

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

FAO No. 184 of 2006.

Judgement reserved on:

Date of decision : July 31, 2006.

The National Insurance Co. Ltd. Appellant.

Vs.

Smt. Anjna Devi & ors. Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: Mr. Sandeep Sharma, Advocate, with
Mr. Rajiv Jiwan, Advocate.

For the respondents:

Surjit Singh, J. (Oral).

Heard and gone through the record. A petition was filed under Section 163 of the Motor Vehicles Act, claiming compensation for the death of the driver of the vehicle. In the petition, it was alleged that the income of the deceased was Rs. 40,000/- per annum. The Tribunal after trial has concluded that the income of the deceased was only Rs. 24,000/- per annum and awarded the compensation accordingly.

The insurer has come in appeal. It is alleged that during the course of inquiry, one of the claimants, while in the witness box,

Whether reporters of local Papers may be allowed to see the judgment?

stated that the income of the deceased was Rs. 3500/- per month and if that is so, the petition under Section 163-A of the Motor Vehicles Act, was not maintainable, and hence, the award is liable to be set-aside.

I have heard the learned counsel for the appellant. A perusal of the award of the Tribunal shows that the claimants had alleged that the income of the deceased was Rs. 40,000/- per annum, and admittedly, where the income is up to Rs. 40,000/- per annum, claim petition under Section 163-A of the Motor Vehicles Act, is maintainable. This is clear from a bare reading of the provision of Section 163-A read with the Schedule. Of-course, the award shows that during the course of inquiry, one of the claimants stated that the income of the deceased was Rs.3500/- per month, that is to say Rs. 42,000/-, per annum, but that should not make any difference, because the Tribunal has not believed that statement and found that the income of the deceased was only Rs. 24,000/-, per annum. Thus, the petition was maintainable, because it was stated therein that the income of the deceased was Rs.40,000/- per annum. Similarly the award can also not be assailed because the Tribunal has given a definite finding that the income of the deceased was less than Rs. 40,000/- per annum.

I need not go into the other aspect of the matter, i.e. whether an Insurance Company can assail an award on the ground of maintainability of the petition in such a situation, because of the statute, i.e. Section 149, sub-section (2) of the Motor Vehicles Act, limiting the defences available to the insurance company in a claim petition under the Motor Vehicles Act, as even on facts, the appeal is without any merit.

The precedent, i.e. **Deepal Girishbhai Soni and others** vs. **United India Insurance Co. Ltd. Baroda** [(2004) 5 SCC 385], relied upon by the counsel for the appellant does not have any application, because on facts, the case in hand, is different from the case before the Hon'ble Supreme Court, inasmuch as in the case in hand, the income as alleged was Rs.40,000/-, per annum and on inquiry it has been held to be even less than that.

For the foregoing reasons, the appeal is dismissed.

CMP No. 746 of 2006.

Infructuous.

July 31, 2006.
(Hem)

(Surjit Singh),
Judge.