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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1004 of 2013

- Shriram General Insurance Company Limited through- Incharge Officer, E-08 Rico Industrial Area, Sitapur, Jaipur Rajasthan.

----Appellant/ Non-applicant No. 3

VERSUS

1. Narsingh Das Manikpuri S/o Palpudas Mainkpuri, aged about 55 years
2. Smt. Sushila Bai W/o Narsingh Das, aged about 55 years
3. Smt. Nirmala Bai Wd/o Late Sanjay Manikpuri, aged about 30 years
4. Ishu Das S/o Late Sanjay Manikpuri, aged about 07 years
5. Bishal Das S/o Late Sanjay Manikpuri, aged about 03 years

   No. 4 & 5 are minor, through natural guardian mother Smt. Nirmala Bai Wd/o Late Sanjay Manikpuri

   All R/o Village Rakhi Joba, P.S. Dhamdha, District Durg C.G.

--------Claimants

6. Dinesh Sahu S/o Bukhara Sahu, aged about 30 years, R/o Village Ramhepur, Police Station Kawardha, Tahsil and District Kabirdham C.G.

-**Non-applicant No. 1/ Driver**

7. Durgesh Chandravanshi S/o Rupau Chandravanshi, aged about 25 years, R/o Z-one Marg-2, Kawardha, P.S. and Tahsil Kawardha, District Kabirdham C.G.

-**Non-applicant No. 2/ Owner**

-----------Respondents

For Appellant	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate
For Non-applicants	:	None.

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

19/12/2019

1. The appellant-Insurance Company has challenged the impugned award dated 26-06-2013 passed by Sixth Additional Motor Accident Claims Tribunal, Durg,

Chhattisgarh passed in Motor Accident Claim No. 37/2012.

2. The relevant facts necessary for disposal of this appeal are that, on 11-04-2012 at about 6:45, when Sanjay Das Manikpuri was traveling on his motor cycle bearing registration No. CG-10-JE-8987, when he reached near Transport Nagar, one truck bearing registration No. CG-09-B-0767 (hereinafter 'offending truck') driven by Non-applicant No. 1-Driver of offending truck, dashed the motor cycle driven by Sanjay Das. In the said accident, driver of the motor cycle suffered grievous injury over his person and succumbed to those injury on the spot. The matter was reported to concerned Police Station, based on which crime bearing No. 145/2012 under Section 304-A of I.P.C. was registered against Non-applicant No. 1-Driver of offending truck. On account of untimely death of Sanjay Das (deceased), his parents, widow and children filed claim application before the competent Claims Tribunal by mentioning that on the date of accident, deceased was doing business of Hotel and thereby earning Rs. 3,000/- per month i.e. Rs. 36,000/- per annum and claimed Rs. 10,84,000/- as compensation.

3. Respondents No. 6 & 7/ Non-applicants No. 1 & 2 who are driver and owner respectively of the offending truck, did not appear before the Claims Tribunal and they were proceeded *ex parte.*

4. Non-applicant No. 3/ Appellant submitted its reply to the claim application and denied all the adverse pleadings made by the claimants in their claim application and further pleaded that the accident took place due to negligence on the part of the deceased himself, there was violation of conditions of insurance policy as on the date of accident, Non-applicant No. 1-Driver of the offending truck was not possessing valid and effective driving license.

5. The learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by respective parties, has framed as many as six issues and after conclusion of the Trial, allowed the claim application and awarded sum of Rs. 6,36,500/- as compensation along with interest @ 6% per annum from the date of filing of claim application till tis realization.

6. The learned counsel appearing for the appellant-Insurance Company submits that the claim application filed by the claimants itself is not maintainable in view of the law laid down by the Supreme Court in the matter of ***Deepal Girishbhai Soni and others* v. *United Insurance Co. Ltd. Baroda*** reported in **(2004) 5 SCC 385,** as the learned Claims Tribunal has assessed the income of the deceased as Rs. 46,800/- per annum, ignoring the fact that the Claimants have filed the claim application under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter 'the Act'). He further submits that for maintaining the application flied under Section 163-A of the Act, the income of the deceased should not be more than Rs. 40,000 per annum as per Schedule 1 appended under the Act and framed under Section 163-A of the Act.

