MOTOR ACCIDENT JUDGEMENTS

2024(2)GMAJ513

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before M M Sathaye]

First Appeal; Interim Application No. 168 of 2024; 19753 of 2022 **dated 01/10/2024**

New India Assurance Co Ltd

Versus

Vivek Niwas Patil; Gursahib Singh Kullar

COMPENSATION REDUCTION

Motor Vehicles Act, 1988 Sec. 166, Sec. 173 - Compensation Reduction - Appellant challenged the award of Rs.1.06 crore for the death of respondent's wife, arguing excessive dependency compensation - Appellant highlighted that respondent was not financially dependent on his wife's income, and deduction should be 2/3rd, not 1/3rd - Court accepted the argument, reducing compensation by applying 2/3rd deduction based on shared living expenses - Final compensation recalculated to Rs.52,59,658 with 9% interest. - Appeal Partly Allowed

Law Point: In cases where both spouses earn similar incomes and have no dependents, a higher deduction of 2/3rd for personal expenses may be applied to ensure just compensation.

મોટર વાહન અધિનિયમ, **1988** કલમ **166,** કલમ **173 -** વળતરમાં ઘટાડો **-** અપીલકર્તાએ પ્રતિવાદીની પત્નીનાં મૃત્યુ માટે રૂ. **1.06** કરોડના ચુકાદાને પડકાર્યો હતો, જેમાં વધુ પડતી નિર્ભરતાની દલીલ કરવામાં આવેલ હતી **-** અપીલકર્તાએ એવી દલીલ કરેલ હતી કે, પ્રતિવાદી તેની પત્નીની આવક પર આર્થિક રીતે નિર્ભર નથી તથા તેમાં કપાત **2/3** થવી જોઈતી હતી અને નહીં કે **1/3 -** અદાલતે તેની દલીલને માન્ય રાખેલ, વહેંચાયેલ જીવન નિર્વાહ ખર્ચ પર આધાર રાખી **2/3** ની કપાત લાગુ કરીને વળતરને ઘટાડેલ **-** અંતિમ વળતર પુનઃગણતરી કરીને **9%** વ્યાજ સાથે રૂ. **52,59,658/-** નો કરવામાં આવેલ **-** અપીલ અંશતઃ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- એવા કેસોમાં કે જેમાં પતિ-પત્ની બંને સમાન આવક મેળવતા હોય તથા તેઓનાં કોઈ આશ્રિત ન હોય, તો માત્ર વળતરની ન્યાયિક ખાતરી કરવા, વ્યક્તિગત ખર્ચ માટે 2/3 ની ઊંચી કપાત લાગુ કરી શકાય છે.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 166, Sec. 173

Counsel:
Devendra Joshi, Abhishek Jha, Nishant Mokal, Jha Legal Associates

JUDGEMENT

M M Sathaye, J.- [1] Heard learned counsel for the Appellant/Insurance Company and learned counsel for Respondent No.1/Claimant. Learned counsel for the Appellant/Insurance Company submits that the presence of Respondent No.2/ owner of the offending vehicle is not required for disposal of the Appeal considering the nature of arguments proposed to be advanced about quantum only. Hence, taken up for final disposal with consent of learned counsel appearing for the parties.

[2] The Appellant/Insurance Company has filed present Appeal under Section 173 of the Motor Vehicles Act, 1988 ('the said Act' for short) challenging the Judgment and Award dated 23.12.2021 passed by the Motor Accident Claims Tribunal (MACT), Alibaug in Motor Accident Claims Petition (MACP) No. 138 of 2017. By the said impugned Judgment and Award, the claim of Respondent No.1 under Section 166 of the said Act is allowed, thereby holding the Appellant/Insurance Company jointly and severally liable with Respondent No.2 to pay Rs.1,06,94,116/- (Rupees one crore six lakh ninety four thousand one hundred and sixteen only) along with interest @ 9% from the date of claim application till realization.

