

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Revision No. 8533 of 2017 (O&M)

Salindro Devi and Another
... Petitioner(s)

Versus

Thakur Dass and Another
... Respondent(s)

AND

**2. Review Application No. 136 of 2023
In/And Civil Revision No. 8532 of 2017**

Salindro Devi and Another
... Petitioner(s)

Versus

Thakur Dass and Another
... Respondent(s)

**Reserved On: 21.09.2023
Pronounced On: 28.09.2023**

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ranjit Saini, Advocate
for the petitioners (In CR-8533-2017) and
for the review applicants (In RA-CR-136-2023).

Mr. Vishal Aggarwal, Advocate
for the respondent No.2.

Anil Kshetarpal, J.

1. This order shall dispose of Civil Revision No. 8533 of 2017,
Review Application No. 136 of 2023 in Civil Revision No. 8532 of 2017 as
well as Civil Revision No. 8532 of 2017. With the consent of the learned
counsel representing the parties, all these matters shall be disposed of by a
common order.

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2. The controversy involved in the present cases arises from a petition filed under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as “the 1988 Act”) by the petitioners herein to claim compensation on account of the death of their son, namely Rajat Kumar, who died at a very young age of 20 years. It is alleged that his death took place in an automobile accident. While filing the petition under Section 163A of the 1988 Act, the claimants claim that the deceased was earning more than ₹4,000/- per month by giving tuition to the students. However, during the pendency of the petition, upon realizing that the petition under Section 163A of the 1988 is maintainable only for the persons who are having an income upto the maximum of ₹40,000/- per annum, an application for permission to amend the claim petition was filed in order to reduce the income of the deceased to ₹3,000/- per month. The aforesaid application was dismissed by the Motor Accidents Claims Tribunal, Yamuna Nagar (hereinafter referred to as “the Tribunal”) on 11.08.2017. Forced by the circumstances, the petitioners filed an application for permission to withdraw the previous petition filed under Section 163A of the 1988 Act with the liberty to file a fresh one. The Tribunal did not grant permission to the petitioners to file a fresh petition, however, on the request of their counsel, the claim petition was dismissed as withdrawn. That is how two revision petitions were filed.

3. Both the revision petitions came up for hearing on 03.07.2023. The Civil Revision Petition No. 8532 of 2017 filed against the dismissal of an application for permission to amend the claim petition was dismissed as

infructuous by a coordinate Bench with the following order:-

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“Admittedly, the petition under Section 163-A of the Motor Vehicles Act, 1988 is no longer pending before Motor Accidents Claims Tribunal, Yamunanagar at Jagadhri. The petitioner is said to have filed an application seeking permission to withdraw the same with liberty to file a fresh one after removal of the flaw in framing of the petition. The petition was dismissed as withdrawn, however no permission was granted to file a fresh one.

This revision petition against the order vide which amendment of the petition was declined no longer survives and is dismissed as infructuous.”

Whereas, in Civil Revision No. 8533 of 2017, which was filed against refusal to grant permission to file a fresh one, a coordinate Bench has passed the following order:

“Learned counsel for the petitioners has contended that in the claim petition under Section 163-A of the Motor Vehicles Act, 1988 filed by petitioner Salindro Devi and Tara Chand against Thakur Dass and Iffco Tokio General Insurance Company Ltd. seeking compensation on account of death of their son, though, inadvertently, the income of the deceased was mentioned as Rs.4000/- per month when the maximum income for maintainability of such petition is Rs.40,000/- p.a. Though the petitioners sought to amend the income from Rs.4000/- per month to Rs.3000/- per month but that prayer was declined by the tribunal and by reason of that defect, the petition was

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*bound to fail. The petitioners had filed an application for withdrawal of the petition with liberty to file fresh one after removal of the defect which was technical in nature. Motor Accidents Claims Tribunal, Yamunanagar at Jagadhri, vide impugned order though allowed the withdrawal of the petition but refused to grant permission to file fresh one on the same cause of action. According to learned counsel for the petitioners, such order is not sustainable in the eyes of law. In support of his contentions, he has referred to judgment **Jaibir Vs. Mahender Singh & Ors. 2007 (1) PLJ 567** by this Court.*

Notice of motion.

Mr. Aayush Goyal, Advocate for Mr. Vishal Aggarwal, Advocate, has accepted notice on behalf of respondent No.2.

For arguments to come up on 14.07.2023.”

4. Subsequently, the learned counsel representing the petitioners filed an application for review of the order dated 03.07.2023 in Civil Revision No. 8532 of 2017 along with an application for condonation of delay. That is how all these matters have come up for the disposal. The learned counsel representing the parties have been heard in the review application as well as in both the revision petitions i.e. Civil Revision No. 8532 of 2017 and Civil Revision No. 8533 of 2017.

