

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 336 of 2018**

1. Sahodri Bai W/o Late Kanhaiyyalal Kashyap Aged About 34 Years (Wife Of Deceased)
2. Nandkishore S/o Late Kanhaiyyalal Kashyap Aged About 17 Years (Son Of Deceased)
3. Ramkishore S/o Late Shri Kanhaiyyalal Kashyap Aged About 13 Years (Son Of Deceased)

Appellants No. 2 & 3 are Minor Through Natural Guardian Mother Sahodri Bai W/o Late Shri Kanhaiyyalal,
All R/o Village Kosmanda, P.S. And Tahsil Champa, District Janjgir-Champa, Chhattisgarh

**---- Appellants/
Claimant**

Versus

1. Kishore Kumar Goyal S/o Shri Jagdish Prasad Aged About 42 Years Caste Agrawal, R/o Village Modi Chowk, Champa, P.S. And Tahsil Champa, District Janjgir-Champa, Chhattisgarh (Owner Of Vehicle)
2. Branch Manager National Insurance Company Limited, 13, Meenu Complex Main Road Kosabadi, Korba, District Korba, Chhattisgarh (Insurer Of Vehicle)
3. Tirupati Bai W/o Late Natthuram Kashyap Aged About 70 Years R/o Village Kachora, P.S. And Tahsil Korba, District Korba, Chhattisgarh (Mother Of Deceased)

---- Respondents

For Appellant	:	Shri HP Agrawal, Advocate.
For Respondents No.1&2	:	None though served.
For Respondent No.3	:	Shri Gautam Khetrapal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Order On Board

07/01/2019:

Aggrieved by the award dated 18.1.2018 passed by Motor Accident Claims Tribunal, Janjgir-Champa in Claim Case No.13/2017 whereby application u/s 163A of the Motor Vehicles Act, 1988 (in short "the Act") of the claimants has been dismissed, the appellants/claimants have filed the instant appeal u/s 173 of the Act.

02. As per averments in the claim petition, on 12.10.2012 while

Kanhaiyalal, aged about 28 years, earning Rs.40,000/- per annum as a driver, was driving vehicle tractor and trolley bearing No. CG 12 F 0133 at the stone quarry for the purpose of loading stones, due to failure of steering of the vehicle, it got uncontrolled and overturned as a result of which Kanhaiyalal suffered grievous injuries and succumbed to the same.

03. On claim petition being filed by the claimants – wife and minor children of the deceased, under Section 163A of the Act, the Tribunal dismissed the same as being not maintainable only on the ground that income of the deceased has been claimed as Rs.40,000/- per annum whereas for filing a claim petition u/s 163A of the Act, annual income of the deceased has to be below 40,000/-.

04. Learned counsel for the appellants/claimants submits that the Tribunal has committed a gross illegality in dismissing the claim petition filed under Section 163A of the Act as being not maintainable merely on the ground that annual income of the deceased has been pleaded as Rs.40,000/-. Therefore, the matter needs to be remanded to the Tribunal with a direction to decide the claim petition afresh after giving due opportunity of hearing and of adducing evidence to the parties in accordance with law as expeditiously as possible.

05. On the other hand, learned counsel appearing for respondent No.2/insurance company opposes the above submission of the appellants and supports the impugned award.

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

07. The only issue to be considered by this Court is whether the Tribunal was justified in dismissing the claim petition filed under Section 163A of the Act as being not maintainable on the ground that income of the deceased has been pleaded as Rs.40,000/- per annum. The claimants in their claim petition have pleaded that income of the deceased was Rs.3333/- per month i.e. Rs.39996 per annum. As per evidence of AW-1 Sahodri Bai (wife of the deceased), the deceased was earning Rs.40,000/- per annum as a driver. From perusal of

Section 163A and Second Schedule thereunder, it is seen that nowhere it has been provided that for filing a petition under the aforesaid section, income of the deceased has to be below Rs.40,000/-. It only contemplates that income of the deceased should not be more than Rs.40,000/- if a claim petition is filed under this section.

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 Girishbhai 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 committed an illegality in dismissing the claim petition on the ground that annual income of the deceased has been claimed as Rs.40,000/-.

10. In the result, the appeal is allowed in part. The impugned award is hereby set aside the matter is remanded to the Tribunal with a direction to decide the claim case afresh after giving due opportunity of hearing and adducing evidence to both the parties, within a period of six months from the date of receipt of the records. The parties shall

also be permitted to amend their pleadings, if so required, and adduce evidence thereon.

11. Registry is directed to send the record to the concerned Tribunal without delay.

12. Parties present here are to appear before the concerned Tribunal on 7th February, 2019. However, the parties who are not represented here shall be given notice by the Tribunal on the said date for their appearance/representation on a date to be fixed by it.

It is made clear that nothing in this order shall be construed as an expression of opinion on merits of the case and the Tribunal to decide the claim case strictly on the basis of material available before it in accordance with law.

Sd/

(Gautam Chourdiya)

Judge