

Sr.No.307

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-860 of 2016(O&M)
Date of Decision:05.12.2022

Santosh Kaur and othersAppellants

versus

Gurnam Singh and another
.....Respondents

CORAM: Hon'ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. Ishan Thakur, Advocate for
Mr. L.S.Sidhu, Advocate
for the appellants.

None for the respondents.

Harpreet Kaur Jeewan, J.

1. Challenge in the FAO is to the award dated 06.02.2015 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as, 'the Tribunal') in a petition under Section 163-A of the Motor Vehicles Act (hereinafter referred to as 'the Act').

2. The brief facts of the case are that on 03.05.2007 at about 3:00 AM Gurcharan Singh (since deceased) was driving TATA 909 bearing Registration No. HR-67-1448 and was going to Delhi. When they reached near G.T. Road Bahalgarh, District Sonipat, the tyre of the truck got punctured, therefore, after parking the truck on the kacha berm of the road, the driver tried to open the window of the

truck to come out. However, another vehicle coming from the side of Panipat struck against the truck and crushed Gurcharan Singh, who suffered multiple injuries and died at the spot. The accident was witnessed by the cleaner Bant Singh. FIR No.89 dated 04.05.2007 under Sections 279 and 304-A IPC was got registered at Police Station Sonipat. Post mortem examination was conducted in the Civil Hospital, Sonipat. It was alleged that the age of the deceased was 35 years at the time of his death. He was survived by the appellants. Appellant No.1 is the widow, appellant Nos.2 and 3 are the minor daughter and son respectively of the deceased. It was alleged that Gurnam Singh respondent No.1 who is the owner of the vehicle TATA 909 bearing Registration No. HR-67-1448 and respondent No.2 is the insurer of the said vehicle. Compensation of Rs.8 lakhs was sought by way of filing the petition under Section 163-A of the Act before the Tribunal.

2. Respondent No.1 filed a written statement alleging that the salary of the deceased was only Rs.3,000/- per month. It was admitted that on the day of accident, the deceased alongwith Bant Singh was going to Delhi by loading Nut Bolts in the truck. However, it was alleged that the accident took place due to the negligence of the deceased. The replying respondent has no liability to pay compensation regarding the negligence of the deceased himself. The factum that respondent No.2 is the insurer of the vehicle was admitted.

3. The insurance company also contested the petition by way of filing the written statement taking a preliminary objection that driver of the vehicle was not holding a valid and effective driving license at the time of alleged accident. The truck was not holding valid rout permit, registration certificate and the fitness certificate. On merit, it was alleged that no accident took place on the alleged date, time and place. FIR was alleged to be false and fabricated. It was further alleged that the vehicle TATA 909 bearing Registration No. HR-67-1448 was not involved in the alleged accident. Therefore, the claim petition is liable to be dismissed. However, it was admitted that the vehicle was insured with the replying respondent No.2 covering the period from 24.09.2006 to 23.09.2007 vide Policy no 36140131060100005553.

4. Tribunal has framed various issues, granted opportunity to all the parties to lead evidence and after considering the evidence on record it was observed that the appellants has proved that Gurcharan Sing has died in a Motor vehicle Accident on 03.05.2007 while using the truck TATA 909 bearing Registration No. HR-67-1448. The age of deceased was determined to be between 35 to 40 years. His income was assessed as Rs.3300/- per month. It was further observed that no amount is to be added towards future prospects. After deducting 1/3rd of his income towards the personal expenses it was held that claimants are entitled to remaining 2/3rd of his income towards loss of dependency. By applying the multiplier of

16, the total amount of compensation was determined as Rs.22400 (3300 x 2/3 x12 x16).

5. Aggrieved by the decision of the Tribunal, claimants assailed the award dated 06.02.2015 by way of present appeal.

6. Learned counsel for the appellant submitted that since the age of the deceased was between the age group of 35 to 40 years and addition of 50% should have been made in view of the decision of the Hon'ble Supreme Court in ***Rajesh and others vs. Rajbir and others 2013 (9) SCC 54***. However the said increase has not been made by the Tribunal. It is further submitted that very meagre amount towards the consortium and funeral expenses has been awarded.

7. On the other hand, learned counsel for the respondent has submitted that it is a petition under Section 163-A of the Act therefore the Tribunal has rightly not added the future enhancement. It is submitted that the appeal is liable to be dismissed.

8. I have considered the aforesaid submissions and perused the record.

9. Since claimants have filed a petition under Section 163-A of the Act, for the said reason the compensation was calculated as per the structured formula provided in the said provisions. While determining the monthly income of the deceased as Rs.3,300/-, the Tribunal has rightly observed that no amount can be added in the income of the deceased towards future prospects as the present claim petition has been filed under Section 163-A of the Act.

10. The High Court of Sikkim:Gangtok in the case of ***The Branch Manager, Shriram General Insurance Company Limited;***

MAC App No.10 of 2018 has held that once a person invokes the provisions of Section 163A, the question of inclusion of pecuniary compensation for non-tangibles and future prospects does not arise. The relevant portion of the said judgment reads as under:-

*“These observations unequivocally clarify that compensation under Section 163-A of the Act is based on strict liability, in other words the requirement of proof of negligence on the part of the driver is done away under Section 163-A of the Act. So far as reliance on **Pranay Sethi (supra)** by learned counsel for respondents No.1 to 5 is concerned, we are in agreement with learned counsel appearing on behalf of the Bar Association of Sikkim and reliance by learned counsel for respondents No.1 to 5 on the ratio is a misconception of the law. The ratio observes inter alia that the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. It needs no reiteration that the Hon'ble Supreme Court has clearly spelt out as evident from the decisions cited supra that compensation to be computed under Section 163 of the Act is on the structured formula as it is based on no fault liability. Once a*

*person invokes the provisions of Section 163-A of the Act, the question of inclusion of pecuniary compensation for non-tangibles and future prospects does not arise. The ratio in **R.K. Malik** (supra) which adverts to the decision in **Lata Wadhwa and Others vs. State of Bihar and Others** holds no relevance herein as those matters were concerned with deaths of minors who were non-earning members.”*

11. Learned counsel for the petitioner could not show any provisions under the Act as per which the future prospects are to be added while determining the monthly income of the deceased under Section 163-A of the Act.

12. Since the accident took place on 03.05.2007 and the second schedule under Section 163-A of the Act was prevailing at the time of the accident which was inserted by Act No. 54 of 1994 w.e.f. 14.11.1994. The second schedule under Section 163-A of the Act as prevailing on the date of accident provides for a multiplier of 16 for the age group of 33 to 40. The said multiplier has been rightly applied by the Tribunal by the calculation of the compensation.

13. Similarly, as per the said schedule, a sum of Rs.2,000/- towards funeral expenses and a sum of Rs.2,500/- towards loss of estate and a sum of Rs.5,000/- towards loss of consortium has been rightly awarded by way of acceptance of the appeal.

14. In light of all the foregoing discussions, I hold that under Section 163-A of the Act, future prospects or any other additional non-pecuniary heads find no place and compensation in a Claim Petition under Section 163-A of the Act is to be strictly computed on the structured formula provided in the Second Schedule to the Act. The reference stands answered accordingly.

15. In view of the above facts the present case and ratio of the aforesaid decision, this Court finds no merit in the present appeal, the same stands dismissed.

(Harpreet Kaur Jeewan)
Judge

5th December, 2022

Shivani Kaushik/Mehak

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No