5. On one hand, the learned counsel representing the petitioners contends that the petitioners have been left with no other alternative as the Tribunal has neither permitted them to amend the claim petition nor

permitted them to file a fresh one. He submits that both the orders result in

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failure of justice and are required to be set aside.

6. On the other hand, the learned counsel representing the respondent-insurance company contends that the review petition cannot be allowed as the amendment in the claim petition can be permitted only if it is pending. He submits that the claim petition has been withdrawn, therefore, the Court correctly dismissed the revision petition as infructuous. In alternative, he submits that in view of the judgment passed in *Ram Sarup v. Lakhpatt Singh and Others 2009(2) RCR (Civil) 641*, an amendment in the claim petition under Section 163A of the 1988 Act in order to make it maintainable is not permissible. While opposing Civil Revision No. 8532 of 2017, the learned counsel representing the insurance company submits that the Tribunal has given an option to the learned counsel representing the claimants, however, he himself prayed for withdrawal without seeking permission to file a fresh one, hence, no relief can be granted even in the second revision petition.

7. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties. Section 163A was introduced by Act No.54 in the year 1994 by the Parliament in the 1988 Act in order to enable the claimants to get compensation on the basis of structured formula. In a claim petition under Section 163A of the 1988 Act, the claimant is not required to plead or establish that the death or permanent disablement was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

8. The attention of the Court has not been drawn to any specific

prohibition/bar in amending the petition which has already been filed under

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Section 163A of the 1988 Act. In this case, originally, itself, the petition was filed under Section 163A of the 1988 Act, though the income of the deceased was alleged to be more than ₹4,000/- per month.

9. This Court has carefully read the judgment passed in ***Ram Sarup's case (supra)*** relied upon by the learned counsel representing the insurance company. In the aforesaid judgment, the reliance has been placed on the judgment of the Supreme Court in ***Deepal Girishbhai Soni and Others v. United Insurance Company Limited, Baroda (2004) 5 SCC 385***.

By this judgment, a reference to a Larger Bench was decided. The Court was faced with a situation where two simultaneous petitions were filed, one under Section 163A and the second under Section 166 of the given Act. The Tribunal as well as the High Court concluded that the petition under Section 163A is only for interim compensation and the petition under Section 166 of the 1988 Act can continue even after the decision in a petition under Section 163A. After comparing the provisions of Section 140 and 163A, the Court held that simultaneous remedy under Section 163A and 166 is not maintainable. While answering the aforesaid question, the Court has made an observation that switching to a remedy under Section 166 after filing a claim petition under Section 163A is not permissible. However, in this case, originally, the petition was filed under Section 163A of the 1988 Act. In ***Ram Sarup's case (supra)***, the Bench, while referring to ***Gurmeet Singh v. Chandigarh Transport Undertaking and Others 2007(2) RCR (Civil) 21***, held that notionally scaling down of the income to invoke the provisions of Section 163A of the 1988 Act results in defeating the very object of Section

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(*supra*) in which the High Court relies upon ***Deepal Girishbhai Soni's case*** (*supra*).

10. In ***Ram Sarup's case*** (*supra*), it was concluded that no application to amend the petition in order to notionally scale down the income of the deceased is permissible. In fact, a Division Bench judgment in ***Himachal Road Transport Corporation and Another v. Baldev Kumar Nayyer and Others 2006(2) RCR (Civil) 682*** has held that originally, the petition was filed under Section 166, which was permitted to be switched to Section 163A of the 1988 Act by the Tribunal was wrong while relying upon ***Deepal Girishbhai Soni's case*** (*supra*), the Bench held that such procedure is not permissible.

11. In ***Jaibir v. Mahender Singh and Others 2007(1) PLJ 567***, a coordinate Bench held that ***Deepal Girishbhai Soni's case*** (*supra*) is not in the context of amendment in the petition filed under Section 163A. Thus, the Bench held that it is permissible to amend the petition filed under Section 163A of the 1988 Act to plead that the income was less than ₹40,000/- per annum.

