



FAO-3195-2007 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-3195-2007 (O&M)

Date of Decision: November 05, 2024

Jaswant Kaur

.....Appellant

Vs.

Sukhwinder Singh and anr.

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMAPresent: Mr. Ashwani Arora, Advocate
for the appellants.Mr. N.S. Gill, Advocate
for the respondents.

SUDEEPTI SHARMA J. (Oral)

The present appeal has been preferred against the award dated 12.03.2007 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Ropar (for short, 'the Tribunal') for grant of compensation.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 01.04.2005 at about 6:30 P.M, Bakshish Singh (since deceased) was going on his bicycle, in the meantime, a mini bus bearing registration No. HP-20/1083 being driven by respondent No. 1 in a rash and negligent manner, struck against the bicycle of the deceased. As a result of the accident, the deceased (Bakshish Singh) fell down on the road and sustained serious injuries. He was taken to Civil Hospital, Ropar from where he was referred to PGI, Chandigarh, where he succumbed to his injuries on 04.04.2005.

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

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

- 1) Whether Bakshish Singh had died in a motor vehicular accident arising out of use of Mini Bus No. HP-20/1083 being driven by respondent No. 1 on 01.04.2005 at about 6:30 P.M in the area of village Railon? OPP
- 2) Whether the claimant is entitled to the compensation? If so, to what amount and against whom?
- 3) Whether the petition is bad for non-joinder of necessary parties?
- 4) Relief

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence the claimant/appellant filed the present appeal for grant of compensation.

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

6. The learned counsel for the claimant-appellant contends as under:-

- i) That the claim petition is dismissed only on the ground that the income of Bakshish Singh (since deceased) was more than Rs.40,000/- per annum, which is more than prescribed in the schedule.
- ii) That Section 163-A of Motor Vehicles Act, 1988 is now substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) and compensation should be granted as per the substituted statutory provision i.e. Section 164 of the Act.
- iii) That the present case is covered by the judgment rendered by this Court in **FAO No.4301 of 2006**, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others.**” wherein the claim under Section 163-A of the Motor Vehicles Act, 1988 was converted to Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019

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w.e.f 01.04.2022) by relying upon the judgment of Hon'ble *Supreme Court in the case of Ram Murti and others Vs. Punjab State Electricity Board [2022(4) TAC 738]* wherein it was held that Section 164 of the Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) provides for payment of compensation in case of death in the amount of Rs.5 lakhs and in the case of grievous hurt of Rs.2.5 lakhs.

7. Per contra, learned counsel for the respondents (owner and driver), however, vehemently argues that the award has rightly been passed and the claim petition has rightly been dismissed.

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

9. Reference at the very outset can be made to a judgment dated 17.05.2024 passed in FAO-407-2006, titled as ***Satpal Vs. Daljit Singh and others***, wherein this Court held as under:-

“12. Learned Tribunal while rejecting/dismissing the claim petition has stated therein that the monthly income of the claimant was shown to be Rs.6,000/- in the pleadings and on appearance as PW-2 claimant-Satpal deposed that he was earning Rs.3,000/- per month, therefore, his evidence is contrary to his own pleading and he cannot disown his own pleading. By taking his earning to be Rs.6,000/-, the annual income was calculated as Rs.72,000/- and since there is a cap of Rs.40,000/- under Section 163-A, therefore, the claim petition of the claimant was dismissed.

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

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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.”

10. 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 grievous hurt of Rs.2.5 lakhs.

11. 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.”

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12. In view of the above referred to judgments, the appeal is allowed and award dated 12.03.2007 is set aside. The claimant/appellant is held entitled to compensation to the tune of Rs.5 lakhs.

13. 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 Nadu State Transport Corporation** (2022) 5 **Supreme Court Cases 107**, the appellant-claimant is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

14. The respondents are directed to deposit the awarded amount along with interest with the Tribunal within a period of two months from today. The appellant-claimant is directed to furnish her bank account details to the Tribunal. The Tribunal is further directed to disburse the enhanced amount of compensation alongwith interest in the bank account of the appellant-claimant.

15. Pending applications, if any, also stand disposed off.

(SUDEEPTI SHARMA)
JUDGE

November 05, 2024

G Arora

Whether speaking/non-speaking : Yes

Whether reportable : Yes