**(2006) 05 P&H CK 0003**

**In the Punjab And Haryana At Chandigarh**

New India Assurance Co. Ltd. — APPELLANT

Vs

Jaspreet Kaur and Others — RESPONDENT

**Date of Decision :** 30-05-2006

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 163A, 166

**Citation :** (2007) ACJ 2167 : (2006) 3 RCR(Civil) 810

**Hon'ble Judges :** Vinod K.Sharma, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Vinod K. Sharma, J.—This appeal has been filed by insurance company against the award of the Motor Accidents Claims Tribunal, Jalandhar dated 9.12.2002 in the M.A.C.T. Case No. 40 of 2001.

2. This appeal was ordered to be heard with F.A.O. No. 2022 of 2003 as the point of law involved is the same as to whether petition u/s 163A of the Motor Vehicles Act, 1988, on behalf of the claimants was competent.

3. Learned Counsel appearing for the appellant contended that the deceased was alleged to be earning Rs. 3,500 per month and, therefore, it was not open for the legal heirs of the deceased to file petition u/s 163A of the Motor Vehicles Act, 1988, even on the stand of the appellant that this case was ordered to be heard along with F.A.O. No. 2022 of 2003. Learned Counsel further argued that though as per the pleadings of the claimants, income of the deceased was to be taken as Rs. 3,000 per month and, yet it was not open to the claimants to file the petition u/s 163A of the Motor Vehicles Act.

4. I have gone through the judgment passed by the Motor Accidents Claims Tribunal and find that the learned Tribunal, on appreciation of evidence on the record, came to the conclusion that the income of the deceased at the time of his death was about Rs. 3,000 per month, i.e., Rs. 36,000 per annum. Learned Tribunal by imposing a cut of 1/3rd, assessed the annual dependency at Rs.

24,000 and by applying a multiplier of 17, granted total compensation to the tune of Rs. 4,30,500. Respondent 1 and 2 before Tribunal were held jointly and severally liable to make the payment. The interest at the rate of 9 per cent per annum from the date of award till realisation was also granted to the claimants.

5. I have considered the contentions raised by the learned Counsel for the appellant and do not agree with the same. In the present case, it has to be noticed that the learned Tribunal, on appreciation of evidence on record has given a clear finding that the annual income of the deceased was Rs. 36,000, i.e., less than Rs. 40,000. The Hon''ble Karnataka High Court in the case of Sharabai v. P. Sahebkhan 2006 ACJ 229 (Karnataka), has been pleased to hold that it is not the pleadings, but the findings of the Tribunal which is to be taken to decide whether the Tribunal had jurisdiction or not. Relevant portion of the judgment reads as under:

(6) Admittedly, appellants-claimants made an application only u/s 163A of the Act. The argument of the learned Counsel for the insurance company is that since in the said application, it was claimed by the claimants that the deceased was earning yearly income of Rs. 1,00,000 and since that income is more than Rs. 40,000, the application filed by them is not maintainable and that the application ought to have been treated as one filed u/s 166 of the Act and dealt with accordingly. This submission is not acceptable to us for more than one reason. The pleading of a party can never be placed on the pedestal of a law. Simply because claimants have under a wrong perception or appreciation of the facts asserted a fact which they cannot prove, that circumstance itself without anything further has no legal efficacy to determine the jurisdiction of the M.A.C.T. The jurisdiction of the M.A.C.T. is determined by the law and not by pleading of a party who invokes its jurisdiction. Be that as it may, it is not a finding of M.A.C.T. that the yearly income of the deceased was more than Rs. 40,000. On appreciation of oral and documentary evidence, the Tribunal has recorded a finding that the deceased was earning only Rs. 2,400 per month. That means that deceased was earning Rs. 28,800 per annum. Therefore, we hold that Tribunal had jurisdiction to entertain the application filed by the appellants-claimants u/s 163A of the Act and that in entertaining that application, the M.A.C.T. has not committed any illegality as contended by the learned Standing Counsel for the insurance company.

Therefore, finding no illegality in the order passed by the Motor Accidents Claims Tribunal, this appeal is dismissed with no order as to costs.