

(2010) 01 P&H CK 0236

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 2008 of 2009

Joginder

APPELLANT

Vs

JSP Services (P) Limited and
Another

RESPONDENT

Date of Decision: Jan. 22, 2010

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A

Citation: (2011) ACJ 2125 : (2010) 159 PLR 615 : (2010) 2 RCR(Civil) 542 : (2011) 2 TAC 152

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.

This appeal by the claimant is directed against the award dated 6.3.2009, passed by the learned Motor Accident Claims Tribunal, Jind, vide which the claim petition filed by the appellant u/s 163-A of the Motor Vehicles Act, 1988, was ordered to be dismissed as not competent.

2. The appellant claimed compensation to the tune of Rs. 10,00,000/- (Rupees ten lac only), on account of injuries suffered by him in a motor vehicular accident. The appellant claimed, that he was earning Rs. 7,000/- (Rupees seven thousand only) per month by way of income.

3. This fact was not disputed by the respondent-employer in written statement. Rather the employer of the appellant admitted the factum of salary.

4. However, in the evidence, the appellant stated his income to be only Rs. 3,000/-(Rupees three thousand only) per month, without producing on record the salary certificate, though he was admittedly an employee. It is also pertinent to mention here, that in reply to the claim petition, the employer of the appellant

admitted that he was being paid a salary of Rs. 7,000/- (Rupees seven thousand only) per month.

5. The learned Tribunal, therefore, came to the conclusion that petition u/s 163-A of the Motor Vehicles Act, was not competent, and accordingly dismissed the petition.

6. Learned Counsel for the appellant contends, that the learned Tribunal failed to record the finding with regard to income, which on evidence was proved to be Rs. 3,000/-(Rupees three thousand only) per month.

7. The averment of the appellant that he was drawing Rs. 7,000/- (Rupees seven thousand only) per month as salary was affirmed by the owner by filing the written statement, therefore, oral evidence contrary to the pleadings, could not be accepted in absence of any other documentary evidence on record.

8. Consequently, no fault can be found with the judgment passed by the learned Tribunal.

9. Learned Counsel for the appellant contends that the award passed by the learned Tribunal is contrary to the law laid down by the Hon"ble Karnataka High Court in *Guruanna Vadi and Anr. v. The General Manager, Karnataka State Road Transport Corporation and Anr.* 2001 (3) R.C.R. (Civil) 693.

10. This contention is totally mis-conceived, as the Hon"ble Karnataka High Court has nowhere held, that the averments made in the claim petition, which are admitted by the owner, are not to be believed. The Hon"ble Karnataka High Court has nowhere laid down that provision of Section 163-A can be claimed by person not falling in the limit prescribed. The findings by the Hon"ble Karnataka High Court read as under:

33. Question No. 4: The Legislature intended to extend the benefit of this 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 it often gives the details and forms for working out the policy underlying the statute. The division of a statute into section and Schedules is a mere matter of convenience and the Schedule, therefore, has to be treated as a substantive enactment which, sometimes, may even go beyond the scope of a section to which the schedule is appended. 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. The prescription of the outer limit of Rs. 40,000/- under the Schedule does not take away the right of the person to claim compensation under any other provision of the Act. The Legislature in its wisdom has thought it fit to provide the luxury of choice to persons whose income does not exceed Rs. 40,000/- in order to obviate the need for such persons to involve themselves in a long drawn litigation, the cost and consequences of which may work to their disadvantage and ultimate failure of justice. Such a beneficial provision which is more in the nature of advancement of social justice, keeping in

view a select class of citizens, cannot be construed by Courts as applicable to all class of citizens. But, in case the person with the higher income notionally brings down his income to Rs. 40,000/- in order to present his claim u/s 163-A the same can be permitted.

34. It is one of the principles of statutory interpretation that what was not been provided for in a statute cannot be supplied by Courts. To do so will amount to legislating which is not the function of the Courts. That it would be more logical to enlarge the application of a provision to all class of citizens by itself would be no ground for the Courts to read something into a provision not intended by the Legislature as it would amount to usurpation of the legislative function under disguise of interpretation.

10. This judgment, thus, goes against the appellant as the positive case of the appellant was that his salary was Rs. 7,000/- (Rupees seven thousand only) per month, this was admitted by the employer. The appellant in his evidence would not bring down his income to claim benefit u/s 163-A, which is meant for a special category of persons.

No merit.

Dismissed.