(2013) 12 CHH CK 0008

In the Chhattisgarh High Court

Case No : Misc. Appeal No. 619/2004

The New India Assurance Company Limited — APPELLANT

Vs

Sumitra Bai — RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 1 MPHT 64

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—The New India Assurance Company Ltd./appellant herein has filed this appeal u/s 173 of the Motor Vehicles Act, 1988 (for short "the M.V. Act") questioning the award dated 23-2-2004 passed by 4th Additional Motor Accidents Claims Tribunal, Raipur (for short "the Claims Tribunal") in Claim Case No. 33/2003, by which, the Claims Tribunal has partly allowed the claim petition filed by the claimants and awarded total sum of Rs. 1,70,000 along with 6% interest. Brief facts necessary for adjudication of this appeal are as under:--

1.1. Claimants-Sumitra Bai and others being the legal representatives of deceased Omprakash Dhiwar, filed Claim Petition No. 33/2003 u/s 163-A of the M.V. Act, before the Claims Tribunal seeking compensation stating inter alia that on 15-12-2002, Omprakash Dhiwar (deceased) along with Khorbahara Chandrakar were going from Raipur to Village Nara on motorcycle bearing Registration No. CG-04/ZE/6177. The said motorcycle was driven by Omprakash Dhiwar and Khorbahara Chandrakar was sitting as pillion rider, when they reached near, FCI Godown, tyre of motorcycle got burst and motorcyclist lost balance and came into contract of truck, by which, Omprakash Dhiwar and Khorbahara Chandrakar both sustained injuries and thereafter died. At the time of accident, Omprakash Dhiwar was aged about 32 years and earning Rs. 7,000/- per month as Contractor. Claimants claimed compensation to the extent of Rs. 10,17,000 from the appellant and respondent No. 5 jointly and severally.

1.2. The said application was contested by owner of the vehicle as well as Insurance Co. stating inter alia that they are not liable to make payment of compensation.

1.3. The Claims Tribunal, by its impugned award held that deceased Omprakash Chandrakar has died on account of bursting of tyre of motorcycle and entitled for Rs. 1,70,000 along with 6% interest.

2. Mr. Shree Kumar Agrawal, Senior Counsel with Mr. Anand Gupta, learned Counsel appearing for the appellant/Insurance Co. would submit that the claimants has claimed that the monthly income of deceased Omprakash Dhiwar was Rs. 84,000 per annum, which is more than Rs. 40,000 prescribed under the Second Schedule enacted u/s 163-A of the M.V. Act, therefore, the application filed u/s 163-A of the M.V. Act was not maintainable and as such award deserves to be set aside.

3. Per contra, Mr. Amiyakant Tiwari, learned Counsel appearing for the respondent Nos. 1 to 4/claimants supported the impugned award and would submit that annual income of deceased Omprakash Dhiwar was claimant as Rs. 84,000, but the Claims Tribunal has assessed the annual income of deceased Omprakash Dhiwar as Rs. 15,000 per annum, therefore, the application filed u/s 163-A of the M.V. Act was maintainable.

4. Mr. Abhishek Sharma, learned Counsel appearing for the respondent No. 7 supported the impugned award and opposed the appeal.

5. I have heard learned Counsel for the parties and considered the rival submissions and have perused the records of the Claims Tribunal.

6. In case of Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, , the Supreme Court has held that jurisdiction of Motor Accidents Claims Tribunal u/s 163-A of the M.V. Act can be invoked, if the annual income of a person is Rs. 40,000 per annum. Para 67 of the said report held as under:--

"67. We, therefore, are of the opinion that The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., , 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 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."

7. The Claims Tribunal, after due enquiry, has clearly recorded a finding that the annual income of deceased was Rs. 15,000/- per annum and said finding has not been challenged by Insurance Co. in this appeal and same has attained finality, therefore, merely on the basis of pleading in the application that cannot be held that annual income of deceased was more than Rs. 40,000/- per annum. Therefore, Claims Tribunal has rightly entertained and granted the application

filed by the claimants u/s 163-A of the M.V. Act assessing the annual income of deceased as Rs. 15,000/- per annum and there is no illegality in the impugned award. Resultantly, I find that the application filed u/s 163-A of the M.V. Act before the Claims Tribunal was clearly maintainable. As such, the appeal filed by the Insurance Co. deserves to and is hereby dismissed. No order as to costs.

