(2008) 06 SHI CK 0003

In the High Court Of Himachal Pradesh

Santosh Kumari and Others — APPELLANT

Vs

New India Assurance Company Ltd. and Another — RESPONDENT

Date of Decision : 30-06-2008

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

Citation : (2010) ACJ 1740 : (2008) 2 ShimLC 470

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—The appellants were the claimants before the learned Motor Accident Claims Tribunal. They are the widow, minor daughter and mother of deceased Rajnesh Kumar. They originally filed a petition u/s 163-A of the learned Motor Vehicles Act before the Motor Accident Claims Tribunal, Bilaspur, claiming compensation under no fault liability. In the claim petition the income of the deceased was alleged to be more than Rs. 40,000/- per annum. It would be pertinent to mention that deceased Rajnesh Kumar was the driver of the vehicle, which met with accident. The learned Tribunal allowed the claim petition and awarded Rs. 4,34,000/- to the claimants. The Insurance-Company challenged this award before this Court by filing FAO (MVA) No. 235 of 1997. This appeal was allowed by this Court on the ground that the claim petition u/s 163-A was not maintainable since the income of the deceased was alleged to be more than Rs. 40,000/- per annum. The relevant portion of the judgment reads as follows:

The Apex Court in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, , has held that where the income of the victim is more than Rs. 40,000/- per annum then a petition u/s 163-A of the Motor Vehicles Act is not maintainable. The Apex Court held as follows:

53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such

beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the Court Would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. See Regional Director, Employees'' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, .

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 annum 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 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.

In view of the law laid down by the Apex Court there can be no doubt that Section 163-A could not have been applied in the facts of the present case. It appears that the petition u/s 163-A has been filed by the claimants under legal advice received, therefore, it would not be in the interest of justice to deny them the right to claim compensation. Therefore, while holding that the petition u/s 163-A is not maintainable I feel it proper to permit the claimants to take such other legal action for grant of compensation as is permissible under law, either under the Motor Vehicles Act or under the Workmen''s Compensation Act. In case the petitioners take such steps within a period of two months from today the proceedings shall be decided without raking up any objection of limitation or delay and laches.

The appeal is allowed in the aforesaid terms with no order as to costs.

2. This order was challenged by the claimants before the Apex Court but the Apex Court rejected the Special Leave Petition.

3. Thereafter, the petitioners again filed a petition u/s 163-A of the Motor Vehicles Act. However, in this petition, the income of the deceased Rajnesh Kumar was alleged to be Rs. 3300/- per month, i.e. Rs. 39,600/- per month. The learned Motor Accident Claims Tribunal rejected this petition on the ground that though this Court had permitted the petitioners to take other action which may be permitted under the Motor Vehicles Act and the Workmen''s Compensation Act but the petitioners could not have filed a fresh petition u/s 163-A of the Motor Vehicles Act just by reducing the income which was initially alleged to be more than Rs. 40,000/- to be a little below Rs. 40,000 per annum.

4. Shri T.S. Chauhan, has contended that this Court in its previous order had not directed that the petitioners cannot file a petition u/s 163-A and the petitioners were at liberty to take any action under the Motor Vehicles Act or the Workmen''s Compensation Act. I am not in agreement with this contention. For the sake of convenience the operative portion of the order is again quoted:

Therefore, while holding that the petition u/s 163-A is not maintainable I feel it proper to permit the claimants to take such other legal action for grant of compensation as is permissible under law, either under the Motor Vehicles Act or under the Workmen''s Compensation Act.

5. It is clear from the operative portion of the order, especially the underlined portion that this Court had only permitted to the claimants to take "such other" legal action as is permissible under, law. These words make it clear that the action contemplated was action other than that contemplated u/s 163-A of the Motor Vehicles Act. By no stretch of imagination, the claimants could be permitted to file a fresh application u/s 163-A of the Motor Vehicles Act. If this interpretation is accepted, this would set at naught not only the judgment of this Court but also the judgment of the Apex Court in Deepal Girishbhai Soni, supra.

6. Therefore, in my considered view, the learned Tribunal was absolutely right in rejecting the claim petition. There is no error in the award passed by the learned Tribunal.

7. Hence, the appeal is dismissed.