**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

## MA No. 445 of 2005

1. Ram Kumar Devangan, aged about 48 years, S/o Ganga Ram Devangan
2. Smt. Revti Bai, aged about 43 years, W/o Ram Kumar Devangan,

   Both residents of Village Tikripara, Gandai Panderia, Tahsil Chhikhadan, District Rajnandgaon (C.G.)

**---- Appellants/Applicants (Claimants)**

**Versus**

1. Bhuwan Lal Devangan, aged about 43 years, S/o Prem Lal Devangan, residents of village Tikripara, Gandai, Panderia, Tahsil Chhuikhadan, District Rajnandgaon (C.G.)
2. Oriental Insurance Company Ltd., Branch Office, Kamthi Line, Rajnandgaon (C.G.)

**---- Respondents/Non-applicants.**

| | | |
|---|---|---|
| For Appellants | : | Shri R.N.Jha, Advocate. |
| For Respondent No.1 | : | None appears |
| For Respondent No.2 | : | Shri Raj Awasthi, Advocate |

**Hon'ble Shri Justice Sanjay Agrawal**

**Award On Board**

**10/02/2017**

1. This is the miscellaneous appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short, the Act of 1988) against the award dated 11.02.2005 passed by the Additional Motor Accidents Claims Tribunal, Khairagarh, Dist. Rajnandgaon, in Claim Case No. 60/2004, whereby, the claim petition has been dismissed.

2. The undisputed facts of the case are that on 23.04.2004 when the

deceased Kunjlal, aged about 20 years, was going on his motorcycle bearing registration No. C.G.09-A-0254 at 8.00 pm from village Biranpur to his in-laws village, namely, Parpodi and while proceeding as such, he lost the control over the motorcycle, as a result of which, accident had occurred and on account of such accident, he expired on the spot.

3. Based upon the aforesaid incident, a claim petition was filed under Section 163-A of the Act of 1988 by the claimants by submitting, inter alia, that the deceased Kunjlal used to earn Rs.2000/- per month and was 20 years old at the time of the alleged accident, and therefore, a total amount of compensation to the tune of Rs.12,08,000/- has been made.

4. The non-applicant No.1, owner of the said motorcycle, was proceeded exparte before the Claims Tribunal, while the non-applicant No.2, the Oriental Insurance Company Limited has contested the claim on the ground that the claim petition as framed is not maintainable as earlier petition under Section 163-A of the Act of 1988 was dismissed as it was withdrawn on 27.08.2004. It was contested further on the ground that the deceased Kunjlal was not possessing the effective and valid driving licence at the relevant time, and therefore, the Insurance Company cannot be held liable to indemnify the insured.

5. Upon hearing the parties and by considering the evidence of the claimants, the Claims Tribunal has dismissed the claim vide its impugned award dated 11.02.2005 by holding that since in an earlier instituted claim petition, the claimants had mentioned the monthly income of the deceased Kunjlal as Rs.4,000/- and the applicant-witness No.1, Smt. Rewati Bai has failed to state in their evidence that under what circumstances they claimed the monthly income of the deceased Kunjlal as such, therefore, the annual income, as claimed was more than Rs.40,000/-. In consequence, the claim

petition as instituted under Section 163-A of the Act of 1988 would not be held to be maintainable.

6. Shri R.N.Jha, learned counsel for the appellants submitted that the award impugned is apparently contrary to law. He argued further that the reasonings as assigned by the Claims Tribunal while taking into consideration the income of the deceased Kunjlal, as shown in the earlier claim petition, was absolutely unwanted, and therefore, the award impugned is not at all sustainable. He submitted further that since the claim has been made under Section 163-A of the Act of 1988 in relation to the accident occurred on 23.04.2004, therefore, the just and reasonable compensation payable to the claimants, be awarded.

7. Shri Raj Awasthi, learned counsel for respondent No.2 – the Oriental Insurance Company Limited has supported the award impugned and submitted that since the applicant – Rewati Bai in her evidence has failed to state that under what circumstances the monthly income of the deceased – Kunjlal was shown as Rs.4,000/- in an earlier instituted claim petition, therefore, the award impugned deserves to be upheld.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. From perusal of the record, it is clear that the entire claim instituted under Section 163-A of the Act of 1988 has been dismissed by taking into consideration the monthly income as shown by the claimants in an earlier instituted claim petition bearing Claim Case No. 45/2004. It is evident further that although the claimants had earlier instituted the claim petition under Section 163-A of the Act of 1988 by showing the monthly income of the deceased as Rs.4,000/- but the said claim petition was subsequently

withdrawn with the liberty of the Claims Tribunal on 27.08.2004. Since the earlier claim petition was dismissed as withdrawn with the said liberty, therefore, while rejecting the subsequently instituted claim petition by taking into consideration the averments made in the earlier instituted claim petition was wholly innocuous and ought not to have been taken into consideration. The entire observation as made by the Claims Tribunal is wholly unsustainble in the eye of law, and therefore, the same deserves to be reversed and accordingly I hereby set aside the same and hold that the claim petition as made is maintainable.

10. Since the matter is of the year 2004 and the claim was made under Section 163-A of the Act of 1988, and therefore, with the consent of the parties, the matter is heard and decided finally.

11. Smt. Rewati Bai (A.W.1), while appearing in witness box, has stated that her son Kunjlal was unmarried and used to earn Rs.2,000/- per month. Although this witness in her cross-examination at para – 7 stated that she is not aware that under what circumstances she had mentioned the income of the deceased – Kunjlal as Rs.4,000/- per month. However, the income as stated by this witness with regard to her son at para – 2 could not be rebutted in the cross-examination, and therefore, by taking into consideration the income of the deceased as Rs.2,000/- per month, yearly Rs.24,000/- and that by deducting half of the same, the total yearly dependency would be Rs.12,000/-. Since the deceased was 19 years old as per the Postmortem report, and therefore, by applying the multiplier of 16, the total dependency would arrive at Rs.1,92,000/-. In addition to this, the claimants are entitled to a lump-sum of Rs.25,000/- under other conventional heads. Thus, the claimants are entitled total compensation to the tune of Rs.2,17,000/-, along with interest @ 7% per annum from the date of claim petition till its realisation.

The total compensation of Rs.2,17,000/- and the interest thereon @ 7% per annum shall be paid by the Insurance Company / respondent No.2 within the period of two months from the date of receipt of a copy of this award.

12. The appeal is allowed in view of the aforesaid terms and conditions. No order as to costs.

Sd/-

(**Sanjay Agrawal**)
Judge

Anjani