

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No.216 of 2006

Oriental Insurance Company Limited, Raipur through its Branch Manager, Dhamtari, Chhattisgarh

---- Appellant

versus

- 1. Swatantra Kumar Verma, son of Binda Prasad Verma, aged 49 years,
- 2. Smt. Tara Verma, wife of Swatantra Kumar Verma, aged 45 years,
(Both residents of Civil Lines, Mahur Bantpara, Kanker, Chhattisgarh)
- 3. Father Joseph Kutiya Nickel, Principal, Bishop House, Lalbagh, Near Nirmal Vidyalaya, Jagdalpur, District Bastar, Chhattisgarh
- 4. Director, Medical Services Catholic Ashram, Govindpur, Kanker, Chhattisgarh

---- Respondents

and

Miscellaneous Appeal No.1257 of 2005

- 1. Swatantra Kumar Verma, son of Bindaprasad Verma, aged 49 years,
- 2. Smt. Tara Verma, wife of Swatantra Kumar Verma, aged 45 years,
Both residents of Mahurbandpara, Kanker, District Kanker, Chhattisgarh

---- Appellants

versus

- 1. Father Joseph Kutiyanikal (Principal) Bishap-house Lal Bag near Nirmal School Jagdalpur, District Bastar, Chhattisgarh
- 2. Director, Medical Services Ashram Govindpur Kanker, Kanker (owner of vehicle)
- 3. The Oriental Insurance Company Limited, Raipur, District Raipur, Chhattisgarh through Branch Manager Dhamtari, Chhattisgarh (Insurer)

---- Respondents

For Insurer (Appellant/Respondent)	:	Shri Abhishek Sinha and Shri Ghanshyam Patel, Advocates
For Claimants (Appellants/Respondents)	:	Shri Sachin Singh Rajput, Advocate
For Owner and Driver (Respondents)	:	Shri Mayank Chandrakar, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

20.9.2016

1. The instant two appeals are being disposed of by the following common judgment since the issues involved therein are common.
2. These two appeals one by the insurance company and one by the claimants are directed against the award dated 7.7.2005 passed by the First Additional Motor Accidents Claims Tribunal, Kanker, District Kanker in Claim Case No.104 of 2003, whereby the Claims Tribunal partly allowed the claim petition of the claimants filed under Section 163-A of the Motor Vehicles Act, 1988 (henceforth 'the Act') and awarded sum of Rs.2,52,000/- in favour of the claimants.
3. Three grounds have been raised by the insurance company. Firstly, that the claim petition under Section 163-A of the Act was not maintainable in view of the fact that the claimants themselves in the claim petition claimed that the income of the deceased was more than Rs.40,000/- per annum. The second ground is that the claimants had filed earlier a claim petition under Section 166 of the Act. Though they withdrew that petition with liberty to file a fresh one, but instead of filing it under Section 166 of the Act, they filed the fresh petition under Section 163-A of the Act and while filing the second petition they did not attach a copy of the order passed in the previous round of litigation nor they apprised the Tribunal of the fact that the earlier petition had been withdrawn. The last submission is that as per the terms of the policy of insurance is an act only policy and therefore the insurer is not liable since the deceased was an occupant of a jeep and the insurance policy does not cover liability of a passenger travelling in the jeep.

4. Learned Counsel appearing for the claimants contends that the Claims Tribunal has assessed the income of the deceased as Rs.3,300/- per month which works out to Rs.39,600/- per annum, which is less than Rs.40,000/- per annum and as such the claim petition under Section 163-A of the Act is maintainable. His second submission is that the claimants have produced on record the copy of the order passed in the earlier round of litigation. He further stated that copy of the order passed earlier was available and no prejudice has been caused to any party. The last submission is that the insurance company has not proved the policy of insurance and, therefore, the insurance company cannot argue that it is not liable under the terms of the policy of insurance.
5. I shall first take up the issue as to whether the claim petition of the claimants under Section 163-A of the Act was maintainable or not. Section 163-A of the Act reads as follows:

“163-A. Special provisions as to payment of compensation on structured formula basis. –

