AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 158 of 2013

1. Smt. Jayantri Bai Wd/o Chetan Gajendra Aged About 41 Years

2. Dharmendra Kumar S/o Late Chetan Gajendra Aged About 19 Years

3. Lalit Gajendra Kumar S/o Late Chetan Gajendra Aged About 22 Years

All are residence of Village Puri Tahsil Charama District Kanker (CG)

---- Appellants/claimants

Versus

1. Tarun Kumar Gajendra S/o Chetan Gajendra Aged About 27 Years R/o Village- Jaisakarra, P.S. Charama, Distt. North Bastar Kanker C.G.

2. The Oriental Insurance Co. Ltd. Branch Office Near Adarsh Bal Mandir, Main Road, Dhamtari, Distt. Dhamtari C.G.

---- Respondents

For Appellants	:	Shri Praveen Dhurandhar, Adv.
For Respondent No.1	:	None though served.
For Respondent No.2	:	Shri Pankaj Agrawal, Adv.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

01/04/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) against the award 12.12.2012 passed by Additional Motor Accident Claims Tribunal, North Bastar, Kanker, in Claim Case No.18/2011 dismissing the claim of the claimants under Section 163 A of the Act being not maintainable.

02. As per claim petition, on 31.3.2004 Chetan Gajendra, 40 years of

age, earning Rs.40,000/- per annum through agriculture, huller mill and tractor, was riding Hero Honda motorcycle bearing No. CG 05 A 5658, owned by his son non-applicant No.1 Tarun Kumar Gajendra and insured with non-applicant No.2/Oriental Insurance Co. Ltd. However, on the way, as all of a sudden some cattle came on the road, the vehicle was hit by the cattle, as a result of which Chetan Gajendra fell down from the motorcycle and suffered grievous injuries.

03. On claim petition being filed by the claimants, wife and children of the deceased, under Section 163A of the Act, the Tribunal considering the evidence led by the parties by the impugned award dismissed the claim petition on two grounds, firstly that income of the deceased as per evidence adduced by the claimants comes to Rs.1,58,000/- whereas for maintaining application u/s 163A of the Act, annual income should be Rs.40,000/- or below the same, and secondly, the deceased by riding the vehicle after borrowing the same from his son-owner/non-applicant No.1 had stepped into the shoes of the owner and therefore, the claimants cannot claim compensation for the death of the deceased.

04. Learned counsel for the appellants/claimants submits that the burden lies upon the insurance company to prove that the deceased was not a third party, however, no evidence was adduced by the insurance company in this regard and therefore, the Tribunal was not justified in dismissing the claim petition.

05. Learned counsel for respondent/insurance company supports the impugned award and submits that as per evidence adduced by the claimants themselves, income of the deceased comes to Rs.1.58 lacs per annum and that the deceased was riding the vehicle of his son-owner and as such, had stepped into the shows of the owner. Therefore, the Tribunal was fully justified in dismissing the claim petition of the claimants being not maintainable.

06. Heard learned counsel for the parties and perused the material available on record.

07. Though in the claim petition, the claimants after amendment

have pleaded that the deceased was earning Rs.40,000/- per annum, however, in her evidence adduced before the Tribunal, wife of the deceased Smt. Jayantibai (AW-1) has claimed that the deceased was earning Rs.1.58 lacs per annum.

08. The Hon'ble Supreme Court in the matter of ***Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd. Baroda, (2004) 5 SCC 385***, 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."

09. Thus, considering the facts and circumstances of the case, the decision of the Hon'ble Supreme Court in *Deepal Girishibhai Soni* (supra) as also the object behind insertion of Section 163A of the Act by way of Amendment Act 54 of 1994 (w.e.f. 14.11.1994), this Court is of the opinion that the Tribunal has not committed any illegality in dismissing the claim petition on one of the grounds that annual income of the deceased has been claimed more than Rs.40,000/-.

10. From the evidence available on record, it is seen that the deceased was riding the motorcycle of its registered owner i.e. his son/non-applicant No.1 and as such, he had stepped into the shoes of the owner and was not the third party. The Tribunal considering the decisions of this Court in the matter of ***Bajaj Alliance General Insurance Co. Ltd. Vs. Smt. Savita Sahu and others in MAC No.331/2012*** and ***Sakun Kushwaha and others Vs. Dhaniram and***

others, ACJ 2012 (II) 232**,* held that the claim petition u/s 163A of the Act by the claimants is not maintainable for the death of the deceased. Keeping in view the decision of the Hon'ble Supreme Court in ***Ningamma vs. United India Insurance Co. Ltd. AIR 2009 (SC) 3056 and the overall evidence available on record, this Court is of the opinion that the Tribunal was justified in dismissing the claim petition on the aforesaid ground.

11. In the result, the appeal filed by the appellants/claimants being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/

(Gautam Chourdiya)

Judge

Khan