



FAO-946-2006 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-946-2006 (O&M)

Date of Decision: October 18, 2024

Manjit Kaur and ors.

.....Appellants

Vs.

New India Assurance Co.

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vipul Sharma, Advocate
for the appellants.

Mr. R.C. Kapoor, Advocate
for the respondent-Insurance Co.

SUDEEPTI SHARMA J.

1. This is an old matter pertaining to the year 2006 but no one has put in appearance on behalf of the Insurance Company.

2. Previously vide order dated 18.07.2024 in FAO No.1682 of 2007, this Court had already issued directions to the Insurance Companies that in the event, any of their empanelled counsel fails to appear, the Court would request the counsel empanelled with the Insurance Companies, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.

3. On the asking of the Court, Mr. R.C. Kapoor, Advocate accepts notice on behalf of respondent No.3-Insurance Company.

4. Learned counsel for the appellant has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent No.3-

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5. In view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, the Insurance Company is directed to disburse the current scheduled fees to Mr. Suvir Dewan, Advocate, the counsel engaged by this Court in the present case. The present appeal has been preferred against the award dated 06.09.2005 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') for grant of compensation.

FACTS NOT IN DISPUTE

6. The brief facts of the case are that on 02.01.2004 at about 6:15 P.M, the deceased (Jaswinder Singh) was going from Chandigarh to Kalka Highway and when he reached near Sahara Resorts while driving motorcycle bearing Registration No. CH-T-8119, at that time one unknown vehicle was struck against the motorcycle of the deceased and sped away. As a result of the accident, the deceased (Jaswinder Singh) fell down on the road and sustained serious injuries. He was removed to General Hospital, Sector 6, Pachkula by PCR Vehicle Pinjore from where he was referred to PGI, Chandigarh, where he succumbed to his injuries on 31.07.2004.

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

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

1) Whether the deceased died by use of vehicle bearing Registration No. CH-T-8119.

2) If issue no. 1 is proved, whether the claimants are entitled for compensation. If so, from whom and to what amount?

3) Relief

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

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

10. The learned counsel for the claimants-appellants contends as under:-

- i) That the claim petition is dismissed only on the ground that the income of Jaswinder Singh (since deceased) was more than Rs.40,000/-, which is more than prescribed in the schedule.
- ii) That the application was moved before the learned Tribunal by the claimants (Annexure P-1) for considering the income of the deceased at Rs.40000/- per annum, so that benefit of Section 163-A could be granted to him.
- iii) 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.
- iv) 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 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.

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11. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the award has rightly been passed and the claim petition has rightly been dismissed.

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

13. A perusal of the award dated 06.09.2005 shows that Ld. Tribunal, Gurugram while dismissing the claim petition observed that in the claim petition, the income of the deceased was shown to be more than Rs.40000/- per annum. Since there is a cap of Rs.40,000/- per annum under Section 163-A, therefore, the claim petition of the claimants was dismissed. However, a perusal of the record further reveals that the claimant has specifically moved an application for considering the income as Rs.40,000/- per annum as required under Section 163-A of the Motor Vehicles Act, 1988. Thus, the learned Tribunal has erred in law in not considering the application of the claimants.

14. This Court vide judgment dated 17.05.2024 passed in FAO-407-2006, titled as ***Satpal Vs. Daljit Singh and others*** 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

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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.”

15. 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.

16. 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

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showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary.”

17. In view of the above referred to judgments, the appeal is allowed and award dated 06.09.2005 is set aside. The claimants/appellants are held entitled to compensation to the tune of Rs.5 lakhs.

18. 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 enhanced amount from the date of filing of claim petition till the date of its realization.

19. The Insurance Company is directed to deposit the awarded amount along with interest with the Tribunal within a period of two months from today. The appellants-claimants are directed to furnish their bank account details to the Insurance Company/Tribunal. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the bank accounts of the appellants-claimants.

20. Before parting with the judgment, this Court extends its appreciation to Mr. R.C. Kapoor, Advocate, for his able assistance to the Court in the present matter.

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

(SUDEEPTI SHARMA)
JUDGE

October 18, 2024

G Arora

Whether speaking/non-speaking : Yes
Whether reportable : Yes