

(2011) 03 P&H CK 0385

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1960 of 2011 (O and M)

Sham Singh

APPELLANT

Vs

Anil Kumar and Others

RESPONDENT

Date of Decision: March 23, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, 151
- Constitution of India, 1950 - Article 227
- Motor Vehicles Act, 1988 - Section 163A , 166

Citation: (2011) 163 PLR 89 : (2011) 3 RCR(Civil) 162 : (2011) 4 TAC 140

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ram Chand Gupta, J.

C.M. No. 7671-CII of 2011

1. Application is allowed subject to all just exceptions.

Civil Revision No. 1960 of 2011

2. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 11.3.2011, Annexure P3, passed by learned Motor Accident Claims Tribunal, Karnal, (hereinafter to be referred as the "Tribunal") vide which application filed by Petitioner-claimant under Order VI Rule 17 read with Section 151 of the CPC (hereinafter to be referred as "the Code") for amendment of the claim petition has been dismissed.

3. I have heard learned Counsel for the Petitioner and have gone through the whole record carefully including the impugned order passed by learned Tribunal.

4. Facts relevant for the decision of present revision petition are that initially claim petition for compensation was filed u/s 166 of the Motor Vehicle Act, 1988 (hereinafter to be referred as the "Act") by the present Petitioner-claimant and the other claimants. However, during pendency of the said petition, an application under Order VI Rule 17 read with Section 151 of the Code was filed for amendment of petition by taking the plea that claimants have mentioned the income of deceased as Rs. 5,000/- per month inadvertently and that in fact his income was Rs. 40,000/- per annum. Hence, a request was made to amend the requisite para No. 6 of the petition by reducing the income of deceased from Rs. 5,000/- per month to Rs. 40,000/- per annum and accordingly, the petition be also permitted to be converted from u/s 166 of the Act to Section 163A of the Act.

5. Application was opposed by Respondents on the plea that there was a specific plea taken by the claimants that deceased used to earn Rs. 5,000/- per month from agricultural and dairy farming and that the plea was also supported by the claimants at the time of leading evidence by filing affidavit in which as well claimants stated that deceased used to earn Rs. 5,000/- per month and that, however, in order to take benefit of provision of Section 163A of the Act, claimants intend to reduce the income of the deceased to Rs. 40,000/- per annum.

6. Learned Tribunal declined the request of Petitioner-claimant by placing reliance upon *Gurmit Singh v. Chandigarh Transport Undertaking*, 2008 ACJ 2303 (P&H).

7. It has been contended by learned Counsel for the Petitioner that income of deceased was inadvertently mentioned as Rs. 5,000/- per month and that Petitioner only intends to reduce the income of deceased to Rs. 40,000/- per annum and intends to claim compensation u/s 163A of the Act instead of Section 166 of the Act. It is further contended that the question regarding income of the deceased can be left to be decided by learned trial Court on the basis of evidence adduced and, however, requisite amendment can be allowed. He has also placed reliance upon a judgment rendered by a coordinate Bench of this Court in *The New India Assurance Company Ltd. v. Sanjeev Kumar and Anr.* 2010(2) RCR (Civil) 58.

8. Law on the point has been settled by Hon'ble Apex Court in [Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda](#), by observing as under:

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

9. A Division Bench of this Court in *Himachal Road Transport Corporation and Anr. v. Baldev Kumar Nayyer and Ors.* 2006(2) RCR (Civil) 682: 2006(2) PLR 75 by placing

reliance upon Deepal Girishbhai Soni and others's case (supra) has declined similar request of claimant for treating the petition u/s 163A of the Act instead of Section 166 of the Act by restricting the income of the deceased to less than Rs. 40,000/- per annum by observing as under:

3. On the last date of hearing, counsel for the Appellant had placed reliance on the judgment of Apex Court in Deepal Girish Bhai Soni and Ors. v. United India Insurance Company Ltd., 2004(2) RCR (Civil) 466: (2004-2) 137 P.L.R. 271 (S.C.) to contend that in view of the claim of the claimants themselves that the income of the deceased/injured was more than Rs. 40,000/- per annum, the Tribunal was not justified in treating the petitions to be petitions u/s 163-A of the Act and awarding compensation without going into the question of negligence. Counsel for the claimant-Respondents had sought time to go through the said judgment. He has not been able to refer to any other subsequent judgment of the Supreme Court taking a contrary view.

4. In this view of the matter, we are satisfied that the impugned award dated 6.11.2003 cannot be sustained. The Tribunal could not have treated the petitions filed u/s 166 of the Act as petitions u/s 163-A of the Act by restricting the income to Rs. 40,000/- This issue stands settled by the Apex Court in Deepal Girish's case (supra). Accordingly, we set aside the impugned award dated 6.11.2003 and direct the Motor Accident Claims Tribunal, Panchkula, to decide the petition filed u/s 166 of the Act in accordance with law.

10. So far as Sanjeev Kumar and another's case (supra) on which reliance has been placed on behalf of the Petitioner is concerned, the same is based on different facts as in that case the original petition was not filed u/s 166 of the Act and rather the original petition was filed u/s 163A of the Act and hence, there was no request for converting the petition from Section 166 of the Act to Section 163A of the Act.

11. In the present case, specific plea has been taken by claimants that the deceased used to earn Rs. 5,000/- per month from agricultural work as well as by doing dairy farming. Even during evidence, affidavit was filed by one of the claimants reiterating the income of the deceased as Rs. 5,000/- per month.

12. Hence, learned Tribunal has rightly declined the request of Petitioner for amendment of the claim petition by treating the same as u/s 163A instead of Section 166 by restricting the income of the deceased Rs. 40,000/- per annum.

13. Hence, in view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned Tribunal in passing the impugned order and that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

14. Moreover, law is well settled in Surya Dev Rai v. Ram Chander Rai and Ors. 2004(1) RCR (Civil) 147 that mere error of fact or law cannot be corrected in the

exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that a grave injustice or gross failure of justice has occasioned thereby.

15. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.