[3] Few facts necessary for disposal of the Appeal are as follows. The claim is filed for compensation towards accidental death of wife (Deepali) of Respondent No.1- Claimant. The case of the Claimant in short is that on 04.03.2017 at around 5.45 am, when deceased Deepali was travelling as pillion rider on Activa scooter (MH-10/BD-5890) from Dandphata to Apta, a tractor (MH-46/F-5278 - offending vehicle) gave dash to the said Activa from backside. In this accident, deceased Deepali got seriously injured, who was taken to hospital, where she succumbed to injuries and died on 06.03.2017. The accident took place due to rash and negligent driving of the offending vehicle. Deceased was 27 years old at the time of death and was working as a professor in Sinhgad Institution of Technology, where she was earning an amount of Rs.55,979/- per month. On these contentions, claim of Rs. 5 Lakh was made.

[4] The Appellant/Insurance Company filed written statement contending inter alia breach of policy conditions. It is further contended that Activa was being driven in rash and negligent manner, whereas the driver of the offending tractor was not driving

rashly and negligently and therefore, accident has occurred due to fault of the Claimant. The claim that Respondent No. 1 was dependent on deceased's income was disputed and claim was opposed as being excessive.

[5] The Tribunal after hearing both sides held that the accident took place due to rash and negligent driving of offending tractor and giving dash to Activa from backside and the offending vehicle was insured with Appellant at the time of accident. It is found on admission that Respondent No. 1 - Claimant himself was driving the Activa Scooter at the time of accident. Compensation has been calculated accepting monthly income of Deepali after deducting the amount of taxes and annual income is fixed at Rs.6,24,948/-, future prospects of 50% is added and 1/3rd deduction is applied towards personal expenses and finally multiplier of 17 is applied. On this basis, the amount as indicated above, is granted.

[6] Learned counsel Mr. Joshi for the Appellant/Insurance Company has raised two main contentions. It is pointed out that the Claimant has admitted in cross-examination that he himself is employed in a permanent service and earing Rs.45,000/- per month. He has admitted that at the time of accident also, he was employed in private company and getting Rs.30,000/- per month. He has also admitted that he was not dependent on the income of his wife. He has also admitted that deceased's job was of temporary nature. Based on these admissions, it is argued by the Insurance Company that when the claimant himself is almost equally earning as compared to the deceased, he cannot be treated as dependent and therefore, is not entitled to the compensation. It is further argued that assuming without admitting that there is some dependency of the Claimant, in identical situation like the present case, where the Claimant and deceased are husband and wife living together with no children, Karnataka High Court has taken a view in the case of **A. Manavalagan v/s. A. Krishnamurthy and Ors.**, 2004 ILR(Kar) 3268 that if the husband and wife were both earning and living together, sharing the expenses, then their joint living expenses are less than twice the expense of each one living separately, and then each of them, by the fact of sharing, is conferring a benefit on the other, resulting into higher savings. It is therefore held that in such circumstances the Claimant (surviving spouse) will be entitled to compensation on the basis of 1/3rd of the income of deceased. In other words in such peculiar case, a view is taken that deduction should be 2/3rd. He therefore, submitted that amount taken as basis under the impugned Judgment and Award should be reduced by applying 2/3rd deduction. In other words, instead of applying deduction of 1/3rd, he submitted that deduction of 2/3rd be applied.

[7] The second submission of learned counsel for the Insurance Company, relying on pay-slip of the deceased produced on record, is that deceased was getting Hill Station Allowance (HSA) of Rs.2,292/- per month as well as Travelling Allowance (TA) of Rs. 1,200/- per month. He submitted that both these allowances were for the

use of the deceased only and therefore, cannot be considered as benefit to the family and therefore should be deducted from the amount of income.

[8] Per contra, learned counsel for the Respondent No.1/Claimant disputed this position relying on the Judgment of Karnataka High Court in the case Uma w/o Sadashiv Kalmad v/s. Basavaraj s/o Baganvanth Hugar and Anr [MFA No. 100859/2016 (MV)] contending that the said judgment has followed the judgment of **Sarla Varma v/s. Delhi Transport Corporation**, 2009 6 SCC 121 , where it is held that in case of married couple only 1/3rd needs to be deducted from the income towards personal expenses. He further relied upon the Judgment of Karnataka High Court in the case of National Insurance Co. Ltd. v/s. Girija w/o Shivagouda Goudar and Anr. [Misc. First Appeal No. 22495 of 2010 dated 08.06.2022] which once again relying on Sarla Varma (supra) and the case of Uma Kalmad (supra) has held that in case of married couple appropriate deduction is 1/3rd of the income for personal expenses. He has also relied upon Judgment of Supreme Court in the case of **N. Jayasree and Ors. v/s. Cholamandalam MS General Insurance Company Ltd.**, 2022 14 SCC 712 especially paragraph 11 thereof and **National Insurance Co. Vs. Pranay Sethi & Ors**, 2017 16 SCC 680 contending same proposition that in case of married couple 1/3rd deduction should be applied. In short his contention is that appropriate deduction in present case is 1/3rd only and not more.