12. In the year 2001, a Full Bench of the Karnataka High Court in ***Guruanna Vadi and Another v. General Manager, Karnataka State Road Trans. Corpn. and Another, 2001 ACJ 1528*** held that an application for permission to amend the claim petition in order to switch to petition under Section 163A from the claim petition under Section 166 is permissible while observing as under:-

“Question No.6:

36. *The only bar provided for exercising an option in the*

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matter of filing a claim petition for compensation is to be found in Section 163B which states, 'where a person is entitled to claim compensation under Section 140 and Section 163A, he shall file the claim under either of the said Sections and not under both.' There is no prohibition in any other provision of the Act from switching over the Claim made under Section 166 to 163-A provided the accident took place on 14-10-1994 or thereafter because Section 163A came on the statute book only with effect from 14-10-1994, subject of course, to the claimants satisfying other requirements such as the outer income limit mentioned in the Second Schedule. Section 163 is a beneficial Legislation and provides for payment of compensation based on structured formula without requiring pleading or establishing that the death or permanent disability in respect of which the Claim has been made was due to any wrongful act or negligence or default of the owner of the vehicle or vehicles concerned or any other person. Such a beneficial legislation has to be given a liberal interpretation. Therefore we answer this question in the affirmative by holding that a claimant can move the Court for amendment of his claim petition filed under Section 166 to that of a petition under Section 163A at any stage of the proceedings and it would be for the concerned Court to pass an order on that application in according with law."

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***Insurance Company Limited v. Mukeshbhai Bhalachandrabhai Jani
(Deceased) through heirs Ranjanben and Others 2004 ACJ 1533*** again
deliberated on the aforesaid issue and held as under:-

“7. In view of the above decisions, it is clear beyond any manner of doubt that the claimant who is having three statutory remedies available, (i) under Section 166, (ii) under Section 140, and (iii) under Section 163-A of the Act can exercise any of the said remedies. The Tribunal is duty bound to consider the application. As far as the case on hand is concerned, the claimants are justified in withdrawing the original application filed under Section 166 of the Act and praying for the award under Section 163-A of the Act. In taking this view, we are also supported by the decisions of the Full Bench of the Karnataka High Court rendered in the case of Guruanna Vadi v. General Manager, Karnataka State Road Trans. Corpn., 2001 ACJ 1528 (Karnataka). It is held in the said decision that the claimant can move the Court for amendment of his claim petition filed under Section 166 to that of a petition under Section 163-A at any stage of the proceedings and it would be for the concerned Court to pass an order on that application in accordance with law, provided he satisfies other conditions such as the income factor etc. and the only bar provided for exercising an option in the matter of filing a claim petition for compensation is to be found in Section 163-B which states, 'where a person is entitled to claim compensation under Section 140 and Section 163-A,

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he shall file the claim under either of the said sections and not under both.”

13. It is evident that in ***Ram Sarup’s case (supra)***, the attention of the Court was not drawn to the statutory provision. In fact, the ***Ram Sarup’s case (supra)*** is by and large based on ***Deepal Girishbhai Soni’s case (supra)*** in which the Supreme Court was not considering the amendment of the petition filed under Section 166 in order to convert it to the one under Section 163A. In the present case, there is no prayer for switching of the petition. The only amendment sought is to scale down the income in order to come within the maximum limit prescribed in the Schedule to the 1988 Act. In the absence of any specific bar or prohibition or restriction, it would not be appropriate to hold that there is an absolute bar on switching the provisions of application. The amendment of pleadings is a well known concept and in the absence of any specific provision to the contrary, it would not be appropriate to hold that the Tribunal or the Court has no power to permit the parties to amend the petition.

14. As regards the objection of the learned counsel representing the insurance company that no order can be passed in this revision petition because the claim petition has been withdrawn is required to be examined in the context of the claimants. On one hand, their application for permission to amend has been dismissed. On the other hand, their application for permission to withdraw the petition with the liberty to file a fresh one has also been dismissed. A simplicitor withdrawal of the claim petition with the liberty to file a fresh one would debar them from filing a fresh one. Thus,

the claimants shall debar from claiming the amount even though they have

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lost their young son. This situation is required to be remedied. While disposing of the Civil Revision No. 8532 of 2017, the Court has held that the petition is infructuous, which in the considered opinion of this Court, such order suffers from an apparent error. The amendment application filed by the claimants was dismissed by the Tribunal on 11.08.2017. On that day, the claim petition was pending. Forced by the circumstances, the claimants filed another application. In such circumstances, the Court could have allowed the revision petition which would have resulted in revival of the claim petition. In the interest of justice, this Court recalls the order dated 03.07.2023 passed in Civil Revision No. 8532 of 2017. For the reasons already stated, with the consent of the learned counsel representing the parties, the revision petition is taken on board. The same is allowed for the reasons already discussed in detail.

15. Consequently, the Civil Revision No. 8533 of 2017 is rendered infructuous and is disposed of as such. The Tribunal shall now proceed to decide the amended claim petition, on accordance with law, forthwith.

**(Anil Kshetarpal)
Judge**

September 28, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No