



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

FAO-3845-2005 (O&M)

Decided on : 09.12.2024

Shashi Bala and another

... Appellant(s)

Versus

Vipin Bhanot and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**PRESENT:** Mr. Tushar Gera, Advocate
for the appellant(s).

None for the respondent(s).

SANJAY VASHISTH, J. (Oral)

1. Present appeal has been filed by the appellants Shashi Bala and Baijnath (hereinafter referred as 'claimants') challenging the Award dated 10.05.2005 passed in MACT case No.24 of 2004 by learned Motor Accidents Claims Tribunal, Hisar (hereinafter referred to as 'learned Tribunal') for seeking enhancement of amount of compensation, on account of death of deceased – 'Sachin'.

2. Briefly stated facts of the case are that on 07.01.2004, Sachin (deceased) alongwith his friends Rajesh and Vipin were going on a motorcycle bearing registration No.HR-20J/0964. Motorcycle was driven by Sachin, while Rajesh and Vipin were pillion riders. Due to the loss of control over the motorcycle on account of high speed, it struck against a footpath and resultantly, Sachin and pillion riders fell down and received multiple injuries. Sachin succumbed to the injuries and on the statement of Rajesh, a Daily Diary Report was prepared. Since accident took place on account of



use of the vehicle i.e. the motorcycle bearing registration No.HR-20J-0964, claim petition was instituted under Section 163A of the Motor Vehicles Act, 1988, by the claimants i.e. mother and father of the deceased.

3. Learned Tribunal dismissed the claim petition by recording its finding that since, the claimants pleaded the income of the deceased Sachin as Rs.6,000/- per month i.e more than Rs. 70,000/- per annum, the claim petition was not maintainable under Section 163A of the Motor Vehicles Act, 1988 as it breaches the prescribed statutory limit of Rs.40,000/- per annum . Findings recorded in paragraphs No.18, 19, 20 and 21 are reproduced here-under:-

“18. Para 67 of the judgment (Deepal Grisihbhai Soni and others Vs. United India Insurance Co. Ltd.) is important and it reads as under:-

“We, therefore, are of the opinion that Kodala’s case, 2001 ACJ 827 (SC) has correctly been decided. However, we do not agree with the findings in Kodala (supra), that if a person invokes provisions of Section 163-A, the annual income of Rs.40000/- shall be treated as under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs.40000/- can take the benefit thereof. All the other claims are required to be determined in terms of Chapter XII of the Act.

19. The present claim petition is under Section 163A. The income of the deceased which has been shown by the claimants is Rs.6000/-. The material placed on the file consists of an admission which shows that the income of the deceased was admittedly over Rs.50000/- per annum. Therefore, the claim petition under Section 163-A is not maintainable. In the light of Deepal’s case (supra) the petitioners cannot take benefit of the provision nor they can restrict their right limiting the income of



the deceased at Rs.40,000/-. Resultantly, the Issue No.1 is answered in favour of the petitioners. Issue No.2 is answered against the petitioners.

Issue No.3

20. In view of my findings on issue NO.2, this issue does not arise.

Relief

21. As a sequel to the findings recorded on issue No.2, the claim petition is dismissed, leaving the parties to bear their own costs. Memo of costs be prepared and file be consigned to the records.”

4. On the previous date of hearing i.e. 06.09.2024, there was no representation on behalf of the Oriental Insurance Company (respondent no.2). Today also, there is no representation on behalf of the Oriental Insurance Company. Since the issue involved herein is of a legal nature, only on account of absence of counsel for the Insurance Company, there is no need of further adjourning the hearing of the appeal.

5. Ld. counsel for the applicants/claimants relies upon the judgment passed by the Karnataka High Court in New India Assurance Co. Ltd. v. Abdul Bhasheer alias Basheer & others, 2010 ACJ 405 : Law Finder Doc Id #201073, and submits that as per the Full Bench decision of the Karnataka High Court as discussed in the said case i.e. Abdul Bhasheer alias Basheer's case (supra), for maintaining the claim petition under Section 163-A of the MV Act, claimants are entitled to restrict the income of the deceased and Tribunal/Court has ample power to consider the plea under Section 163-A of the MV Act under the restricted income structure.

6. Ld. Counsel further submits that the earlier provision i.e. Section 163-A of the MV Act, has now been amended as Section 164 of the



MV Act, wherein, fixed amount of Rs.5.00 lacs is to be awarded in case of death and Rs.2.5 lacs in case of grievous injury.

