



FAO-488-2006 (O&M)

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

**FAO-488-2006 (O&M)
Reserved on : 28.02.2025
Pronounced on : 06.03.2025**

Smt. Kitabo and others

.....Appellants

Vs.

Manjeet Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ravinder Malik, Advocate,
for the appellants.

Mrs. Shamsher Kaur, Advocate,
for respondent No.5-Insurance Company.

Mr. Akhil Saini, Advocate, for
Mr. Pardeep Goyal, Advocate,
for respondent No.7-Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 13.05.2005 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal'), whereby the claim petition filed by the appellants/claimants for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that Satish Kumar (since deceased) was working as a truck driver. On 05.08.2002, he was driving truck bearing registration No.HR-55A-0394 from Delhi to Jodhpur. At around 01:15 A.M., when he reached near Bhomiaji Than on Nagore Road, which falls under Mandore Police Station, Jodhpur, another truck bearing



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registration No.PB-13G-6634 was coming from Jodhpur to Nagore and both trucks collided head-on. As a result thereof, both trucks drivers died on the spot. Satish's body was taken to Mahatma Gandhi Hospital, Jodhpur, for a postmortem. After postmortem, it was handed over to his family members. In this regard, FIR No.155 dated 05.08.2002, was registered under Sections 279, 337 and 304-A IPC at Police Station Mandore, District Jodhpur (Rajasthan).

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

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

“1. Whether Satish Kumar, the predecessor-in-interest of the petitioners died in a motor vehicular accident, as alleged in the petition, if so its effect? OPP.

2. If issue No.1 is proved whether the petitioners are entitled for compensation, if so to what amount and from whom? OPP.

3. Whether the respondent No.1 Manjit Singh and deceased Satish Kumar had no valid and effective driving licences at the relevant time to drive their respective vehicles, as alleged by respondents No.5 and 7 in their respective written statements? OPR5 and 7.

4. Whether the insured and their drivers had contravened any terms and conditions of the insurance policy of the vehicles in question, as alleged by the respondent No.5 and 7? OPR-5 & 7

5. 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 that the claim petition was dismissed only on the ground that claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988, but deceased-Satish Kumar was stated to be earning Rs.3,500/- per month, as per statements of PW1-Kitabo and PW2-Hukam Singh, parents of the deceased-Satish Kumar. Since, the appellants/claimants pleaded the salary/income of deceased-Satish Kumar was more than Rs.40,000/- per annum, therefore, the appellants/claimants could not take the benefit under Section 163-A of the Motor Vehicles Act, which is meant for legal representatives of the deceased, whose income was upto Rs.40,000/- per annum.

7. *Per contra*, learned counsel for the respondent-Insurance Company, however, vehemently argues on the lines of the award dated 13.05.2005 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. The relevant portion of the award dated 13.05.2005 is reproduced as under:-

“Issues No. 1 and 2.

13. Both these issues are inter-connected, hence taken up together. During the course of arguments, learned



counsel for the petitioners contended that in view of the averments made by the respondents No. 1, 3, 4, 6 and 7 the accident is an admitted fact and that claimants being successor-in-interest of Satish driver deceased are entitled to get the compensation in terms of section 163-A of the Act from the respondents No.5 and 7 being insurer of both the truck, which was being driven by Satish driver. Learned counsel also relied upon the observations made in New India Assurance Company Ltd. versus Shyamo Chuhan and others, 2005(1) Accident Compensation Judicial Reports 520, which has been refuted by the other side i.e. counsel for respondent-insurance companies that petition is not maintainable under section 163-A of the Act in view of income mentioned of the deceased Satish driver and that the FIR was also against him that the accident was caused due to his own rash and negligent driving and that there is collusion between the claimants and other respondents and they also relied upon the observations made in Deepal Girishbhai Soni and others versus United India Insurance Co. Ltd., 2004, ACJ, 934.

14. In New India Assurance's case (Supra) it has been observed that under no fault liability the insurer is liable to pay the compensation to legal heirs of deceased under section 163-A of the Act even deceased was driver of motor vehicle in question.

15. In Deepal's case (Supra) it has been observed that provisions of section 163-A of the Act could be invoked only when the income of the deceased is Rs.40,000/-. Other claims are required to be determined in terms of Chapter XII of the Act.

16. There is also a dispute between the parties with regard to respondent No.1 Manjeet Singh son of Bawa



Ram being driver of truck bearing No. PB-13G-6634. FIR of this case has been tendered as Ex. PA. Its perusal shows that Satish driver of truck No. HR-55-A-0394 died on the spot. He was also found responsible for causing said accident with another truck bearing registration No. PB-13G-6634, whose driver also expired at the spot. Meaning thereby both the drivers died in this accident. The specific name of the driver of the other truck has not been mentioned. However, driving licence of Manjeet Singh was found in the documents placed in that truck. No eye witness to this accident has been examined. However, on behalf of respondent-insurance company No.7 examined Harjit Singh, IPS, retired investigator as RW2, who has stated that he has also investigated this case and visited the place of occurrence and also collected the record of the police and he submitted his report dated 5.2.2003 finding Resham Singh deceased as driver of truck bearing No. PB-13G-6634 and that Manjeet Singh was sitting on his left side and the truck had collided with another truck bearing registration No. HR-55-0394. He proved his report Ex.R1.

