Section 163A of the Act, the Second Schedule thereto will apply. Therefore, the compensation has to be determined on the basis of income of the deceased and his age at the time of the accident. A deduction of ⅓ is to be made from the compensation determined towards personal maintenance of the deceased. Compensation is also payable under the usual heads of funeral expenses, loss of consortium, loss of estate and medical expenses as provided in the said Schedule of the Act. No increase in the amounts provided under the said Schedule is permissible by the Courts and only the Central Government is entitled to amend the Second Schedule of the Act keeping in view the cost of living. It has been held by the Hon'ble Supreme Court in ***Deepal Girishbhai Soni and others v. United India Insurance Company Limited, 2004 (2) RCR (Civil) , 466.*** The relevant observations from this judgment are reproduced below:-

"37. Chapter XI was, thus, enacted for grant of immediate relief to a section of people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto; compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in column Nos.2 to 6 thereof leaves no manner of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle."

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41. Section 163A which has an overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163A contains non-obstante clause in terms whereof the owner of the motor vehicle or the authorized insurer is liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Sub-section (2) of Section 163A is in pari material with sub-section (3) of Section 140 of the Act.

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52. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163A or under Section 166 of the Act, but no under both."

I have heard learned counsel for the parties and in my considered view there is merit in the submissions advanced by the learned counsel for the claimants/appellants.

Perusal of the record reveals that only Rs.2000/- have been awarded towards funeral expenses, and Rs.2500/- towards loss of estate. It is not disputed that the deceased was only 24 years of age and gainfully employed. Moreover, keeping in view the judgment of Hon'ble Supreme Court in **Puttamma's** case (supra), there is no doubt that the Central Government is long required to amend Schedule II of the Motor Vehicles Act, which was enacted as far back as 1994 and in the intervening almost 30 years the said Schedule is in actual fact redundant, impractical and unworkable as costs of living, inflation etc., have gone up manifold. It has been very fairly stated by the learned counsel for the appellants that enhancement be allowed only for a sum of Rs.50,000/-.

Accordingly, in view of the above said facts and circumstances of the present case, this appeal is allowed and the claimants/appellants are held entitled to an enhancement of Rs.50,000/- over and above the compensation awarded by the Tribunal.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

21.11.2022
Joshi

Whether speaking/reasoned **Yes**

Whether reportable **Yes/No**

RAJINDER PARSHAD JOSHI
2022.11.23 15:29
I attest to the accuracy and integrity of this document