

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

FAO 9754/2014 (O&M)

Date of decision: 16.02.2023

Satpal

.....Appellant.

Vs.

Raj Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Deepak Choudhary, Advocate for the appellant.
Mr. Partap Singh, Advocate for respondent no.2.
Mr. Sanjeev Kodan, Advocate for respondent no.3-Insu.Co.

Nidhi Gupta, J.

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.2,55,724/- granted by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') vide Award dated 12.8.2014 passed in Claim Petition no.46 of 2014 filed u/s 163-A of the Motor Vehicles Act,1988.

Learned Tribunal on the basis of pleadings and evidence before it concluded that the claimant had been injured in a motor vehicular accident that took place on 9.8.2011 due to rash and negligent driving of Tralla bearing registration No. HR-39B-7230 (hereinafter referred to as the 'offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3 herein. The respondents were held jointly and severally liable to pay the amount of compensation.

The only ground on which the learned counsel seeks enhancement is that the compensation awarded is not as per Schedule. Learned counsel places reliance upon judgment of High Court of Himachal Pradesh in **Oriental Insurance Company Ltd. V Sh. Sihnu Ram and others, Law Finder Doc Id # 818067.**

On the other hand, learned counsel for the respondent Insurance Company states that the claim petition was filed u/s 163-A of the Motor Vehicles Act, 1988. It is submitted that as per Second Schedule of the Act, income cannot be assessed more than Rs.40,000/- per annum. It is submitted that in the present case the learned Tribunal has assessed the income of the claimant as Rs.4000/- per month which is in contravention of the Act. It is further submitted that interest has been granted @ 7.5% per annum which is also on the higher side. It is further submitted that as per old Act in injury cases the total compensation cannot exceed Rs.2.50 lacs, however, in the present case total compensation of Rs.2,55,724/- has been awarded. It is submitted that in the present case the accident took place on 9.8.2011 and therefore, the provisions of the new Act will not be applicable and therefore, the claim petition is not maintainable and the impugned Award deserves to be set aside.

No other argument has been raised on behalf of the parties.

Heard ld. Counsel for the parties.

Perusal of the record shows that claimant was travelling in the offending vehicle along with respondent no.1 when the accident took place. As per pleaded case of the claimant himself a Bluebuck (Neelgai) came in front of the offending vehicle upon which respondent no.1 had to suddenly apply brakes to save the Bluebuck as a result of which the offending vehicle dashed into the Kikkar tree outside the road.

Admittedly, in a petition u/s 163-A of the Act compensation is to be awarded strictly as per Schedule II of the Act, whereby in an injury case, a maximum compensation of Rs. 2.5 lacs can be granted. In the present case, compensation of Rs.2,55,724/- granted by the Tribunal is already in excess of the permissible amount.

Further, paras 60 and 61 of the judgment of Himachal Pradesh High Court relied upon by the learned counsel for the appellant reads as under:-

“60. The appellant-insurer has questioned the impugned award mainly on the ground that the claim petition was not maintainable for the reason that the monthly income of the deceased was alleged to be Rs. 6,000/- per month, i.e. Rs. 72,000/- per annum.

61. This ground is not available to the insurer for the reason that, as discussed herein above, the claim petition cannot be dismissed on that ground and it can be treated as claim petition under Section 166 of the MV Act. Though, the claimants have averred that the income of the deceased was Rs. 6,000/- per month, but, the Tribunal has held that the income of the deceased was Rs. 3300/- per month. Thus, his income was not more than Rs. 40,000/- per annum, and the claim petition under Section 163A of the MV Act was maintainable”.

Thus, even in the relied upon case, income of the claimant did not exceed Rs. 40,000/- per annum, and Schedule II of the Act was followed. As such, claimant can derive no benefit from the relied upon judgment.

Accordingly, I find no merit in this appeal and the same is hereby dismissed.

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

(Nidhi Gupta)
Judge

16.02.2023
Joshi