7. Even in second round of hearing, no one appeared on behalf of the respondents.

8. I have heard learned counsel appearing for the appellant and perused the record, minutely.

9. To have a better understanding, relevant portion of Provisions of Section 163-A of the Act is extracted below:

> "163A. **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."

10. Schedule-1 which has been framed under Section 163-A for calculation of the amount of compensation for third-party provides for maximum annual income of the deceased in fatal and injury cases up to Rs. 40,000/- only. In the case at hand, in view of the pleadings made in the claim application itself, it is apparent that the claimants have pleaded the income of the deceased as Rs. 36,000/- per annum which is less than the maximum amount i.e. Rs. 40,000/- as provided in Schedule 1 of the Act.

11. Perusal of claim application filed by the respondents-Claimants reveals that the claimants, in the claim application, have pleaded income of the deceased as Rs. 3,000/- per month i.e. 36,000/- per annum. The income of the deceased on the date of accident was Rs. 36,000/- per annum which is less than the amount as provided in the special provision for payment of compensation on structured formula basis, therefore, the claim application filed by the claimants under Section 163-A of the Act cannot be said to be not maintainable as put-forth by the learned counsel for the appellant.

12. In view of the aforementioned specific pleadings made with respect to income which is less than Rs. 40,000/-, the claim application filed under Section 163-A of the Act is not maintainable and the arguments raised by the learned counsel for the appellant is not sustainable. Sofar as, income assessed by the learned Claims Tribunal i.e. Rs. 46,800/- per annum is concerned. The learned Claims Tribunal has taken into consideration the annual income of the deceased as Rs. 36,000/-. Learned Claims Tribunal has added 30% of the established income towards future prospects, thereafter, by addition of 30% towards future prospects, the annual income of the deceased has been taken as Rs. 46,800/- Section 163-A of the Act has been incorporated in the Act to provide benefit to the claimants on account of no fault liability. The provisions of Section 163-A of the Act has been made applicable to a particular category of the deceased whose income, on the date of accident, was Rs. 40,000/- or less. If the claim application filed on account of death of the person whose income, on the date of accident, was more than Rs. 40,000/-, it would be excluded from the benefit of the provision and they would not be entitled to get benefit under the provisions of Section 163-A of the Act.

13. The Hon'ble Supreme Court in the mater of **Deepal Girishbhai Soni** (supra), dealt with the issue of maintainability of the claim application filed under Section 163-A of the Act, while considering its earlier judgment of ***<u>Oriental Insurance Co. Ltd.</u>*** **<u>v.</u>** ***<u>Hansrajbhai V. Kodala and others</u>*** reported in **(2001) 5 SCC 175** has held that they are not in the agreement with the findings that annual income more than Rs. 40,000/- shall be treated as 'cap' for maintaining the claim application and taking benefit under the provisions of Section 163-A of the Act and held that the provisions under the Act being social security provisions providing for distinct scheme. It has further held that the claim application for mentioning the income up to Rs. 40,000/- can take the benefit thereof.

Relevant paragraph of the judgment passed in **Deepal Girishbhai Soni** (supra) is reproduced below for easy understanding:

> "67. We, therefore, are of the opinion that *Kodala*[1] has correctly been decided. However, we do not agree with the findings in *Kodala*[1] 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 proceedings 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."

14. Perusal of the aforementioned law laid down by the Supreme Court, it is apparent that the Hon'ble Supreme Court has clearly held that the income of the deceased, on the date of accident, must be Rs. 40,000/- or less, being so, the claimants can maintain the claim application and thereafter they will be entitled for the amount of compensation on all heads.

15. In the light of the aforementioned judgment passed by the Hon'ble Supreme Court, if the facts of the case in hand are taken into consideration, it would be apparent from the pleadings of the claim application that the claimants have pleaded in a very specific terms that on the date of accident, deceased was earning Rs. 3,000/- per month and they have filed the claim application on the basis of the said monthly income.

16. In view of the aforementioned glaring facts pleaded and emerged from the record; income of the deceased pleaded in the application, the claim application is maintainable under the provisions of Section 163-A of the Act and the submissions made by the learned counsel for the appellant that the learned Claims Tribunal committed error in not dismissing the claim application on the account of non-maintainability of the claim application is not sustainable.

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1 (2001) 5 SCC 175

17. No other ground is raised before this Court.

18. For the aforesaid discussions and observation, the appeal being devoid of any substance which is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

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