



No.1 while S.P.Sharma (since deceased) was sitting as a pillion rider. When they reached near Minerva Academy in village Daon, respondent No.1 riding LML Vespa Scooter bearing registration No.PB-65-A-5167 allegedly overtook their scooter in a rash and negligent manner and suddenly slowed down his scooter. As a result thereof, appellant/claimant No.1's scooter collide with respondent No.1's scooter leading to injuries to both appellant/claimant No.1 and his father, S.P.Sharma. Thereafter, they were taken to the hospital, where S.P.Sharma remained hospitalized for over four months, but ultimately succumbed to the injuries.

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

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

“1. Whether the claimants are the legal heirs of the deceased? OPP.

2. Whether the deceased died in a motor vehicular accident which took place with scooter No.PB-65-A-5167 which was being driven by Harvinder Singh alias Raju respondent No.1? OPP.

3. If issue No.1 and 2 are proved to what amount of compensation, the claimants are entitled to and from whom of the respondents? OPP.

4. Whether respondent No.1 was not holding a valid driving license? OPR.

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 deceased-S.P.Sharma was earning more than Rs.40,000/- per annum. Since the salary/income of deceased (S.P.Sharma) 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.

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. The relevant portion of the award dated 10.01.2005 is reproduced as under:-

“ISSUE NO.1

9. *It is admitted case of the parties that claimants No.1 and 2 are the sons while claimant No.3 is the widow of the deceased (SP Sharma). So they being sons and widow of the deceased are class-I legal heirs for the purpose of this petition. This issue is decided in favour of the claimants.*

10. *Before giving finding on the other issues, I would like to mention here that the Insurance Company in its written statement has taken an objection regarding the maintainability of the present petition. Admittedly the claimants have knocked the door of this Tribunal under Section 163-A of the Motor*



Vehicles Act and it is pleaded in para No.4 and 6 of the petition that the deceased was working as a property dealer in the name and style of M/s Sharma property dealer and was earning Rs.15,000/- per month. PW1 Naveen Sharma has also deposed in the similar fashion before this Tribunal. Under the second Schedule appended to section 163-A of Motor Vehicles act, the maximum income of the deceased should be Rs.40,000/- per annum or less. In the instant case, as per the case of the claimants, the deceased was earning Rs.15,000/- per month or Rs. 1,80,000/- per annum. Therefore prima facie, the present petition under section 163-A of the Act is not maintainable because the scheme of the provisions under section 163-A and 166 are distinct and separate in nature. In Sub-section (5) of section 140 of the Act, the expression also as been used which is indicative of the fact that the owner of the vehicle would be additionally liable to pay compensation under any other law of the time being in force. Right to claim compensation under Section 140, having regard to the provisions contained in section 141 is in addition to any other right to claim compensation on the principle of no fault liability whereas such a provisions does not exist in section 163-A. It has been held by the Hon'ble Apex court in Deepal Girishbai Soni and others Vs United of India Insurance Co. Ltd. 2004 ACJ 934 as under:-

“The scheme as envisaged under section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the afore-mentioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike section 140. In terms of the said provision, a distinct and specified class of citizens, namely persons whose income per annum is Rs.40000/- or less is covered there under whereas sections 140 and 166 cater to all sections of society.

It may be true that section 163-B provides for an option to a claimant to either go for a claim under section 140 or section 163-A of the Act, as the case may be but the same was inserted ex abundanti cautela so as to remove any misconception in the mind of the parties to the lis having regard to the fact that both relate to the claim on the basis of ‘no fault liability’. Having regard to the fact that section 166 of the Act provides for a complete machinery for slaving a claim on fault liability, the question of giving an option too the claim to pursue their claimants either under section 163-A or section 166 does



not arise. If the submission of the learned counsel is accepted the same would lead to any incongruity.

Although the Act is beneficial one, and thus deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby.”

It has been further laid down by the Hon'ble Supreme Court as under:-

“.....However, we do not agree with the findings in Kodala (supra), that if a person invokes provisions of section 163-A, the annual income of Rs.40,000 shall be treated as a cap. In our opinion the proceeding under Section 163-A, being social security provision, providing for a distinct scheme only those whose annual income is upto Rs. 40,000/- can take the benefit thereof. All the other claims are required to be determined in terms of Chapter XII of the Act.”

It has also been held by the Hon'ble Karnataka High Court in Guruanna Vadi and another Vs. General Manager, Karnataka State Road Trans. Corpn. and another 2001 ACJ 1528 that “the legislature intended to extend the benefit of the provision to a chosen class of persons. The intention to limit it to a certain class is exemplified in the Schedule appended to the statute. The Schedule forms part of the statute and if often gives the details and forms for working out the policy underlying the statute. "It has been further laid down that the Second Schedule limits the operation of the section to a limited class of persons whose income is Rs.40,000 or less per annum.” As, already observed above, as per the case of the claimants, the deceased was working as Property Dealer and was earning Rs. 15000/- per month. Therefore, in view of the law laid down by the Hon'ble higher courts, the present petition under Section 163-A of the Act is not maintainable and the same is liable to be dismissed.”

A perusal of the above shows that the learned Tribunal decided

Issue No.1 against the appellants/claimants.

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.15,000/- per month. By taking his earning to be Rs.15,000/- per month, the annual income of the deceased was calculated as Rs.1,80,000/- 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. However, learned Tribunal has erred in dismissing the claim petition solely on the ground that deceased's income was more than Rs.40,000/- per annum.

11. This Court vide judgment dated 17.05.2024 passed in **FAO-407-2006**, titled as '**Satpal Vs. Daljit Singh and others**' has already adjudicated upon the similar issue. The relevant extract of the same is reproduced 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.*



FAO-3092-2006 (O&M)

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 of Rs.2.5 lakh. The appellants/claimants are held entitled 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 10.01.2005 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 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.3-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. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Vinod Gupta, Advocate, pursuant to the order dated 18.07.2024 passed in FAO-1682-2007, within a period of 20 days from the date of receipt of the copy of this judgment.

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

(SUDEEPTI SHARMA)
JUDGE

29.01.2025
Virrendra

Whether speaking/non-speaking : Yes
Whether reportable : Yes/No