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**(2012) 02 P&H CK 0037**

**In the Punjab And Haryana At Chandigarh**

**Case No : F.A.F.O. No's. 602 and 603 of 2011 (O and M)**

Gurmit Kaur and Others

APPELLANT

Vs

Mohan Singh and Others

RESPONDENT

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**Date of Decision : 22-02-2012**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 163A

**Citation : (2012) 3 TAC 433**

**Hon'ble Judges : K.C. Puri, J**

**Bench : Single Bench**

**Advocate : Arvind Kashyap, for the Appellant; Naveen Sharma, Advocate for Respondent No. 2 and Shri Ravinder Arora, Advocate, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

K.C. Puri, J.—Vide this judgment, I intend to dispose off FAO No. 602 of 2011 titled as Gurmit Kaur and others v. Mohan Singh and others and FAO No. 603 of 2011 titled as Karamjit Kaur and others v. Mohan Singh and others, as both these appeals have been filed against the two awards which were the result of a single accident. For the sake of convenience, the facts are being taken from FAO No. 602 of 2011.

2. The claimants filed the claim petition u/s 163-A of the Motor Vehicles Act for grant of compensation, in respect of death of Surjit Singh in a motor vehicular accident. It was pleaded that applicant No. 1 Gurmit Kaur is the widow and applicant No. 2 Baldeep Singh is the minor son of Surjit Singh. Applicant Nos. 3 and 4, namely, Balbir Singh and Mohinder Kaur are the parents of said Surjit Singh. Surjit Singh was aged 30 years and was working as cleaner on the truck. He was earning Rs. 3,300/- per month. On 25th November, 2007, Surjit Singh and Rajwinder Singh were unloading the electric poles loaded on Trolly No. PB-23-E-9095 and sustained serious injuries as the rope by which the electric poles were tied broke down. The electric poles suddenly fell down on them. In this accident both Surjit Singh and Rajwinder Singh died on the spot. FIR No. 104

dated 25th November, 2007 was recorded at P.S. Andal, West Bengal.

3. Notice was given to the respondents. Respondent No. 1 filed reply taking preliminary objections that the claim petition is not maintainable in the present form. The applicants could not file the claim petition u/s 163-A of the Motor Vehicles Act. On merits, the facts were denied for want of knowledge. Ownership of respondent No. 2 was admitted.

4. Respondent No. 2 filed separate written statement taking the objection of maintainability. It is pleaded that the claimants can seek compensation under the Workmen's Compensation Act.

5. The Insurance Company-respondent No. 3 filed separate written statement taking preliminary objections of maintainability of application u/s 163-A of the Motor Vehicles Act. It is pleaded that the truck was not being used at the time of accident.

6. Objection of territorial jurisdiction was also taken. Another claim petition was preferred by the LRs of Rajwinder Singh taking similar plea that he was driver of the said Trolly. Other facts were similar to that of claim petition preferred by LRs of Surjit Singh.

7. The stand taken by the respondents in that claim petition is also the same.

8. From the pleadings of the parties, following issues were framed in claim petition filed by LRs of Surjit Singh :-

1. Whether Surjit Singh son of Balbir Singh died on 25th November, 2007 at about 10.45 a.m. in the area of P.S. Andal, West Bengal, due to the injuries received by him during the use of truck No. PB-23-E-9095? OPP

2. Whether the claimants are entitled to compensation, if so, to what extent and from whom? OPA

3. Whether claim petition is not maintainable? OPR

4. Relief.

9. Following additional issues were also framed :-

1. Whether the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident? OPR

2. Whether claim petition is not maintainable? OPR

10. From the pleadings of the parties, following issues were framed in claim petition filed By LRs of Surjit Singh :-

1. Whether on 25th November, 2007 at about 10.45 a.m. In the area of P.S. Andal, West Bengal Rajwinder Singh son of Mann Singh died due to the rash and negligent act of Trolly No. PB-23-E-9095? OPP

2. Whether the driver of offending truck/Trolla was not holding a valid and effective driving licence at the time of accident? OPR 3

3. Whether claim petition is not maintainable? OPR

4. To what amount of compensation the claimants are entitled to and from whom? OPA

5. Relief.

11. Learned Tribunal after appreciating the evidence, reached to the conclusion that Surjit Singh and Rajwinder Singh have not died due to use of the motor vehicle and as such the claim petitions were dismissed on that ground.

12. Feeling dissatisfied with the two different awards, the above noted FAO Nos. 602 and 603 of 2011, have been preferred by the LRs of Surjit Singh and Rajwinder Singh.

13. Learned Counsel for the appellants has submitted that the Tribunal has not assessed the evidence on the file in its right perspective. This Court in authority reported as *United India Insurance Company Limited v. Lakhwinder Singh and others*, 2010 (3) R.C.R. (Civil) 33, has held that where the person was sleeping on the truck which was standing on the road side, the person fell down and died, in that case it would be held that he died due to use of the motor vehicle and claim petition u/s 163-A of the Motor Vehicles Act was maintainable.

14. Learned Counsel for the appellants has also relied upon the authority reported as *Smt. Rita Devi and others v. New India Assurance Co. Ltd. and another*, AIR 2000 S.C. 1930 : 2000 (2) T.A.C. 213 (S.C.). He has submitted that in that case autorickshaw driver was employed to drive autorickshaw for carrying passengers on hire. Passengers committed act of felony of stealing autorickshaw and murdered the autorickshaw driver. In that case also it was held that accident/death is the result of use of vehicle under the provisions of Motor Vehicles Act.

15. No contrary authority could be cited by Learned Counsel for the respondent.

16. From the facts of the present case, both the deceased Surjit Singh and Rajwinder Singh were unloading the goods loaded in the Trolla in question. The rope tying those electric poles was broken and those poles have fallen on Surjit Singh and Rajwinder Singh, resulting into their death.

17. So, in view of both the above said authorities in *Lakhwinder Singh's* case (supra) and *Smt. Rita Devi's* case (supra), I have no hesitation in holding that both Surjit Singh and Rajwinder Singh have died due to use of motor vehicle as envisaged u/s 163-A of the Motor Vehicles Act and as such the application u/s 163-A of the Motor Vehicles Act, is maintainable.

18. So, finding of the Tribunal in both the cases stands set aside and both the appeals stand accepted. Since, the Tribunal has not giving finding regarding the other facts of the case and as such the case stands remanded back to the

Tribunal for deciding afresh regarding the quantum of compensation and the liability to pay the amount of compensation.

Parties are directed to appear before the Tribunal on 20th March, 2012.

The files of the Tribunal be sent back, if received by this Court.