NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 239 of 2006

The Oriental Insurance Company Ltd. Ambikapur, through Divisional Manager, Divisional Office, Bilaspur (C.G.)

---- Appellant

Versus

1. Shri Ranjeet Kumar, 23 years, S/o. Late Jaggu, Caste Panika, R/o. Dedri, P.S. Soorajpur, District Surguja (C.G.)
2. Shri Dikpal, 58 years, S/o. Shri Lejan Ram, Caste Rajwar, R/o. Dedri, P.S. Soorajpur, District Surguja (C.G.)

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate
For Respondent No.1	:	Shri Jamil Akhtar Lohani, Advocate under instructions of Shri P.K.Dhurandar, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/08/2017

1. Present is an appeal by the Insurance Company assailing the award dated 06/12/2004 passed by the 4th Additional Motor Accident Claim Tribunal (FTC), Surajpur, District Surguja (C.G.) in Motor Accident Claim Case No.12/2004. Vide the impugned award the Tribunal in an application filed under Section 163-A of the M.V. Act has allowed the same and granted compensation of Rs.3,35,810/- along with interest at the rate of 6% per annum from the date of application.

2. This appeal is assailing the maintainability of the claim petition itself. The solitary ground raised by the appellant is that since application under Section 163-A and if we take into consideration the income of the claimant pleaded, it comes beyond the prescribed limit of Rs.40,000/- per month as has been provided under the Act. Therefore claim application entertained by the Tribunal deserves rejection.

3. Counsel for the Appellant submits that it is a case where Respondent No.1 who was traveling on a Scooty owned by the respondent No.2 en-route he fell from the Scooty and sustained injuries. According to the Counsel for the Appellant, since the Respondent No.1 has

pleaded his salary to be Rs.10,000/- as he was employee of the South Eastern Coalfields Limited, the annual income would be more than Rs.1,00,000/- which is much more than Rs.40,000/- as prescribed under the schedule 2 of the MV Act for making out a case under Section 163-A.

4. Thus the Tribunal committed error in entertaining the application and awarding compensation fastening the liability upon the Insurance Company. He prayed for the award beset aside on this ground alone and to further hold that the claim application was not maintainable.

5. Shri Jameel Akhtar Lohani, Advocate appearing for the claimants however opposes the appeal of the Insurance Company and submitted that Insurance Company ought to have been more sympathetic in its approach. He submitted that since it is a death case, this court may not entertain the appeal as the amount of compensation awarded also being not much prayed for the rejection of the appeal.

6. Having heard the parties at this juncture, it would be relevant to refer to the decision of the Supreme court in the case of ***Deepal Girishbhai Soni and Ors. Versus United India Insurance Co. Ltd., Baroda, [(2004) 5 SCC 385]*** in which the Hon'ble Supreme Court in the said judgment has categorically held that proceeding under Section 163-A being social security provision, provides for a distinctive scheme and only those whose income is less than Rs.40,000/- which means that all the persons whose annual income is more than Rs.40,000/- would not be able to initiate application under Section 163-A.

7. Similar view has been taken by recent decision of this Court reported in ***2017 (1) T.A.C. page 538 (Chhattis.)*** "***Oriental Insurance Company Limited vs. Swatantra Kumar Verma and others***" wherein this High Court has allowed similar proceeding while rejecting the application of Insurance Company and of the claimant seeking enhancement has held that the claimant application is filed under Section 163-A and where the claimants have pleaded income to be more than Rs. 40,000/- per month, application would not be maintainable. It could be relevant at this juncture to refer to paragraph 6 of the said judgment, which also refers to the legal

position as also reference to the judgment of the Supreme Court in this regard.

8. It is also relevant to refer to the production of the said judgment of paragraph 9 wherein held as under:-

> ***"9. xxxxxx 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 © 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."***

9. Likewise it is also relevant to reproduce the relevant part of the decision in paragraph 12 of the said judgment.

> ***"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 7th July, 2005 passed by the First Additional Motor Accident 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."***

10. In view of the aforesaid factual matrix of the case this Court in full agreement to the decision rendered by this Court in the case of "***Oriental Insurance Company Limited vs. Swatantra Kumar Verma and others"*** holds that the claimants having preferred the application under Section 163-A it would not be maintainable and same deserves rejection.

11. Accordingly, the appeal of the Insurance Company stands allowed. It is held that the application under Section 163-A preferred by the claimants is not maintainable, same deserves to be and is ordered as rejected.

Sd/-
(P. Sam Koshy)
Judge

sumit