



FAO-2098-2006 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****FAO-2098-2006 (O&M)****Date of Decision: 22.11.2024**

Leela Dhar and another

.....Appellants

Vs.

Umesh Jain and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMAPresent: Mr. Tushar Gera, Advocate,
for the appellants.Mr. Ashwani Talwar, Advocate,
for respondent No.3-Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 04.01.2006 passed in the claim petition filed under Sections 163-A and 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal'), whereby the claim petition filed by the appellants/claimants for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that initially, a claim petition was filed under Sections 163-A and 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Ajay Goyal, son of the appellants/claimants, in a Motor Vehicular Accident, occurred on 18.09.2002, but during the course of proceedings, an application was filed



opting for conversion of the claim petition under Section 163-A of the Motor Vehicles Act, 1988, which was allowed. The case of the appellants/claimants is that on 18.09.2002, their son-Ajay Goyal (since deceased) was going to Hansi in a FIAT car, which was being driven by respondent No.1, whereas their son was sitting next to the driver seat. When the car reached near Bittu Hotel, a truck over took the car. Due to which, respondent No.1 lost his control over the car and it went to the right side of the road and turned turtle. As a result thereof, Ajay Goyal, son of the appellants/claimants died. The whole incident was witnessed by one Des Raj Jain, who was going to Delhi in a truck and was following the car.

3. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

4. From the pleadings of the parties, the learned Tribunal framed the following issues:-

“1. Whether death of Ajay Goyal occurred in the accident which took place on 18.09.2002 while the Fiat Car No.HR-20-D-0917 driven by respondent No.1 was in use? OPP.

2. Whether the applicants are entitled to any compensation on account of death of Ajay Goyal, how much and from whom? OPP.

3. Whether the Insurance Company is liable to make the payment of compensation, if awarded or not? OPR.

4. Relief.”



5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence, the present appeal.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the appellants/claimants contends that the claim petition was dismissed only on the ground that claim petition was filed under Sections 163-A and 166 of the Motor Vehicles Act, 1988. Thereafter, during the course of proceedings, an application was filed for converting the claim petition under Section 163-A of the Motor Vehicles Act, 1988, which was allowed by the learned Tribunal, vide order dated 22.04.2005, and Issue No.1 was amended accordingly. During the course of hearing, appellants/claimants moved another application dated 04.10.2005 for consideration of the income of the deceased-Ajay Goyal to the tune of Rs.40,000/- per annum, but the same was dismissed by the learned Tribunal, vide order dated 28.10.2005 (Annexure P-1), on the ground that deceased-Ajay Goyal was earning Rs.6,500/- per month, as per salary certificate (Ex.P2) issued by his employer Rama Trading Company. Since the salary/income of deceased (Ajay Goyal) was more than Rs.40,000/- per annum, therefore, the appellants/claimants could not take the benefit under Section 163-A of the Motor Vehicles Act.

7. *Per contra*, learned counsel for the respondent-Insurance Company, however, vehemently argues on the lines of the award dated 04.01.2006 and submits that the award has rightly been dismissed by the learned Tribunal. Therefore, he prays for dismissal of the present appeal.



8. I have heard learned counsel for the parties and perused the whole record of this case.

9. The relevant portion of the award dated 04.01.2006 is reproduced as under:-

“ISSUE NO.1

7. The claim Petition has been filed under Sections 163-A and 166 of the Motor Vehicles Act but during the course of proceedings, an application was filed and the claimants exercised their option of presenting their claim petition under Section 163-A of the Motor Vehicles Act. No amended petition was filed. A reading of the claim petition would show that the claimants had pleaded that the accident had occurred on account of the negligent driving of respondent No. 1 but are claiming compensation on the ground of no fault liability as the death occurred when the case was in use. In the proceedings under section 163-A, no finding regarding the negligence has to be recorded and all that has to be seen whether the death occurred when the vehicle was in use. The death in this case did take place while the car was in use. The FIR placed on the record also recites this fact but there it has been recorded that an unknown truck had caused the accident. Leeladhar PW-1 is the father of the deceased. He was not present at the time of the accident. Jodha Ram MHC had brought the FIR register and he had stated that the case went untraced. Mehender Kumar PW-3 had produced the salary certificate while the Medical Officer PW-4 had proved the post-mortem report.

8. From the above it is found that Ajay Goyal died in an accident when the car No. HR-20D-0917 was in use.

ISSUE No.2

9. The issue now to be determined is as to what compensation the claimants are entitled to. A perusal of the claim petition shows that the monthly income of the deceased has been shown as Rs. 6500/- per month and to prove this fact, the claimants had produced on record the salary certificate Ex.P2, which was produced by Mahender Kumar, Proprietor of Rama Trading Company. Leeladhar PW1 had also deposed that his son was getting a salary of Rs.6500/- per month. After this evidence had come on record, the claimants filed an application seeking amendment of the claim with respect to the income of the deceased. They wanted to scale down the income so as to bring their case under Section 163-A of the Motor Vehicles Act. This application was dismissed on 21.10.2005 as the Apex Court had held in Deepal Girishbhai Soni and ors. Versus United India Insurance Company Ltd., 2004 ACJ 934 that the provisions under section 163-A was a social security provisions, which provided for a distinct scheme for only those whose annual income was upto Rs.40,000/-and for others the claims were dealt with under Chapter XII of the Act.

