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

FAO-1912-2008 (O&M)
Date of decision: 06.09.2024

Santosh @ Munna Devi and others

...Appellants

Versus

Swaranjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. B.S. Mittal, Advocate for the appellants.

Mr. Manu Loona, Advocate for respondent No.3.

VIKAS BAHL, J. (ORAL)

1. The widow, two minor children and parents of the deceased-Modu Ram have filed the present appeal challenging the common award dated 16.10.2007 passed by the Motor Accident Claims Tribunal, Sirsa (hereinafter to be referred as “the Tribunal”) in case MACT No.80/29.07.2006 with respect to the death of Modu Ram which had taken place in an accident that had occurred on 16.04.2004.

2. Learned counsel for the appellants has submitted that in the present case, the present appellants/claimants had filed a claim petition under Section 163A of the Motor Vehicles Act, 1988 (hereinafter to be referred as “the 1988 Act”) and in para Nos.16 to 18 of the award passed by the Tribunal, it was observed that both the deceased-Modu Ram, who was



the driver of the Jeep bearing registration No.UTS-1652 as well as the driver of the truck bearing registration No.RJ-31G/1789, were responsible for the accident on account of contributory negligence to the extent of 50% each. It was further observed that both the jeep and the offending truck had been insured by the National Insurance Company Limited, which is respondent No.3 in the present case. It is submitted that in spite of the same, no amount of compensation had been awarded to the present appellants despite the fact that the claim petition was filed under Section 163A of the 1988 Act, in which even if it was not proved that the driver of the offending truck was negligent, then, also compensation was required to be awarded to the present appellants. It is further submitted that the provisions of Section 163A of the 1988 Act have now been replaced with Section 164 of the 1988 Act and thus, the claimants are entitled to an amount of compensation of Rs.5,00,000/-. It is submitted that the Hon'ble Supreme Court in the case of **"Ram Murti and others Vs. Punjab State Electricity Board,"** reported as **2023 ACJ 631,** in similar facts and circumstances, was pleased to grant compensation of an amount of Rs.5,00,000/- in a case where the negligence of the driver of the offending vehicle was not proved. In the said case also, although the accident had taken place on 23.05.1991 and the award in the said case was passed on 12.04.1994, yet the Hon'ble Supreme Court had given the benefit of the beneficial provisions of Section 164 of the 1988 Act, which provision had been incorporated by the Act 32 of 2019. It is submitted that in view of the same, the said amount be paid along with interest to the claimants from the date of the application till the date of the actual payment. It is submitted that



the present case be treated as a case under Section 164 of the 1988 Act as amended. It is further submitted that the fact that the truck involved in the accident in question was owned by respondent No.2 and was insured by respondent No.3-Insurance Company, is not in dispute.

3. Learned counsel for respondent No.3-Insurance Company has submitted that the present case is a case of contributory negligence of the deceased Modu Ram, who was the driver of the jeep, and also of the driver of the offending truck and it is in view of the same that no amount of compensation had been awarded to the present claimants, who are the legal representatives of the said Modu Ram.

4. This Court has heard learned counsel for the parties and has perused the paper book.

5. This Court in case bearing No.**FAO-247-1991 titled as “Sushma Devi and others Vs. Tarlochan Singh and others” decided on 03.09.2024** while considering the case of no fault liability had, by placing reliance upon the judgment of the Hon’ble Supreme Court in case of **Ram Murti and others** (Supra), directed the Insurance Company to pay an amount of Rs.5,00,000/- to the claimants along with the interest at the rate of 7.5% per annum from the date of filing the claim petition till its actual payment. Relevant portion of the said judgment passed in the case of **Sushma Devi and others** (Supra) is reproduced hereinbelow:-

“6. Section 140 of the Motor Vehicles Act, 1988, which was in force on the date of the accident i.e. 04.12.1989 provided that the compensation to the extent of Rs.25,000/- would be payable in the case of death of a person and in such a situation, the claimant was not required to plead and establish that the death or permanent



disablement in respect of which the claim had been made was due to any wrongful act, negligence or default of the owner of the offending vehicle or vehicles concerned or any other person. The said Section 140 of the Motor Vehicles Act, 1988 was amended in the year 1994 and the amount payable in the case of death was enhanced to Rs.50,000/-. The relevant portion of amended Section 140 of the Motor Vehicles Act, 1988 is reproduced as under: -

“140. Liability to pay compensation in certain cases on the principle of no fault. –

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub- section (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty – five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.”

7. By virtue of Act 32 of 2019, the above-said provisions of Section 140 of the Motor Vehicles Act, 1988 were deleted and simultaneously Chapter XI was substituted and Section 164 of the said Chapter provided that a compensation of Rs.5,00,000/- in the case of death was to be provided and in such situation also, the



claimant was not required to plead or establish that the death or grievous hurt in respect which the claim had been made was due to any wrongful act or neglect or default of the owner of the vehicle or any other person. The said Section 164 of the Motor Vehicles Act, 1988 is reproduced herein below: -

“164. Payment of compensation in case of death or grievous hurt, etc. --(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.”

