

(2006) 08 P&H CK 0125

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Smt. Rani Devi and
Others

APPELLANT

Vs

Rai Singh and Others

RESPONDENT

Date of Decision: Aug. 28, 2006

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 163A, 166

Citation: (2006) 4 ACC 146

Hon'ble Judges: M.M.S. Bedi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

M.M.S. Bedi, J.

The petitioners are claimants before the learned Motor Accident Claims Tribunal, Karnal (for short "the Tribunal"). Their application under Order 23 Rule 1 C.P.C. for permitting them to relinquish part of their claim by bringing down the income of the deceased from Rs. 3500/- per month to Rs. 3300/- per month and to proceed with the petition u/s 163A of the Motor Vehicles Act, 1988 (for short "the Act") stands dismissed vide the impugned order passed by the Tribunal. Learned Counsel for the petitioner has submitted that the sole bread earner of the family of the claimants has expired in a motor vehicle accident and it had been pleaded in para 24 of the claim petition that the accident had taken place on account of the rash and negligent driving of respondent No. 2, driver of the offending tractor. The accident has already been denied by respondents 1 and 2 in their written statement. Even the Insurance Company has also denied the accident. Relying upon [Gurmeet Kaur and Others Vs. Hardeep Singh and Another](#), , it was argued that Section 163-A is a social security provision, which gives a right to the claimants to claim income of the deceased upto Rs. 40,000/- per annum and for this purpose the claimants need not to prove the negligence on part of the offending vehicle, as such the said provision

has be interpreted in a liberal manner. In the said case the abandonment of part of the claim under Order 23 Rule 1 C.P.C. was held permissible to take the protection of Section 163-A of the Act. It was observed in the said judgment that the application for restricting the claim to Rs. 7 lacs instead of Rs. 10 lacs cannot be said to be an application under Order 6 Rule 17 C.P.C.

2. On the other hand learned Counsel for the respondents has placed reliance on Deepal Girishbhai Soni and Ors. v. United India Insurance Co. Ltd Baroda (2004) 137 PLR 217, to contend that a claimant cannot pursue his remedies under Sections 163-A and 166 of the Act simultaneously.

3. I have heard learned Counsel for the parties and gone through the facts and circumstances of the present case. The claimants seek to amend their claim petition filed u/s 166 to a petition u/s 163-A of the Act by relinquishing part of their claim by pleading that the deceased was earning a sum of Rs. 3000/- per month whereas in the original petition it was pleaded that the deceased was earning Rs. 3500/- per month.

4. In Deepal Girishbhai Soni's case (supra) considering the scope of Section 140 and Section 163-A of the Act it was held that Section 140 of the Act dealt with interim compensation whereas by inserting Section 163-A, the Parliament intended to provide for making of an award consisting of a predetermined sum without insisting on a long drawn trial or without proof of negligence in causing the accident.

5. In the said case two applications had been filed by the claimants. One u/s 163-A and another u/s 166 of the Act. Both the applications had been entertained by the Tribunal as well as by the High Court and on the basis that the amount of compensation u/s 163-A is by way of an interim award and the same would not preclude the claimants to proceed with made in terms of Section 166 of the Act. The Hon'ble Supreme court had directed that the application u/s 163-A be treated u/s 140 of the Act. It was specifically clarified in the said judgment that a claimant cannot pursue his remedies u/s 163-A and 166 of the Act simultaneously and thus one must opt/elect to go either for a proceedings u/s 163-A or u/s 166 of the Act but not under both.

6. The question of abandonment of claim came up for consideration before this Court in Gurmeet Kaur's case (supra), wherein it was observed as follows:

I have considered the contentions of both the sides and I am of the considered view that the petitioners who are claimants before the MACT have already filed a petitioner u/s 163-A of the Motor Vehicles Act and, thus, are entitled to say that the deceased was earning less than Rs. 40,000/- per annum. Under the second Schedule attached with Section 163-A of the Motor Vehicles Act the petitioners need not to prove the negligence of the offending vehicle and that Section 163-A is a social security provision which gives a right to the claimants to claim income of the deceased upto Rs. 40,000/- and for this purpose they need not prove the negligence

on part of the offending vehicle. Thus, this provision being an essential legislation in favour of claimant has to be interpreted in a liberal manner.

In the instant case, the petitioners have scaled down the compensation from Rs. 10 lacs to Rs. 7 lacs and are claiming that the deceased was earning Rs. 3300/- per month instead of Rs. 4,000/- per month and, thus, no prejudice can be said to have been caused to the respondents in the present case as lesser compensation is being now claimed. Moreover, the application for restricting the claim to Rs. 7 lacs instead of Rs. 10 lacs cannot be said to be an application essentially in the nature of Order 6 Rule 17 C.P.C.

7. Following the ratio of the above said judgments, I do not find any reason to disallow the petitioners to abandon their claim, which is permissible under Order 23 Rule 1 C.P.C. and to seek the amendment in para 24 of the claim petition to plead that the deceased was earning a sum of Rs. 3300/- per month instead of Rs. 3500/- per month as pleaded earlier. In view of the above, revision petition is allowed, impugned order dated 18.2.2005 is set aside and the application for amendment is allowed.

8. The parties are directed to appear before the trial Court on 7.11.2006 for further proceedings.