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

**FAO-3590-2006 (O&M)
Date of Decision: 29.01.2025**

Phoolwati and another

.....Appellants

Vs.

Ram Partap and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Naveen Jhajholia, Advocate, for
Mr. Sanjiv Gupta, Advocate,
for the appellants.

Mr. Rahul Pathania, Advocate, for
Mr. R.C.Kapoor, Advocate,
for respondent No.2-Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 30.05.2006 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal'), whereby the appellants/claimants were awarded compensation of Rs.50,000/- along with interest @ 7.5% per annum on account of death of Sant Kumar.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 13.12.2003, Sant Kumar (since deceased) was driving a truck bearing registration No.HR-39-6303 loaded with cement bags from Narnaul to Sirsa. He was accompanied by his brother Jawahar Lal and the cleaner Rinku. When they reached near



Lalitana turning, after crossing Mahendragarh bypass, Sant Kumar (since deceased), while driving, tried to avoid a bent portion of an old kikkar tree leaning towards the road. In doing so, he applied the brakes, but the tree's branch hit the truck's side mirror. Resultantly, the side mirror of the truck got broken and a piece of the broken glass struck below the ear of Sant Kumar, leading to severe bleeding. Unfortunately, due to excessive blood loss, Sant Kumar died on the spot after some time. An entry regarding this accident was made in the Roznamcha Register of Police Station City Dadri.

3. Upon notice of the claim petition, respondent No.2-Insurance Company appeared and denied the factum of accident/compensation, whereas, respondent No.1 (owner of the truck) did not appear to contest the claim petition and was proceeded against *ex parte*.

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

“1. Whether the accident in question was caused by the use of truck No.HR-39-6303 resulting into the death of Sant Kumar as alleged? OPP.

2. Whether the petitioners are entitled to receive any amount of compensation? If so to what amount and from whom? OPP.

3. Whether the claim petition is not maintainable in the present form? OPR.

4. Whether the petitioners have no locus standi to file the present petition? OPR.

5. Whether the deceased was not holding a valid and effective driving license to drive a truck at the time of the accident? OPR.



6. *Relief.”*

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

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

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

- i) That the learned Tribunal has erred in law in awarding the compensation to the appellants/claimants to the tune of Rs.50,000/- on “no fault liability”.
- ii) That since, now Section 163-A of Motor Vehicles Act, 1988 is substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022), therefore, compensation should be enhanced as per the substituted statutory provision i.e. Section 164 of the Act (Act 32 of 2019 w.e.f 01.04.2022).
- 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 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 respondent-Insurance Company, however, vehemently argues on the lines of the award dated 10.01.2005 and submits that the award has rightly been dismissed by the learned Tribunal. Therefore, he prays for dismissal of the present appeal.

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

9. A perusal of the award shows that learned Tribunal has awarded a meager amount of Rs.50,000/- on the ground of “no fault liability”.

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.

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.”

11. In view of the above referred to judgments, this Court is now converting the present claim petition filed under Sections 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.

CONCLUSION

12. In view of the law laid down by Hon’ble the Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 10.01.2005 is hereby set aside and the appellants/claimants are held entitled to compensation to the tune of Rs.5,00,000/-.

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 appellants/claimants are granted the interest @ 9% per annum on the compensation amount from the date of filing of claim petition till the date of its realization.

14. The respondent No.2-Insurance Company is directed to deposit the amount of compensation along with interest with the learned Tribunal within a period of two months from the date of receipt of copy of this



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judgment. The Tribunal is further directed to disburse the amount of compensation along with interest in the accounts of the appellants/claimants in equal share. The appellants/claimants are directed to furnish their bank accounts details to the learned Tribunal.

15. Respondent No.2-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. R.C.Kapoor, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.

16. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

29.01.2025

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No



9. The relevant portion of the award dated 30.05.2006 is reproduced as under:-

“ISSUES NO. 1,2 &5

7. *These issues being inter-connected have been taken up together.*

8. *Petitioner no.2 Tiddo Devi stepped in the witness box as PW2 and tendered her affidavit Ex.PB to the effect that her son Sant Kumar died in a road accident on 13.12.2003 while he was on the wheels of truck No. HR-39/6303. PW1 Jawahar Lal is the brother of deceased Sant Kumar and made deposition by way of affidavit Ex.PA. He testified that on 13.12.2003 he was on way to Sirea from Narnaul after loading cement bags in truck No.HR 39/6303 Of which Sant Kumar was the driver. When they reached Lalitana turning inthe area of Dadri branch of the tree, which had bent towards the road, struck the side mirror of the truck. As a consequence the mirror got broken and the broken glass hit Sant Kumar near the ear resulting in Sant Kumar died after some time. According to Jawahar Lal, Sant Kumar tried to save the accident and had applied brakes also but even then a portion of the tree had hit the side mirror of the truck. It is his further deposition that accident had been reported to the police and accordingly a Rapat bearing no.22 was entered in the Roznancha of Polices Station City Dadri on 13.12.2003 itself and post-mortem examination was conducted at General Hospital, Dadri. Mark A is the copy of Rapat Roznancha and Mart. B is the copy of post-mortem report.*

9. Learned counsel for the petitioners contended that with the testimony of PW1 Jawahar Lal, who was accompanying the deceased at the relevant time, the case set up in the petition stands fully proved. The counsel also referred to the copy of Rapat Roznancha No.22 recorded by the police on the basis of statement of said Jawahar Lal itself. Therein also it was mentioned that the accident took place because a branch of the tree had struck the side mirror of the truck despite the fact that the deceased tried to save collusion and none was at fault. As such, according to learned counsel, the petitioners are entitled to get compensation under Section 163-A of the Motor Vehicles Act. However, learned counsel for respondent no.2 contended that the deceased himself was on the driving seat of the truck and being at fault, the petitioners are not entitled to get compensation under that provision. I am inclined to agree with this contention of learned counsel for respondent no.2. The law authority Appaji (since deceased) and another Versus M.Krishna and another 2004. Accidents Claims Journal 1209, cited by the counsel fully supports his contention. In that case a



scooterist met with an accident due to his own negligence and sustained fatal injuries and it was held that his legal heirs were not entitled to get compensation under Section 163A. That judgment. lays down that one who is victim of his own actions of rash or negligent driving cannot invoke section 163 A for making a claim. In the present case, the version of the petitioners is that the side mirror of the truck, driven by the deceased, had been struck by a branch of the tree being on the road. This apparently shows that the deceased had not taken proper care while driving the truck. It is not the case that a portion of the tree suddenly fell on the truck or that it was a sudden happening and to the contrary the material on record shows that a branch of the tree had already bent towards the road. In the circumstances, it has to be concluded that the deceased was careless while driving the truck and the accident took place due to his own negligence. The fact that the right side mirror of the truck had struck against a portion of the tree further shows that the truck driven by the deceased was moving on his right hand side of the road when the mishap took place. At the same time, however, compensation on “no fault basis” under section 140 b1 the Motor Vehicles Act is payable regardless of the fact whether the person injured or killed in a road side accident was partially or wholly responsible for the accident. The Insurance Company (respondent No.2) has failed to bring any evidence on the file to support the plea taken in the written statement that the deceased not holding a valid driving licence. On the other hand, the petitioners placed on file the driving licence of the deceased and the Insurance company has failed to show as to how this licence is invalid.”