17. Petitioners have arrayed respondent No.1 Manjeet Singh showing him as deceased driver of truck bearing No. PB-13G-6634, but he himself appeared as respondent No.1 and also submitted his written statement, but pleading his no negligence and that it was negligence of the other truck driver. His this version is not acceptable. Since truck driver of PB-13G-6634 expired on the driver-seat itself as mentioned in FIR and thus it is made out that said Manjeet Singh was also sitting in the truck and his driving licence was found in the documents kept in driver's cabin, which all goes to show that Manjeet Singh has been falsely introduced as driver of the said truck by claimants and its



owner and attorney i.e. respondent No.2 and 4 as submitted in the report Ex. R1. So, it is made out that the deceased driver of the said truck bearing No. PB-13G-6634 was Resham Singh and not Manjeet Singh respondent No.1.

18. Thus, for the reasons given above, it is made out that Satish Kumar and Resham Singh both the driver of the said truck lost their lives in this accident.

19. As regards compensation, the claimants being LR's of Satish deceased have filed this petition under section 163-A of the Act. They have pleaded deceased's income being Rs.3500/- per month and have also sought compensation to the tune of Rs.6,12,000/- in claim petition. Kitabo herself appeared as PW1 and stated that her son Satish aged about 25 years used to earn Rs.3500/- per month as driver of respondent No.6. His father Hukam Singh claimant as PW2 also deposed to the same effect. Meaning thereby claimants have pleaded the income of the deceased, Satish Rs.42,000/- per annum, so they cannot seek any compensation in terms of section 163-A of the Act which is meant for Legal representatives of the deceased whose annual income was upto Rs. 40,000/- as held in Deepal's case (Supra).

20. So, in these circumstances, it is made out that the petition not maintainable in the present form in view of the pleaded income and the recourse available to the petitioners, was to file a petition under section 166 of Motor Vehicles Act. So, no compensation could be assessed. Accordingly, both these issues stand decided against the petitioners and in favour of the respondents.

Issue No. 3

21. As regards this issue, the petitioners claimed Manjeet Singh respondent No.1 as driver of truck bearing No. PB-13G-6634 and Satish of HR-55A-0394. It has been held in foregoing issues that it was Resham Singh and not Manjeet Singh respondent No.1, who was driving the truck bearing No. PB-13G-6634 at the time of accident and expired at the spot. So, it is to be seen whether Resham Singh and Satish deceased were having any valid driving licence. Driving licence of Satish deceased has not been brought on record by the petitioners-claimants. However, RW1 Ravinder Singh, Clerk, DIO office, Ferozepur (Punjab) stated that Resham Singh son of Sohan Singh was issued learning licence No.29380 dated 11.12.2000 for scooter, LTV only and then for HTV on 8.5.2002 and that this licence was valid from 27.2.2001 to 26.2.2004 and produced photocopy in this regard as Ex.R5. RW2 Harjeet Singh investigator also stated that he has investigated this case about genuineness of driving licence of Resham Singh so submitted by the claimants who admitted him being driver of the said truck instead of Manjeet Singh. He further stated that he had checked the office record of DTO and examined various witnesses and copy of driving licence No.8556 and 29380 which were part of the report dated 10.12.2003, Ex.R2 and relevant documents Ex.R3 and Ex. R4. In the cross-examination he admitted that in report Ex.R2 at page 5, licence No.8556 has been shown genuine. He then stated that said report was found false subsequently.

22. Thus, in these circumstances, in view of entries Ex.R3/R5 and other entries Ex.R4/R6 regarding issuance of learning licence under licence No.29380, it is made out



that learning licence under said number was issued to Balbir son of Kehar Singh and in the entry No.8556 (Ex.R3) Resham Singh son of Sohan Singh has been shown the said entry No.29380 dated 11.12.2000 in respect of issuing learning licence to him which was factually wrong, which all goes to shows that said Resham Singh was not having any valid driving licence.

23. As regards possessing driving licence by respondent No.1 Manjeet Singh, claimants brought the same as Ex.PC and there is no report to the contrary by the other side and meaning thereby the said Manjeet Singh respondent No.1 was having a valid driving licence when the accident took place. Hence, this issue is decided accordingly.

Issue No. 4

24. The onus to prove this issue was on the respondents No.5 and 7, but their counsel did not press these issues during the course of arguments. Hence, both these issues are decided against these respondents.”

A perusal of the above shows that the learned Tribunal decided Issues No.1 and 2 against the appellants/claimants and in favour of the respondents, whereas, issues No.3 and 4 are decided against the respondents.

10. A perusal of the award shows that learned Tribunal, while dismissing the claim petition observed that in the claim petition, the income of the deceased was shown to be Rs.3,500/- per month. By taking his earning to be Rs.3,500/- per month, the annual income of the deceased was calculated as Rs.42,000/- per annum. Since, there is a cap of Rs.40,000/- per annum under Section 163-A of the Motor Vehicles Act, therefore, the claim petition of the appellants/claimants was dismissed.



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11. This Court vide judgment dated 17.05.2024 passed in FAO-407-2006, titled as '**Satpal Vs. Daljit Singh and others**' held as under:-

“13. The claim petitions are drafted by the Advocates and it is standard practice to state the maximum earnings and amount of compensation in 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.”

12. 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.”

13. 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 to the extent of Rs.2.5 lakh. The appellants/claimants are held liable to compensation to the tune of Rs.5,00,000/-.

CONCLUSION

14. 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 13.05.2005 is hereby set aside and the appellants/claimants are held entitled to compensation to the tune of Rs.5,00,000/-.

15. 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



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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.

16. The respondent No.5-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 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.

17. Respective respondent-Insurance Companies are hereby directed to disburse the current scheduled fee to Mrs. Shamsheer Kaur, Advocate, and Mr. Pradeep Goyal, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007 by this Court.

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

(SUDEEPTI SHARMA)
JUDGE

06.03.2025

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No