[9] In rebuttal, the learned counsel for the Appellant/Insurance Company pointed out that in fact, the observations in paragraph 17 of the Judgment of N. Jayasree (supra) relied upon by the Respondent / Claimant are helpful to the Appellant/ insurance company, in as much as, settled law about percentage of deduction towards personal expenses is re-iterated there - that deduction depends on the facts and circumstances of each case and it cannot be governed by a rigid rule or formula of universal application.

[10] There is absolutely no dispute about the propositions and guidelines laid down by the Hon'ble Supreme Court in the cases of both Sarla Verma and Pranay Sethi (supra). However, learned counsel for the Insurance Company is right in pointing out that deduction depends on the facts and circumstances of each case and it can not be governed by a rigid rule or formula of universal application, as reiterated by the Hon'ble Supreme Court in the recent case of N. Jayasree (Supra). That is precisely the reason why peculiar facts of this case has to be considered in deciding just and proper deduction.

[11] In the present case, only husband and wife are involved, who were admittedly living together and one of them (wife) is deceased and the Husband (living spouse) has claimed compensation. Also, the Claimant (Husband - living spouse) himself is admittedly earning almost equal to the deceased. These are the peculiar facts, in which Insurance Company is arguing for increasing deduction towards personal expenses. There is nothing to indicate in the judgments of Uma Kalmad (supra) and Girija S.

Gaudar (supra) that such a peculiar case as present one, was either involved or considered. There is also nothing to indicate in those judgments that such peculiar argument or contention was under consideration. Similarly in the case of N. Jayasree (supra) facts were that deceased had left behind a widow, 2 daughters and a mother in law, who were claiming compensation. The family size was completely different as compared to present case. Also, the Hon'ble Supreme Court, in that case was considering totally different issues as can be seen from paragraph 8 of the said judgment which reads thus:

> "8. In view of the above, the questions for consideration before us are:
>
> 8.1 (I) Whether the High Court was justified in precluding the mother-in-law of the deceased (Appellant No. 4) as his legal representative?
>
> 8.2 (II) Whether the High Court was justified in applying split multiplier?
>
> 8.3 (III) Based on the findings on the preceding questions, what is the amount of compensation that should be awarded to the appellants?"

It is therefore clear that both facts and issue under consideration was totally different in above judgments. The argument of the Appellant/Insurance Company has to be noted in the peculiar facts of the present case. Therefore, the deduction will have to be determined based on facts existing in this case. In that view of the matter, none of the Judgments relied upon by the Respondent No.1/Claimant will advance his case.

[12] The learned counsel for the Respondent-Claimant has relied upon The Report of 6th Central Pay Commission - clause No. 4.2.22 thereof, to contend that many allowances exist to compensate for the hardship of service in certain areas or in cases where the employee is unable to keep his family. He submitted that HSA which was being paid to the deceased in the present case, is covered under this clause and since it makes reference to employee being unable to keep family, such allowance must be held as allowance for the benefit of family and therefore, should not be deducted. Per contra, learned counsel for the Appellant/Insurance Company has argued that even though the allowance is being paid because the employee is unable to keep his family because of special condition (which in this case is a job at hill station), this allowance, in any case, was supposed to be utilised for the deceased alone and therefore should be deducted.

