(2018) 03 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 5255 Of 2005 (O & M)

Sukhwinder Kaur & Ors — APPELLANT

Vs

Baljit Singh & Ors — RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2018) 03 P&H CK 0109

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Neeraj Khanna, Vandana Malhotra

Final Decision : Dismissed

Judgement

Avneesh Jhingan J.

This appeal arises from the award dated 01.12.2004 passed by the Motor Accident Claims Tribunal, Bathinda (for short 'the Tribunal').

This was burnt case and has been reconstructed from the salvaged records and copies supplied by the counsels subject to just exceptions.

The accident took place on 28.8.2001. Lachhman Singh @ Vakil Singh along with others was passenger in a jeep bearing Registration No.PB-04-E-

3232. The said jeep was being driven by Baljit Singh. At about 3.30 PM when the jeep reached near Village Jida Romana, bus stand, one tahli tree fell

on the jeep, as a result of this Lachhman Singh @ Vakil Singh lost his life.

The legal heirs of deceased Lachhman Singh alias Vakil Singh filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short

'the Act'). In the claim petition, it was claimed that the deceased was earning Rs.20,000/- per month. The Tribunal dismissed the claim petition on the ground that the claimants never stepped into the witness box to support their claim. No evidence was produced to establish that they were legal heirs

of the deceased. Appeal has been filed being aggrieved of dismissal of the claim petition. Even in appeal no evidence has been produced to show that

the appellants are legal heirs of the deceased. The monthly income of the deceased was claimed to be Rs.20,000/-.

Learned counsel for the appellants argued that the income of the deceased may be restricted to Rs.40,000/- per annum, counsel further contends that

an application to this effect was also moved before the Tribunal.

The contentions raised by learned counsel for the appellants cannot be accepted in view of the law laid down by the Supreme Court in Deepal

Girishbhai Soni and others vs. United India Insurance Co. Ltd., Baroda 2004(5) SCC 385 in which it was held as under :-

â??62. We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala

(supra) that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annual shall be treated as a cap. In our opinion, the

proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/-

can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.â??

The appellants have failed to prove that they were legal heirs of the deceased, in such circumstances claim petition was rightly dismissed by the

Tribunal on this ground alone. Even otherwise claim petition under Section 163-A of the Act cannot be filed where the income of the deceased was

more than Rs.40,000/- per annum. No fault can be found in the award of the Tribunal dismissing the claim petition.

Appeal is dismissed.

