**(2019) 05 P&H CK 0075**

**In the Punjab And Haryana At Chandigarh**

**Case No :** First Appeal Order No. 8101 Of 2014 (O&M)

Joginder Singh APPELLANT

Vs

Kulwant Singh And Another RESPONDENT

**Date of Decision :** 10-05-2019

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 163A

**Citation :** (2019) 05 P&H CK 0075

**Hon'ble Judges :** Avneesh Jhingan, J

**Bench :** Single Bench

**Advocate :** Kushagra Mahajan, Madhu Sharma

**Final Decision :** Allowed

## Judgement

The award dated 9.5.2014 passed by Motor Accident Claims Tribunal, Amritsar, (hereinafter referred to as 'the Tribunal') has been assailed by the legal heir of Bir Singh @ Beera seeking enhancement of compensation awarded under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act').

The respondents are owner of bus bearing registration No.PB-08-BL-5239 (for short 'the Bus') and insurer (i.e. National Insurance Company Limited) of the Bus.

The facts necessary for adjudication of the present appeal are that on 26.5.2012, a truck bearing registration No.PB-05-S-9385 loaded with sand was coming from Ajnala side. The truck struck against the back side of the bus, as a result, the driver of the bus lost control and ran over the Khokha run by Sulakhan Singh. Bir Singh @ Beera who was plying a rickshaw came underneath the truck and received injuries and succumbed to the injuries.

A claim petition under Section 163-A of the Act was filed. The Tribunal came to the conclusion that Bir Singh lost his life in a motor vehicular accident and the bus was involved in the accident. FIR No. 74 was registered at Police Station Raja Sansi, District Amritsar. The Tribunal assessed the notional income of the deceased as Rs.15,000/- per annum and made 1/3rd deduction for self-expenses. Since, the deceased was 55 years of age, multiplier of 11 was applied. A sum of Rs.1,20,000/- was awarded along with interest @ 6 % per annum. The amount awarded included Rs.10,000/-under conventional heads.

Learned counsel for the appellant argues that the Tribunal erred in treating the deceased as non-earning member while he was plying rickshaw even at the time of accident.

Learned counsel for the insurer defends the award, argues that the deceased was 55 years of age and multiplier of 11 has wrongly been applied. The submission is that the amount under conventional heads be awarded as per Second Schedule to the Act.

An alternative machinery for claiming compensation has been provided under the Act through Section 163-A. In these proceedings, the claimants are not required to prove rash and negligent driving of the offending vehicle. The restriction is that income of the deceased is less than Rs.40,000/- per annum and the compensation is to be awarded in consonance with the Second Schedule to the Act.

As per the pleadings of the claim petition, the deceased at the time of accident was plying a rickshaw. Meaning thereby he was an earning person. In such circumstances, it would not be appropriate to assess his notional income as Rs.15,000/- per annum.

Considering the year of accident and the fact that he was plying the rickshaw, his income is assessed as Rs.3300/- per month, 1/3rd deduction for self-expenses is made.

The contention raised by learned counsel for the insurer that multiplier of 11 has wrongly been applied is not well founded.

There is nothing on record that the deceased was exceeding 55 years of age. The exact date of birth is not on record, no interference is called for in the multiplier applied by the Tribunal.

As per the Second Schedule to the Act, claimant is awarded Rs.2000/- and Rs.2500/- as funeral expenses and loss of estate respectively.

In view of the above discussion, the compensation is recalculated as under:

Sr. No.

Particulars

Amount awarded ( Rs.)

1.

Income assessed

3300/-

2.

1/3rd deduction for self-

1100/-

expenses

3.

Annual dependency

2200 x 12=26,400/-

4.

Multiplier of 11

26,400 x 11 =2,90,400/-

5.

Funeral expenses

2000/-

6.

Loss of estate

2500/-

7.

Total

2,94,900/-

The award dated 9.5.2014 is modified to the extent that amount awarded of Rs.1,20,000/- by the Tribunal is enhanced to Rs.2,94,900/-.

The claimant shall be entitled to enhanced amount alongwith interest as awarded by the Tribunal from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the aforesaid terms.

 