*8. The Hon'ble Supreme Court in the case of **Ram Murti (supra)** had granted the benefit of the beneficial provisions which have been enacted by the Parliament and accordingly, granted the compensation of Rs.5,00,000/- to the claimants therein. In the said case also, the accident as well as the award were much prior to the coming in force of Section 164 of the Motor Vehicles Act, 1988 and the Hon'ble Supreme Court in view of the fact that it*



was a beneficial provision, applied the provisions of Section 164 of the Motor Vehicles Act, 1988. The relevant part of the said judgment is reproduced as under: -

“xxx xxx xxx

2 The appeal has arisen from a judgment of a Single Judge of the High Court of Punjab & Haryana dated 10 March 2009 in FAO No 1461 of 1994.

*3 The High Court was considering an appeal arising from an award of the Motor Accident Claims Tribunal, Bhatinda **dated 12 April 1994**. The Tribunal dismissed the application filed by the appellants under Section 166 of the Motor Vehicles Act 1988. However, the claim under Section 140 was allowed and the appellants were held entitled to receive an amount of Rs 25,000 on account of the death of Ved Parkash.*

4 The High Court has affirmed the judgment of the Tribunal in regard to the dismissal of the claim under Section 166 of the Motor Vehicles Act 1988. However, having due regard to the amendment of the provisions of Section 140 in 1994, the amount payable has been enhanced from Rs 25,000 to Rs 50,000.

5 We have heard Mr Narender Singh Yadav, counsel appearing on behalf of the appellants and Ms Uttara Babbar, counsel for the respondent.

*6 **There is no cogent basis for this Court to entertain the challenge against the findings of fact which have been recorded concurrently by the Tribunal and by the High Court while dismissing the claim under Section 166 of the Motor Vehicles Act 1988.***

*7 The provisions of **Section 140** which formed a part of Chapter 10 of the Motor Vehicles Act 1988 were **omitted by Act 32 of 2019**. Simultaneously, Chapter 11 was substituted 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.

8 *We are inclined to give the appellants the benefit of the beneficial provisions which have been enacted by Parliament. Hence, in modification of the order of the High Court, we direct that the appellants shall be entitled to an amount of Rs 5 lakhs as compensation. However, if the amount of Rs 50,000 which has been awarded by the High Court has already been paid over, the balance (or the entirety of Rs 5 lakhs if no amount has been paid) shall be paid over to the appellants by 30 November 2022.*

9 *The appeal is accordingly disposed of.*

10 *Pending applications, if any, stand disposed of.*

9. Even the judgment of the High Court, passed in FAO No.1461 of 1994 decided on 10.03.2009, from which judgment the SLP was filed before the Hon'ble Supreme Court and the above-said judgment was rendered by the Hon'ble Supreme Court, has been referred to by the learned counsel for the appellants to highlight the fact that in the above-said case the accident had taken place on 23.05.1991, which was even prior to the amendment in Section 140 of the Motor Vehicles Act, 1988 and thus, the present case is squarely covered by the judgment of the Hon'ble Supreme Court.

10. Thus, keeping in view the above-said facts and circumstances, this Court is of the view that in the interest of justice, the present claim petition be treated as a claim petition under Section 164 of the Motor Vehicles Act, 1988 and by applying the ratio of law laid down by the Hon'ble Supreme Court in the above-said judgment, the award of the Motor Accident Claims Tribunal, Hoshiarpur dated 09.10.1990 is set aside and the respondents No.2 and 3 are directed to pay an amount of Rs.5,00,000/- to the present appellants/claimants along with interest @ 7.5% per annum from the date of the claim petition till the date of actual payment within a period of two months from



today.”

6. A Coordinate Bench of this Court in case bearing No.FAO-5204-2006 titled as “Chhailu and another Vs. Ashok Kumar and another” decided on 23.01.2024, while considering the claim petition which was filed under Section 163A of the 1988 Act had, after taking into consideration the judgment of the Hon’ble Supreme Court in case of **Ram Murti and others**, observed that the said judgment of the Hon’ble Supreme Court was applicable in a case initially instituted under Section 163A of the 1988 Act.

7. In the present case, it is not in dispute that the truck bearing registration No.RJ-31G/1789 as well as the Jeep bearing registration No.UTS-1652 were involved in the accident in question, in which the death of Modu Ram had taken place. In para 17 of the award passed by the Tribunal, it had been noticed that both the said truck as well as the jeep were insured by respondent No.3-Insurance Company. In such a situation, the claimants are entitled to compensation irrespective of the fact as to who was negligent in the said accident. Thus, the claim petition of the claimants under Section 163A of the 1988 Act should have been allowed and the compensation should have been awarded to them. Moreover, after the Motor Vehicles (Amendment) Act, 32 of 2019, Section 164 is the provision which deals with payment of lumpsum compensation in the case of death etc. without the claimant having to establish neglect/default etc. of the owner/any other person and keeping in view the law laid down by the Hon’ble Supreme Court in the case of **Ram Murti and others** (Supra), the claimants are entitled to an amount of Rs.5,00,000/-. With respect to the rate



of interest, this Court is consistently awarding rate of interest at the rate of 7.5% per annum, which rate of interest is also reasonable in the present case.

8. Keeping in view the abovesaid facts and circumstances, the present appeal bearing No.FAO No.1912 of 2008 is partly allowed and the award dated 16.10.2007 qua MACT No.80/29.07.2006 is set aside and respondent No.3-Insurance Company is directed to pay an amount of Rs.5,00,000/- to the claimants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation within a period of six weeks from today.

9. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

06.09.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No