



FAO-5270-2006 (O&M)

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

**FAO-5270-2006 (O&M)
Date of Decision: 03.12.2024**

Kamlesh alias Sonia

.....Appellant

Vs.

Bhola Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Maneet Kaushal, Advocate, for
Mr. Ashit Malik, Advocate,
for the appellant.

Mr. Neeraj Khanna, Advocate, for
Mr. Ravinder Arora, Advocate,
for respondent No.3-Insurance Company.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 31.07.2006 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') for enhancement of compensation, granted to the appellant/claimant to the tune of Rs.5,571/- along with interest at the rate of 7.5% per annum, on account of injuries sustained by the appellant/claimant in a Motor Vehicular Accident.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 23.11.2004, appellant/claimant along with her father Sukhbir Singh (since deceased) were travelling on a motorcycle bearing registration No.HP-12-A-1532,



which was being driven by her father Sukhbir Singh, while appellant/claimant was pillion rider. When they reached near Industrial Area, Baddi near Gas Plant chowk, a bus bearing registration No.HP-12-4098 being driven by respondent No.1 in a rash and negligent manner, came from the opposite side and struck against the motorcycle. As a result thereof, Sukhbir Singh (since deceased) as well as appellant/claimant sustained multiple injuries. Thereafter, both the injured were rushed to Bhardwaj Hospital, where doctor on duty declared Sukhbir Singh as dead, whereas the appellant/claimant was shifted to Malhotra Hospital, Baddi.

3. Upon notice of the claim petition, the respondents appeared and filed their separate replies denying the factum of accident/compensation.

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

“1) Whether the accident in question took place due to rash and negligent driving of Bus No.HP-12-4098 by respondent No.1? OPP

2) Whether the claimants are entitled to compensation, if so to what amount and from whom? OPP.

3) Whether the bus in question was being driven against the terms and conditions of the insurance policy? OPR.

4) Relief.”

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.5,571/- alongwith interest @ 7.5% per annum. Hence, the appellant/claimant filed the present appeal for enhancement of compensation awarded by the learned Tribunal.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES**

6. Learned counsel for the appellant/claimant contends that the amount awarded by the learned Tribunal is on the lower side. He further contends that the learned Tribunal has erred in granting a meager amount of Rs.5,500/- as compensation to the appellant/claimant for injuries she sustained due to the accident. He further contends that Tribunal has granted only Rs.4,570 for medical bills and Rs.1,000/- has been granted for pain and suffering, that is on lower side. He further contends that Tribunal has not granted any amount towards special diet, transportation charges, etc. He further contends that since the Section 163-A is now substituted with Section 164 of the Act the present appeal may be converted to 164 and the compensation may be granted under the said provision (Section 164 of the Act.) Therefore, he prays that the present appeal be allowed.

7. *Per contra*, learned counsel for respondent No.3-Insurance Company, at the very outset, contends that the present appeal is not maintainable under Section 173 of the Motor Vehicles Act, 1988 , as no appeal shall lie from an award of the Tribunal if the amount awarded is less than Rs.10,000/-. He further contends that in the instant case, the amount awarded by the Learned Tribunal is Rs.5,500/- with interest @ 6% per annum, thereby precluding the right to appeal.

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

9. The instant appeal has been instituted by the appellant against the respondents, who were also the contesting litigants before the learned



Tribunal. Although it is well-established that the appeal is rendered non-maintainable by virtue of the statutory bar under Section 173(2) of the Motor Vehicles Act, 1988, and the proper recourse lies in filing a revision petition, this court is inclined to address the matter to uphold the interests of justice.

10. **RELEVANT LEGAL PROVISION UNDER MOTOR VEHICLES ACT, 1988**

173. Appeals. - (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ¹[one lakh] rupees.

1. Substituted by Act 32 of 2019, Sec.57, for “ten thousand”
[w.e.f 1.04.2022, vide S.O.859(E), dated 25th February, 2022]



11. **RELEVANT PROVISIONS UNDER THE CODE OF CIVIL
PROCEDURE, 1908**

107. Powers of appellate Court.-

(1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power-

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

Order XLI Rule 33 of the Code of Civil Procedure, 1908:-

33. Power of Court of Appeal— The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits



or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

[Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

ANALYSIS OF THE CASE

12. A perusal of the award indicates that the learned Tribunal has awarded compensation of Rs.5,571/- to the appellant, vide impugned award dated 31.07.2006.

13. It is a well-settled principle that procedural lapses or errors committed by legal counsel, such as invoking an incorrect remedy, should not operate to the detriment of a claimant's substantive right to seek enhanced compensation, particularly under a beneficial statute like the Motor Vehicles Act. The Hon'ble Supreme Court has consistently underscored that the strict adherence to procedural technicalities, including the rigid application of the Rules of Evidence and the Civil Procedure Code, is inapplicable to proceedings under the Motor Vehicles Act. The primary objective of this remedial legislation is to ensure prompt and equitable justice to claimants.

14. This court further observes that under Section 107 and Order XLI Rule 33 of the Code of Civil Procedure, 1908, it possesses inherent



powers to ensure the ends of justice is met by treating the appeal as a revision.

15. Such an exercise of discretion is firmly rooted in judicial precedents and resonates with the legislative intent behind the enactment of the Motor Vehicles Act, which seeks to prioritize substantive justice over procedural formalities. By doing so, this court not only adheres to the principles of equity and fairness but also reinforces the legislative purpose of expediting relief to the victims of motor accidents.

16. In light of the foregoing considerations, this court finds it just and proper to invoke its inherent powers to convert the present appeal into a revision petition. By exercising this discretion, the court reaffirms its commitment to delivering justice in a manner that is both expeditious and fair, thereby safeguarding the claimant's rights and preventing undue delay or denial of relief.

17. So far as the contention of the appellant/claimant regarding converting of the claim petition from Section 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) is concerned, 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.

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."*

18. In view of the above referred to judgments, this Court is now converting the present claim petition filed under Section 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 appellant/claimant is held entitled to compensation to the tune of Rs.2,50,000/-.

**RELIEF**

19. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments and the facts and circumstances of the present case, this appeal is now converted to a revision petition and the same is allowed. The award dated 31.07.2006 is hereby modified qua appellant/claimant-Kamlesh alias Sonia. The appellant/claimant is entitled to the tune of Rs.2,50,000/-.

20. 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.

21. The respondent No.3-Insurance Company is directed to deposit the enhanced amount of compensation in the first instance along with interest with the learned Tribunal within a period of two months from the date of receipt of copy of this judgment, as per award dated 13.07.2006. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the account of the appellant/claimant. The appellant/claimant is directed to furnish his bank account details to the Tribunal.

22. However, respondent No.3-Insurance Company is at liberty to recover the same from respondents No.1 and 2.



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23. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Ravinder Arora, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.

24. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

03.12.2024

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No