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

6. Section 163-A of the Act was introduced in the Motor Vehicles Act, 1988 with effect from 14.11.1994 and the Second Schedule which was added clearly lays down that the maximum income which can be taken into consideration is Rs.40,000/- per annum. This Court need not go into a detailed examination of the issue, since the same stands decided by the judgment of the Apex Court. The first judgment with regard to interpretation of Section 163-A of the Act was **Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala, (2001) 5 SCC 175**. In this case, the Apex Court held that though the benefit of the provision of Section 163-A of the Act was to be given only to those whose annual income is upto Rs.40,000/-, it was held that in case the income is even more than Rs.40,000/- per annum the Court can apply a cap of Rs.40,000/- and awarded compensation accordingly. The matter was referred to a Larger Bench and the Larger Bench by its judgment in **Deepal Girishbhai Soni v. United India Insurance Co. Ltd., Baroda, (2004) 5 SCC 385** discussed the provisions of Sections 140, 163-A, 163-B and 166 of the Act and held as follows:

“52. It may be true that Section 163-B provides for an option to a claimant to either go for a claim under Section 140 or Section 163-A of the Act, as the case may be, but the same was inserted *ex abundanti cautela* so as to remove any misconception in the minds of the parties to the lis having regard to the fact that both relate to the claim on the basis of no-fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims both under Section 163-A and Section 166 does not arise. If the submission of the learned counsel is accepted the same would lead to an incongruity.

53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. (See *Regional Director, ESI Corpn. v. Ramanuja Match Industries*, (1985) 1 SCC 218)

57. We, therefore, are of the opinion that the remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.”

The Apex Court held that the provision for getting compensation under Section 163-A of the Act is totally different from Section 166 of the Act. When a claim petitioner files a petition under Section 166 of the Act, he is required to prove negligence, but under Section 163-A of the Act, no negligence is required to be proved and it amounts to no fault liability. In conclusion, the Apex Court held as follows:

“67. We, therefore, are of the opinion that *Oriental Insurance Co. Ltd. v. Hansrajhai V. Kodala*, (2001) 5 SCC 175 has correctly been decided. However, we do not agree with the findings in *Kodala* that if a person invokes provisions of Section 163-A, the annual income of Rs.40,000 per annum 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 up to Rs.40,000 can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.”

7. A bare reading of above-quoted paragraph 67 clearly shows that the Supreme Court held that Section 163-A of the Act, being social security provision, created a new distinct scheme only for the benefit

of those whose income is only upto Rs.40,000/- per annum. In **Deepal Girishbhai Soni case** (supra), the Apex Court had expressed a hope that Parliament would intervene and enhance the maximum amount since the amendment was made in the year 1994 and **Deepal Girishbhai Soni case** (supra) was decided after a decade in the year 2004. This hope of the Apex Court was in vain and after 9 long years another case came up before the Supreme Court, i.e., **Puttamma v. K.L. Narayana Reddy, (2013) 15 SCC 45**. In this case the Apex Court again reiterated what was said in **Deepal Girishbhai Soni case** (supra). It was pointed out that though inflation had increased and wages are gone up, no change has been made by the Government. The pertinent observations in this regard are in paragraph 58 of the judgment in **Puttamma case** (supra), which reads as follows:

“58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific directions to the Central Government through the Secretary, Ministry of Road Transport and Highways to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of the Second Schedule as proposed or may be made by Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of Rs.1,00,000 (Rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs.1,50,000 (Rupees one lakh and fifty thousand) or the amount may be determined in terms of the Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act.”

8. Therefore, the only change made by the Apex Court was that for children upto the age of 5 years, amount of Rs.1,00,000/- shall be the fixed minimum compensation and for persons of more than the age of 5 years, the amount of Rs.1,50,000/- shall be the minimum compensation. No other change was made. The judgment rendered in **Deepal Girishbhai Soni case** (supra) still holds the field.
9. In the present case, it has been urged by Learned Counsel for the Claimants that the Claims Tribunal has come to the conclusion that income of the deceased was only Rs.3,300/- per month after deduction and, therefore, this Court should not interfere in the matter. There are two reasons why I am not inclined to agree with this submission. Firstly, the Claimants in this case have not approached the Claims Tribunal with clean hands when they filed the petition under Section 163-A of the Act. Earlier, they had filed a petition under Section 166 of the Act claiming compensation and this claim case was numbered as 12 of 2003. This case was withdrawn on 19.11.2003. An application under Order 23 Rule 3 of the Code of Civil Procedure was filed and in the said application it was stated that there was a formal defect in the petition under Section 166 of the Act and, therefore, the same may be permitted to withdraw with liberty to file a fresh petition under Section 166 of the Act. There is not a whisper about filing a petition under Section 163-A of the Act. It may be pointed out that in that case an award for no fault liability had been made, but it now stands established that the amount deposited before the MACT under no fault liability has been paid back to the insurance company. The operative part of the order passed in the said application clearly shows that the claim petition was permitted to be withdrawn with liberty to file a fresh petition. In such an eventuality, when a fresh claim petition was filed, it was the duty of the claimants to file along with the said petition the order passed in the earlier claim