10. The correctness of Oriental Insurance Company Ltd. Versus Hansrajbhai V. Kodala and Ors., 2001 ACJ-821 was doubted by the Division Bench of the Apex Court and the matter was referred to three Judges Bench and the Apex Court observed that Kodala's case has been rightly decided but Apex Court did not agree with the findings in Kodala's case with respect to the observations that the income of Rs.40,000/- P.M. should be treated as a cap. It was observed that the provision was a social security provision, which was drafted for a distinct scheme for only those whose annual income was upto Rs.40,000/- P.M.



11. *Since the claimants had pleaded that the income of the deceased was Rs.6,500/- per month and had succeeded in showing that the income of the claimants was more than Rs.40,000/- per annum, it is held that the claim petition was not maintainable as the claim petition under Section 163-A could have been filed by only those whose annual income was upto Rs.40,000/- P.M.*

12. *The object of legislature was to provide benefit of the provision for those whose annual income was up to Rs.40,000/- P.M.. Since the annual income of the deceased was definitely much above Rs.40,000/- per annum, the claim could not have been filed under Section 163-A. It is held that the claim petition is not maintainable.”*

A perusal of the above shows that the learned Tribunal decided Issue No.1 in favour of the appellants/claimants.

10. A perusal of the award dated 04.01.2006 shows that learned Tribunal, while dismissing the claim petition observed that in the claim petition, the income of the deceased was shown to be Rs.6,500/- per month. By taking his earning to be Rs.6,500/- per month, the annual income of the deceased was calculated as Rs.78,000/- per annum. Since, there is a cap of Rs.40,000/- per annum under Section 163-A of the Motor Vehicles Act, therefore, the claim petition of the appellants/claimants was dismissed. However, a perusal of the record further reveals that during the course of hearing, the appellants/claimants filed an application for consideration of income of their son Ajay Goyal (since deceased) as less than Rs.40,000/- per annum so that they can avail benefit under Section 163-A of the Motor



Vehicles Act. However, learned Tribunal has erred in dismissing the claim petition solely on the ground that deceased's income was more than Rs.40,000/- per annum.

11. This Court vide judgment dated 17.05.2024 passed in **FAO-407-2006**, titled as '**Satpal Vs. Daljit Singh and others**' held as under:-

“13 The claim petitions are drafted by the Advocates and it is standard practice to state the maximum earnings and amount of compensation in the pleadings. The Court/Tribunal should appreciate the evidence led on oath, rather than strictly adhering to the pleadings. The present claim petition was dismissed solely on the stated earning of Rs.6,000/- in the pleadings, completely discarding the evidence presented. This indicates a manifest failure to apply judicial mind. Therefore, the present appeal is allowed. The appellant/claimant is granted compensation under Section 163-A by taking his income to be Rs.3,000/- per month.”

12. Further, this Court in **FAO No.4301 of 2006**, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others**” held as under:-

*“11. Hon'ble Supreme Court in the case of **Ram Murti and others Vs. Punjab State Electricity Board** [2022(4) TAC 738] held that the appellants therein to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in the case of death in the amount of Rs.5 lakhs and in the case of grievous hurt of Rs.2.5 lakhs.*

*12. This Court in **FAO-195-2006** titled as **Mamta and Others Vs. Happy and Others**, decided on 29.05.2024, held that since Motor Vehicle statute is a beneficial legislation, the Judge should not go into the technicalities of the provisions,*



under which the application or petition is moved but should apply his judicial mind, as these are only the irregularities and not illegalities which cannot be cured. It has been observed by the Hon'ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically. Further, Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary."

13. In view of the above referred to judgments, this Court is now converting the present claim petition filed under Sections 163-A (pre-amendment i.e 2019 amendment w.e.f 01.04.2022) to Section 164 of the Motor Vehicles Act, 1988, (amended by the Act 32 of 2019). Keeping in view the beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in the case of death in the amount of Rs.5 lakh and in the case grievous hurt of Rs.2.5 lakh. The appellants/claimants are held entitled to compensation to the tune of Rs.5,00,000/-.

CONCLUSION

14. In view of the law laid down by Hon'ble the Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 04.01.2006 is hereby set aside and the appellants/claimants are held entitled to compensation to the tune of Rs.5,00,000/-.



15. So far as the interest part is concerned, as held by Hon'ble Supreme Court in *Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma* 2019 ACJ 3176 and *R.Valli and Others VS. Tamil Nandu State Transport Corporation* (2022) 5 Supreme Court Cases 107, the appellants/claimants are granted the interest @ 9% per annum on the compensation amount from the date of filing of claim petition till the date of its realization.

16. The respondent No.3-Insurance Company is directed to deposit the amount of compensation along with interest with the learned Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is further directed to disburse the amount of compensation along with interest in the accounts of the appellants/claimants in equal share. The appellants/claimants are directed to furnish their bank accounts details to the learned Tribunal.

17. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Ashwani Talwar, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.

18. Disposed of accordingly.

19. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

22.11.2024

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No