7. Ld. counsel also relies upon the judgment passed by the Hon'ble Apex Court in **Ram Murti and others v. Punjab State Electricity Board, 2023 ACJ 631 : Law Finder Id # 2091451.**

Thus, submits that by considering the prayer for grant of compensation claim under Section 163-A of the MV Act (amended provision Section 164 of the MV Act), compensation amount of Rs.5.00 lacs can be awarded to the claimants.

8. Apart from the aforementioned judgments, this Court has also acknowledged the purpose of the MV Act, as interpreted by the Hon'ble Apex Court in **Ningamma v. United India Insurance Co. Ltd., 2009 (13) SCC 710 : Law Finder Doc Id # 197440**, and thereupon finds that it is the duty casted upon the Court also to extend the benefit of the Statute to the victim under any of the provision of the MV Act, irrespective of the nature of the claim petition. Relevant findings recorded in **Ningamma's case (supra)**, is reproduced here-under:-

“25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the



present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court.

26. *While entertaining the appeal, no effort was made by the High Court to deal with the aforesaid issues, and therefore, we are of the considered opinion that the present case should be remanded back to the High Court to give its decision on the aforesaid issues. The High Court was required to consider the aforesaid issues even if it found that the provision of Section 163A of MVA was not applicable to the facts and circumstances of the present case. Since all the aforesaid issues are purely questions of fact, we do not propose to deal with these issues and we send the matter back to the High Court for dealing with the said issues and to render its decision in accordance with law. The High Court will also consider the question of quantum of compensation, if any, to which the claimants might be entitled to, having regard to the earning capacity of the deceased and "Just Compensation", if any. Since the claim is a very old claim, we request the High Court to consider the matter as expeditiously as possible.*

27. *In terms of the aforesaid order, we remand back both the matters to the High Court to dispose of the same. The appeals are disposed of in terms of the aforesaid order."*

9. The observations made in **Abdul Bhasheer alias Basheer's case** (*supra*), in paragraph No.10, says as under:-

"10. In view of the decision of the Full Bench of this Court and under the facts and circumstances of this case, where the claimants have restricted the income of the deceased to Rs.40,000/- p.a. or less, though initially they stated more than Rs.40,000/- p.a. they can maintain the claim petition under Section 163A of the Act. The claimants are entitled to restrict the income of the deceased. In my opinion, though there are two



later decisions of the Division Bench, however when we have a full bench decision of this Court, which is binding on the Court, therefore, I follow the decision of full bench. In this case also claimants have restricted the income of the deceased at Rs.40,000/- p.a. the claim petition under Section 163A of the Act is maintainable.”

10. Considering all the judgments relied upon by the appellants/claimants, the claim petition filed by them is being considered under Section 163-A of the MV Act (as amended provision under Section 164 of the MV Act), and thereupon, as interpreted by the Hon'ble Apex Court in **Ram Murti's case (supra)**, the appellants/claimants held to be are entitled to compensation amount of Rs.5.00 lacs (Rupees Five Lacs only).

Consequently, the impugned award dated 10.05.2005 and findings of dismissal as recorded in claim petition by the Ld. Tribunal, are set-aside and accordingly, the present petition is partly allowed by directing the respondents to pay the compensation amount of **Rs.5.00 lacs (Rupees Five Lacs only)** to the claimants in equal shares within a period of three months from today.

11. Since there is no dispute regarding the insurance of the vehicle by the Oriental Insurance Company Ltd. (respondent No.2), let the amount of compensation be paid by it within the said stipulated period.

12. Since, in **Ram Murti's case (supra)**, there is nothing observed regarding interest part, it is directed that if the respondent No.2 - Insurance Company does not pay the compensation amount within the stipulated period, as recorded here above, Insurance Company would be liable to pay the compensation amount along with interest @ 9% per annum, from the date of passing of this order till its final payment/realization.



And, in case any further delay is caused beyond six months from today, compensation amount would be payable along with interest @12% p.a. from the date of passing of this order till its actual realization.

Therefore, by recording aforesaid terms, the present appeal stands partly allowed and disposed of.

Misc. application(s), if any, also stand disposed of.

(SANJAY VASHISTH)
JUDGE

December 09, 2024
J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*