[13] I have carefully considered this aspect of Hill Station Allowance (HSA). The nature of allowance as indicated in clause 4.2.22 is an allowance to the employee because he or she is required to meet special living condition, being unable to keep family. It can therefore be safely concluded that if the deceased had not met with the accident and had continued to work and earn in hilly area where the institute is situated, she would have received the said allowance (HSA) because she was required to live in special condition, including not being able to keep family. Therefore, in my view, the said allowance was connected with family and cannot be deducted from the

income. However, in case of TA, travel allowance, it was obviously for the travel undertaken by the deceased herself and had nothing to do with family and therefore it needs to be deducted.

[14] Admittedly in the present case, the Claimant and deceased were living together as husband and wife. Claimant has admitted that he is earning Rs. 45,000/- per month. The deceased was earning about Rs. 56,000/- per month. Considering the Claimant's admission about earning himself, both at the time of accident and at the time of deposition, his further admission that he is not dependent on deceased's income and comparing the figures, it can be said safely said that the Claimant is earning almost equally, albeit on lower side, compared to the deceased. There are no children or other family members involved.

[15] Therefore, in my opinion the Respondent Claimant cannot be called as dependent in the first place.

[16] Assuming that the Respondent Claimant was dependent to some extent (giving him benefit of the fact that he was earning a little less than the deceased wife at the relevant time), in my considered view, his peculiar position can not be left to a straight jacket formula or brackets of 1/3rd or half deduction. Cardinally, the compensation has to be 'just' and 'fair'. It can not be a bonanza.

[17] Such peculiar identical situation is already considered by the Division Bench of the Karnataka High Court in the case of A. Manavalagan (supra), where also earning wife working as a lecturer had died and an earning husband was claiming compensation and there were no children. Same as in the present case. Division Bench of that Court considered a view taken by Hon'ble Supreme Court in the matter of **Madhya Pradesh State Road Transport Corp. Vs. Sudhakar**, 1977 ACJ 290 in similar situation. Finally, a rationale is developed and applied in the said case of A. Manavalagan (supra) about such cases where claimants are dependents and where claimants are not dependents, both as under:

> "20(iv) If the deceased is survived by an educated employed wife earning an amount almost equal to that of her husband and if each was maintaining a separate establishment, the question of 'loss of dependency' may not arise. Each will be sending from his/her earning towards his living and personal expenses. Even if both pool their income, the position will be the same. In such a case the amount spent for personal expenses by each spouse from his/her income will be comparatively higher, that is three-fourth of his/her income. Each would be saving only the balance, that is one fourth (which may be pooled or maintained separately). If the saving is taken as one-fourth (that is 25%), the loss to the estate would be Rs. 2250/- per month or Rs. 27,000/- per annum. By adopting the multiplier of 14, the loss to estate will be Rs. 3,78,000/-.

Note: The position would be different if the husband and wife, were both earning, and living together under a common roof, sharing expenses. As state in **BURGESS VS FLORENCE NIGHTINGALE HOSPITAL**, 1955 1 QB 349, 'when a husband and wife, with separate incomes are living together and sharing their expenses, and in consequence of that fact, their joint living expenses are less than twice the expenses of each one living separately, then each, by the fact of sharing, is conferring a benefit on the other'. This results in a higher savings, say, one-third of the income; In addition each spouse loses the benefit of services rendered by the other in managing the household, which can be evaluated at say Rs. 1,000/- per month or Rs. 12,000/- per annum). In such a situation, the claimant (surviving spouse) will be entitled to compensation both under the head of loss of dependency (for loss of services rendered in managing the household) and loss to estate (savings to an extent of one-third of the income that is Rs. 3,000/- per month or Rs. 36000/- per annum). Therefore, the loss of dependency would be 12000 14=168,000/- and loss to estate would be 36000 14=5,04,000/-. In all Rs. 6,72,000/- will be the compensation"

[Emphasis supplied]

Thus, in such peculiar situation, the Division Bench of Karnataka High Court has taken a view that 2/3rd deduction should be proper. It is not brought to my notice that this Judgment has been set aside or varied or modified. I do not see any reason why the same view should not be followed in the present case also, especially considering the striking similarity of the facts involved.

[18] There is no merit in the argument of the Appellant/Insurance Company that interest of 9% granted by the Tribunal is excessive. I find that 9% interest is reasonable and calls for no interference.

[19] No other arguments are advanced.