petition and also to apprise the Claims Tribunal that earlier a petition was filed which was withdrawn with liberty to file a fresh petition. The second petition was filed by the same Counsel who had filed the earlier petition. Therefore, it cannot be said that the Counsel was not aware of filing of the earlier petition. I also take into consideration the fact that the earlier petition had been withdrawn from the Court of the Third Additional Motor Accidents Claims Tribunal (F.T.C.), Kanker. The second petition under Section 163-A of the Act was filed before the First Additional Motor Accidents Claims Tribunal, Kanker. No client can be permitted to go for forum hunting and choose a forum of his own choice. If the order passed in the earlier petition had been placed on record, the earlier order would have been taken into consideration or the Court could have transferred the case to the Third Additional Motor Accidents Claims Tribunal (F.T.C.), Kanker. If we permit such a practice to go on then any client whenever he finds that the Court is not agreeing with his submission would withdraw his petition from that Court and file a fresh petition before another Court. Such a practice cannot be encouraged. Though I am very sympathetic with the claimants who have lost their young son, but their conduct is not above board. Secondly, as observed earlier, this Court is bound by the judgment in **Deepal Girishbhai Soni case** (supra). It is also pertinent to mention that applying the judgment in **Deepal Girishbhai Soni case** (supra), a Division Bench of this Court in Miscellaneous Appeal (C) No.379 of 2011 has again held that if the income of the deceased is pleaded to be more than Rs.40,000/- per annum, then the claim petition has to be rejected as not maintainable.

10. On the other hand, Learned Counsel for the Claimants has placed reliance on the judgment delivered by me in Miscellaneous Appeal No.618 of 2003, wherein I have held that since the Claims Tribunal

came to the conclusion that the income of the deceased was Rs.3,080/- per month, the claimants cannot claim enhancement of compensation. In fact, that was an appeal filed by the claimants and in the appeal the claimants claimed that income should be taken at more than Rs.40,000/- per annum and I had rejected the prayer on the ground that if in case the income is taken more than Rs.40,000/- per annum then it would be beyond the scope of Section 163-A of the Act. In that case, the award had not been challenged by the insurance company. Therefore, there was no occasion to go into the question of maintainability of the claim petition itself.

11. As far as the second ground raised by the insurance company is concerned, I am not in agreement with the submission. If the insurance company, in any case, wants to prove that it is not liable or that its liability is limited, but admits that the vehicle was insured with it, it is bound to prove the terms of the insurance policy. In this case, though the policy has been filed on record, no attempt has been made to prove the policy or conditions thereof. It is urged by Learned Counsel for the insurance company that relying upon this very insurance policy, the insurance company has made liable. The insurance company has not denied the fact that it has issued the insurance policy. The defence raised by the Company is that as per the terms of policy, it is not liable to cover liability in respect of passengers travelling in motor vehicles. This has to be proved by the insurance company. An insurance policy can even be tendered if it is not objected by the other side. To get itself excluded or to limit its liability the insurance company will have to prove the policy of insurance.

12. In this view of the above discussion, the Miscellaneous Appeal

No.1257 of 2005 filed by the claimants, the same is dismissed, since the claim petition under Section 163-A of the Act is not maintainable. Miscellaneous Appeal No.216 of 2006 filed by the insurance company is allowed. The award dated 7.7.2005 passed by the First Additional Motor Accidents Claims Tribunal, Kanker, District Kanker in Claim Case No.104 of 2003 is set aside and the claim petition filed by the claimants is rejected as not maintainable. No order as to costs.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE