



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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FAO-301-2006 (O&M)

Date of Decision: January 17, 2025

Jai Kishan

.....Appellant

Vs.

Jagat Bhushan Midha and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sandeep Punchhi, Advocate for the appellant.

Mr. Ravinder Arora, Advocate
for the respondent-Insurance Company

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 01.10.2005, passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accidents Claims Tribunal, Sirsa (for short 'the Tribunal'), whereby the claim petition filed by the claimant/appellant was dismissed.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 02.12.2002, the appellant alongwith S/Sh. Jagat Bhushan and Krishan Kumar Jasuja, Advocates Mandi Dabwali was going on Chautala Road Dabwali as a pillion rider on a Scooter bearing registration No.PB-03-G-6043 driven by respondent No. 1. When they reached near Sethi Petrol Pump Dabwali, at about 3.30 p.m. one motorcycle make Yamaha, came at a very high speed and in a rash and negligent manner being driven by its driver dashed against the scooter. As a result thereof, the

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appellant fell down on the road alongwith the scooter. He became unconscious and sustained injuries. However, the motor cyclist ran away from the spot. The appellant sustained multiple grievous and serious injuries. He received fracture of tibia fibula and other multiple fractures and was taken to Civil Hospital, Dabwali, where he remained admitted for two days from where, he was shifted to hospital of Dr.Raj Kumar, an Orthopadic Surgeon, Sirsa where, he remained admitted for 18 days. Further, the appellant was operated upon for his fractures and he has still been under treatment.

3. Upon notice of the claim petition, respondents appeared and contested the claim petition by filing written reply denying the factum of accident/compensation.

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

- 1. Whether the accident was caused by the use of Scooter No PB-03-G-6043 driven by respondent No.1 resulting into causing of injuries to the petitioner as alleged? OPP*
- 2. Whether the petitioner is entitled to receive any compensation amount. If so how much and from whom? OPP.*
- 3. Whether the petition is not maintainable in the present form ?OPR*
- 4. Whether respondents No 1 and 2 have violated the terms and conditions of the Insurance policy. If so to what effect ?OPR*
- 5. Relief*

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



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claimant/appellant. Hence the claimant/appellant filed the present appeal for awarding of compensation.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the appellant-claimant contends that the claim petition was dismissed only on the ground that in the claim petition, the income of the injured was stated to be Rs.6,000/- per month., which is more than Rs.40,000/- per annum.

7. Learned counsel for the appellant contends that the claimant had subsequently moved an application by stating therein that his annual income be treated as Rs.40,000/- per annum, however, Ld. Tribunal dismissed the claim petition only on the ground that the income of the injured was more than Rs.40,000/- per annum.

(ii) He further contends 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 enhanced as per the substituted statutory provision i.e. Section 164 of the Act.

(iii) He further contends 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

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amount of Rs.5 lakhs and in the case of grievous hurt of Rs.2.5 lakhs. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellants/claimants as per settled law.

8. *Per contra*, learned counsel for the respondent, however, vehemently argues that the claim petition had rightly been dismissed by learned Tribunal. He, thus prays for dismissal of appeal.

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

10. A perusal of the award reveals that the Tribunal dismissed the claim petition only on the ground that the income of the deceased was more than Rs.40,000/- per annum and held that if the income exceeds Rs.40,000/- per annum, the present claim petition is not maintainable under Section 163-A of Motor Vehicles Act, 1988.

11. 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.

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."

12. In view of the above, this Court is not satisfied by the reasoning given by the Ld. Tribunal in dismissing the present claim petition filed by the appellant-claimant and therefore, the present appeal filed by claimant/appellant is allowed and the award dated 01.10.2005 is set aside. The appellant/claimant is held entitled compensation to the tune of Rs.2.5 lacs as referred above.

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 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.

14. The Insurance Company is directed to deposit the awarded amount of compensation along with interest @ 9% per annum with the Tribunal within a period of two months from the receipt of copy of judgment. The Tribunal is further directed to disburse the amount of compensation along with interest in the account of the claimant/appellant. The claimant/appellant is directed to furnish his bank account details to the Tribunal.



15. Further Insurance Company is directed to disburse the current schedule fee to Mr. Ravinder Arora, Advocate within a period of 20 days from the date of receipt of certified copy of this order.
16. Disposed of accordingly.
17. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

January 17, 2025
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Whether speaking/non-speaking : Yes
Whether reportable : Yes