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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 4th July, 2013*

+ MAC.APP. 44/2011

SMT SUMAN MALHOTRA & ANR Appellants
Through: Mr.Rajat Aneja, Adv.

versus

GULFAM & ORS Respondents
Through: Ms.Shanta Devi Raman, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The instant appeal has been filed by the appellant by challenging the impugned order dated 16.12.2010 passed by the learned Tribunal whereby the claim petition filed under Section 163-A has been dismissed on the ground that the annual income of the deceased was much more higher than Rs.40,000/- per annum, the ceiling prescribed in Schedule-II.

2. The learned Tribunal has also considered the case of *Rumkani Devi Vs. New India Assurance Company Ltd. and Another 2009 ACJ 2202* and opined that in the facts and circumstance of the case, the above cited case is not applicable.

3. The issue before coordinate bench of this court in the case of *Rukmani Devi (Supra)* was that whether a claim petition, wherein the

claimant has claimed annual income of deceased more than Rs.40,000/- per annum is maintainable.

4. The aforesaid question has been considered in para 10 of the aforesaid judgment, which is re-produced as under:-

“10. As regards grant of compensation in all such cases under Section [163-A](#) of the Motor Vehicles Act, the same is payable as indicated in the Second Schedule to the Motor Vehicles Act to the legal heirs of the victim or to the victim of the accident itself, as the case may be. The Second Schedule to the Motor Vehicles Act places restriction at Rs. 40,000 per annum while no such restriction is there under Section [166](#) of the Motor Vehicles Act. Can such a restriction placed in the Second Schedule to the Motor Vehicles Act prohibit filing of the claim petition itself where the income is pleaded at more than Rs. 40,000 per annum? In my considered view, the answer has to be in the negative, it is not merely by pleading a particular income that the right to file petition under Section [163-A](#) can be denied. In a particular case which is otherwise covered within the ambit and scope of Section [163-A](#) of Motor Vehicles Act, the claim petition cannot be dismissed merely on the ground that the income pleaded therein in the petition is more than Rs. 40,000 per annum. It is ultimately the proof of income which would determine the grant of relief under Section [163-A](#) of the Motor Vehicles Act, but restriction of Rs. 40,000 per annum as indicated in the Second Schedule to the Motor Vehicles Act cannot also be taken as a cap as the government has failed to revise the structural formula of the Second Schedule to the Motor Vehicles Act as mandated by Section [163-A](#) of the Motor Vehicles Act. Second Schedule to the Motor Vehicles Act was to be revised from time to time keeping in view the cost of living by an appropriate notification in the Official Gazette by the Central Government but since the time of

its insertion w.e.f. 14.11.1994 no revision has taken place even after lapse of about more than 13 years. Since the criteria of revision was based on the cost of living, therefore, this Court has taken a consistent view by taking the help of Minimum Wages Act to revise the minimum wages after taking into account rise in the price index and inflation rates. There has been an average increase of up to 4 per cent to 6 per cent in the price index each year and within a gap of about 10 years there has been an increase of wages in the Minimum Wages Act, which comes out as more than double of the wages comparing the wages in the year 1994. For instance wages of an unskilled worker in the year 1994, when the Second Schedule came into effect, was Rs. 1,420 which came to be Rs. 3,312 in the year 2006, the year in which the award was made. This would show an increase of 233.2 per cent and based on the same analogy, it can be said that such an increase can be taken into consideration without considering the said cap of Rs. 40,000 per annum in the structured formula of the Second Schedule to the Motor Vehicles Act”.

5. Counsel appearing on behalf of the respondent/Insurance Company has relied upon the judgment of the Supreme Court in ***Deepal Girishbhai Soni & Ors. Vs. United India Insurance Company Ltd. Baroda AIR 2004 SC 2107*** wherein it is held as under:-

“51. The scheme envisaged under Section [163A](#), in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section [140](#). In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income

per annum is Rs. 40,000/- or less is covered thereunder whereas Sections [140](#) and [166](#) cater to all sections of society.”

6. The issue whether the claim petition filed under Section 163-A is maintainable if the annual income of the deceased is more than Rs.40,000/- per annum. This court has categorically opined that taking the interpretation of Section 163-A of Motor Vehicles Act, the clear intention of the legislation was to come to rescue of all those who, in the absence of any evidence, are not in a position to file a claim petition under Section 166 of Motor Vehicles Act. Where death of the victim or permanent disablement of victim was required to be proved by establishing the factum of negligence in favour of the offending vehicle resulting into causing the accident under Section 163-A, the requirement of proving the negligence has been dispensed with. Even otherwise, the issue before the Supreme Court in ***Deepal Girishbhai (Supra)*** was whether two petitions filed by the claimants simultaneously under Sections 166 and 163-A are maintainable. In para 51 of the aforesaid judgment, it is recorded that it does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs.40,000/- or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society.

7. In ***Rukmani Devi (supra)***, the aforesaid case was considered and finally answered that the Tribunal has to consider the claim petition whether the income of the deceased was more than Rs.40,000/- per annum; but it is

nowhere said that if in any petition the income of the deceased was claimed more than Rs.40,000/-, then a victim of the accident cannot file the claim petition under Section 163-A of the Motor Vehicles Act.

8. In my opinion, the learned Tribunal has wrongly understood the case of **Rukmani Devi (Supra)** and has opined that the claim petition is not maintainable.

9. This is a second round of litigation of the appellant. Initially, the appellant filed the claim petition under Section 166 of the Motor Vehicles Act and same was dismissed. The said order passed by the Tribunal was challenged vide the Appeal No.129/2005 and the same was disposed of vide order dated 26.03.2010. While disposing the appeal, this court directed the Tribunal to permit the appellant to amend and convert the petition as filed under Section 163-A of the Motor Vehicles Act.

10. While passing the order dated 26.03.2010, this court was fully aware of the fact that the monthly/annual income claimed by the appellant was more than Rs.40,000/- despite that the Tribunal was directed to allow the appellant to amend the petition and file under Section 163-A.

11. Keeping in view the facts and circumstances of the case, I direct the learned Tribunal to adjudicate the claim petition under Section 163-A and pass a fresh order keeping in view the observations made in the case of **Rukmani Devi (Supra)**.

12. In view of the above, the impugned order dated 16.12.2010 passed by the learned Tribunal is set aside and the matter is remanded back to the Tribunal for further proceeding.

13. Considering the death of the deceased in the year 1999, the claim Tribunal shall endeavour to complete the inquiry within a period of six months.

14. The parties are directed to appear before the learned Tribunal on 22nd July, 2013 for directions.

15. The appeal is disposed of on above terms.

16. Order dasti.

SURESH KAIT, J

JULY 04, 2013

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