

FAO No.236 of 2003

29.6.2007 Present: Mr. Lovneesh Kanwar, Advocate, for the appellant.

Mr. B.M. Chauhan, Advocate, for respondent No.1.

Mr. Ajay Sharma, Advocate, for respondent No.2.

Mr. Lovneesh Kanwar, Advocate has stated that in view of the judgment passed by Hon'ble Supreme Court *in Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd. [2004 ACJ 934]*, the original petition itself was not maintainable under Section 163 A of the Motor Vehicles Act, 1988 since in the petition income of the deceased has been pleaded Rs.3500 P.M. which comes out to more than Rs.40,000/- per annum. The petition was bonafide filed under Section 163 A of the Act. He prays that in these circumstances, he may be allowed to withdraw the original petition with liberty to file another petition before appropriate forum. Mr. Ajay Sharma, learned vice counsel appearing for respondent No.2 states that he has no objection for withdrawal of the original petition as prayed by learned counsel for the appellant. Mr. B.M. Chauhan, learned counsel for the respondent No.1 has opposed the withdrawal of the original petition.

In view of the judgment of Hon'ble Supreme Court in Deepal Girishbhai Soni case (supra), the original petition is not Maintainable. It appears that petition was bonafide filed under Section 163 A of the Act. The appellant is permitted to withdraw the original petition with liberty to file another petition on the same cause before the appropriate forum. The award dated 14.2.2003 passed by Motor Accident Claim Tribunal, Hamirpur in MAC Petition No.62 of 2001 is set aside.

CMP(M) No.324 of 2007 and CO No.365/2003

In view of the order passed in the main matter, the application as well as Cross-objections are disposed of.

**(Kuldip Singh)
Judge**

29th June, 2007(sks)