
(2006) 05 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1009 of 2003

New India Assurance Company Ltd.

APPELLANT

Vs

Jaspreet Kaur and Others

RESPONDENT

Date of Decision : 30-05-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2006) 144 PLR 497

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : Ashwani Talwar, for the Appellant; Ashish Grover, Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—This appeal has been filed by the Insurance Company against the award of the Motor Accident Claims Tribunal, Jalandhar, dated 9.12.2002 in 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 163-A of the Motor Vehicles Act, on behalf of the claimants was competent.

3. The 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 163-A of the Motor Vehicles Act 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, the 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 petition u/s 163-A of the Motor Vehicles Act.

4. I have gone through the judgment passed by the Motor Accident Claims Tribunal and find that the learned Tribunal, on appreciation of evidence on

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. The 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 Nos. 1 and 2 before the Tribunal were held jointly and severally liable to make the payment. The interest @ 9% per annum from the date of award till realization 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/- per annum i.e. less than Rs. 40,000/-. The Hon'ble Karnataka High Court in the case of Sharabai and Anr. v. P. Sahebkhani and Ors. 2006 A.C.J. 229, 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:

Admittedly, the appellants-claimants made application only u/s 163-A 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 application ought to have been treated as the 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 law. Simply because claimants have under a wrong perception of 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 Claims Tribunal has recorded a finding that the deceased was earning Rs. 28,800/- per annum. Therefore, we hold that the Tribunal had jurisdiction to entertain the application filed by the appellants-claimants u/s 163-A 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 insurance company.

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