(2011) 07 KL CK 0034

In the High Court Of Kerala

Case No : M.A.C.A. No. 886 of 2011

A. Ali, Beevi, Nisha and Sihab — APPELLANT

Vs

Abdulkhader, Basheer and The Orinental Insurance Company Limited — RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2011) 07 KL CK 0034

Hon'ble Judges : R. Basant, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : A. Mohammed, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

R. Basant,J.

1. This appeal is directed against the impugned award under which the claim of the Appellant for compensation u/s 163A of the Motor Vehicles Act was dismissed by the Tribunal. Compensation was claimed by the Appellants/claimants for loss suffered by them as a result of the death of one Sijas, son of claimants 1 and 2 and sibling of Respondents 3 and 4. The Tribunal dismissed the application on the short and sole ground that the claimed income of the deceased being above Rs. 40,000/-, the claim u/s 163A is not legally sustainable.

2. Appellants claim to be aggrieved by the impugned award. What is the ground of challenge? The learned Counsel for the Appellant does not fairly attempt to challenge the conclusion of the Tribunal which we find is eminently supported by paragraph 67 of Deepal Girishbhai Sony v. United India Insurance Co. Ltd. 2004 (2) KLT 395 (SC). We extract paragraph 67 below:

67. We therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/-

per annual shall be treated as a cap. In our opinion, the proceeding u/s 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

3. There can be no semblance of doubt on the question now that the claim u/s 163A in the circumstances of the case is not maintainable. The same view has been taken by other Bench of this Court also earlier.

4. The learned Counsel for the Appellants submits that if the claim is not maintainable u/s 163A, the Tribunal ought to have considered the claim u/s 166 without obliging the Appellants to file another application u/s 166 of Motor Vehicles Act. We find that submission of the learned Counsel for the Appellant absolutely sustainable and correct.

In the result:

(a)This appeal is allowed in part.

(b) The impugned order is set aside and the Tribunal is directed to dispose of O.P. (MV) 1920 of 2003 afresh in accordance with law as expeditiously as possible-at any rate within a period of 45 days from 1.9.2011 on which day the Appellant shall appear before the Tribunal to proceed with the matter. The claim shall be disposed of afresh reckoning the same as one u/s 166 of the Motor Vehicles Act.

(c) Compliance shall be reported to this Court.

