

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****212****FAO-4122-2013(O&M)****Date of decision: 12.05.2025****Sharanjit Kaur and others****...Appellant(s)****Vs.****Harjit Kaur and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. N.K.Vadhera, Advocate
for the appellants.

Mr. Amrinder Sidhu, Advocate for
respondent No.2-NIC.

NIDHI GUPTA, J.

The present appeal has been filed by the claimants against the dismissal of their claim petition by the learned MACT, Gurdaspur (hereinafter referred to as 'the Tribunal'), vide Award dated 11.03.2013 passed in MACT Case No. 41 dated 22.04.2010 filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). The 3 claimants are the widow and two minor children of the deceased Yaadvinder alias Azadwinder Singh.

2. Brief facts of the case are that it was alleged by the claimants that on 1.9.2009, the deceased Yaadvinder @ Azadwinder Singh alongwith Sikandar Randhawa, Surjit Singh and Hari Parsad, was going to Amritsar, on a Tata Safari bearing registration No.PB-18-Q-2366 (hereinafter referred to as 'offending vehicle'), after getting repaired a machinery of



Dharampal Randhawa Filling Station, V. Rattan Shattar, Tehsil Dera Baba Nanak, Gurdaspur. The said vehicle Tata Safari was being driven by deceased Yaadvinder Singh. Balwinder Singh and Davinderpal Singh were travelling in Santro Car No.PB-58-8171. At 9.30 p.m., when they reached near the road turning towards Muradpura, the vehicle Tata Safari driven by deceased went out of control and struck against Safeda trees on the right side of the road, as a result of which all the four occupants of the said vehicle Tata Safari, including deceased Yaadvinder Singh, died at the spot. Postmortem of the deceased was conducted at Government Medical College, Amritsar, on 2.9.2009. FIR No.22 regarding the accident in question was lodged in P.S. Sadar, Amritsar, on 2.9.2009. The deceased Yaadvinder Singh had died due to the injuries suffered by him in the motor vehicular accident that took place on 01.09.2009. The offending vehicle was owned by respondent No.1 and is insured by respondent No.2.

3. Learned counsel for the appellants/claimants submits that claim petition of the appellants has been wrongly dismissed as in the claim petition under Section 163-A of the Act, only the occurrence of accident has to be proven, and negligence is not required to be proved.

4. It is further submitted that the Learned Tribunal has erroneously held that the appellants cannot scale down income of the deceased to invoke provision of Section 163-A of the Act. It is settled law that the appellants can scale down the income of the deceased for taking the benefit of Section 163-A of the Act. Moreover, in the present case, the proved income of the deceased is less than Rs.40,000/-per annum.



5. Learned counsel for the appellants also submits that the learned Tribunal ought to have appreciated that the appellants had even filed an application seeking scaling down of the income of the deceased from Rs.75,000/- p.m. to Rs.3,200/- p.m. Ld. counsel relies upon judgment of this Court in **FAO-301-2006** titled as "**Jai Kishan vs. Jagat Bhushan Midha and others**", **Neutral Citation No.: 2025:PHHC:006935**, to submit that in the said case also, although income of the deceased was pleaded to be Rs.6,000/- p.m., relief was granted and compensation was awarded under Section 163-A of the Act. It is accordingly prayed that the present appeal be allowed; and impugned Award dated 11.03.2013 be set aside.

6. Learned counsel for the respondent No.2-Insurance Company vehemently opposes the prayer made on behalf of the appellants and submits that it is a mandatory provision of the Act that for claim petition to be maintainable under Section 163-A of the Act, income of the deceased has to be Rs.40,000/- per annum or less. Hence, the claim petition was rightly dismissed. It is accordingly prayed that present appeal be dismissed.

7. No other argument is raised on behalf of the parties.

8. I have heard learned counsel for the parties and perused the case file in great detail.

9. The claimants had filed claim petition with the specific averment that deceased was earning Rs.75,000/- p.m. It was also stated that deceased was owner of 86K 12M of land, from which he was deriving said income of Rs.75,000/- per month. Thereafter, an application for scaling



down income of the deceased from Rs.75,000/- to Rs.3,200/- p.m. was filed by the appellants. However, said application was dismissed as withdrawn on 27.02.2013.

10. I find no merit in the submissions advanced on behalf of the appellants. Statutory and mandatory provisions of law cannot be given a go-by in this manner. No doubt, vide an amendment of the year 2019, which came into effect from 1.4.2022, Section 163-A of the Act is now substituted by a similar provision of Section 164. Be that as it may, what is relevant for our purposes is that at the time of accident on 1.9.2009, it was Section 163-A which was applicable. A 3-Judge Bench of the Hon'ble Supreme Court in "*Deepal Girishbhai Soni v. United India Insurance Co. Ltd.*", (SC): Law Finder Doc Id # 70466 has categorically held that where income of the claimant is more than Rs.40,000/- per annum, it makes him ineligible to file claim petition under section 163-A of the Act. As such, appellant can derive no benefit from relied-upon judgment of this Court in *Jai Kishan's case (supra)*.

11. In view of the above, present appeal is hereby **dismissed**.

12. Pending application(s) if any also stand(s) disposed of.

12.05.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No