[20] Having held as above, the amount of TA - travelling allowance of Rs. 1200/- per month needs to be deducted from the income of the deceased apart from deduction of taxes (as already applied by the Tribunal). So also, the deduction towards personal expenses must be 2/3rd instead of 1/3rd applied by the Tribunal. 50% Future prospects will remain unchanged. Applying these changes, the calculation would come out as indicated in the below, which in my opinion is just and proper compensation in the present case:

Rs. 55,979 /- monthly income (-) 1,200/- (deduction of TA) =

Rs. 54,779/- (x) 12 months =

Rs. 6,57,348 /- Annual income

(-) 44,300/- Income Tax (-) 2,500/- Professional Tax =

Rs. 6,10,548/- Annual loss (+) 3,05,274/- (50% addition for future prospects) =

Rs. 9,15,822/-

(-) 6,10,548/- (2/3rd deduction towards personal expenses) =

Rs. 3,05,274/-

(x) 17 (multiplier) = Rs. 51,89,658/-

(+) 70,000/- (for loss of consortium & funeral expenses as awarded by the Tribunal) = **Rs. 52,59,658/- Total amount of compensation.**

[21] The Appeal is therefore partly allowed in the peculiar facts of this case and the impugned award is modified as under.

(A) The claim of the Respondent No.1 is granted with costs as under.

(B) The Respondent No.1/Claimant is held entitled to receive Rs.52,59,658/- (Rupees fifty two lakh fifty nine thousand six hundred fifty eight only) from Appellant Insurance Company jointly and severally with Respondent No. 2 / Owner along with interest @ 9% per annum from date of claim application till realization.

(C) The amount of no fault liability, if already received, will be adjusted from the above amount.

[22] In view of disposal of first appeal, nothing survives in the interim application and the same is also disposed of.

[23] All concerned to act on duly authenticated or digitally signed copy of this order

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2024(2)GMAJ520

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

First Miscellaneous Appeal; F M A T No. 450 of 2011; 697 of 2010 **dated 27/09/2024**

Lipika Dey & Anr

Versus

Oriental Insurance Company Ltd & Anr

ENHANCED ACCIDENT COMPENSATION

Motor Vehicles Act, 1988 Sec. 166 - Enhanced Accident Compensation - Appellants challenged the tribunal's award of Rs. 2,65,500/- for the death of the victim in a motor accident - High Court reviewed evidence and adjusted monthly income to Rs. 3,000/- with 40% for future prospects - Multiplier of 15 applied, and general damages increased to Rs. 84,000/- - Total compensation set at Rs. 5,88,000/-, deducting the amount already paid, with interest at 6% - Appeal Allowed

Law Point: Just compensation in motor accident cases must account for future prospects, proper income assessment, and appropriate damages for loss of consortium and estate based on prevailing legal standards.

મોટર વાહન અધિનિયમ, 1988 કલમ 166 - અકસ્માતનાં વળતરમાં વધારો - અપીલકર્તાઓ એ ટ્રિબ્યુનલ દ્વારા, ભોગ બનનારનાં મૃત્યુ માટેનાં વળતર પેટે રૂ. 2,65,500/- નાં ચુકાદાને પડકારેલ હતો - વડી અદાલતે પુરાવાઓની સમીક્ષા કરેલ, જેમાં માસિક આવકને રૂ. 3,000/- ગણેલ તથા ભાવિ સંભાવનાઓ 40% ગણવામાં આવેલ - અને તેને 15 નો ગુણાંક લાગુ કરેલ તથા સામાન્ય નુકસાન વધીને રૂ.84,000/- ગણેલ - કુલ વળતર રૂ. 5,88,000/- 6% વ્યાજ સાથે આપવાનું ઠરાવેલ, જેમાં અગાઉ ચૂકવી આપેલ રકમને બાદ કરવાની હતી - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- મોટર અકસ્માતનાં કેસોમાં માત્ર વળતર એ ભવિષ્યની સંભાવનાઓ, યોગ્ય આવકની આકારણી તથા પ્રવર્તમાન કાનૂની ધોરણોના આધારે કન્સોર્ટિયમ અને એસ્ટેટનાં નુકસાન માટે યોગ્ય લોસ થયેલ હોવું જરૂરી છે.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 166

Counsel:
Niranjan Maity, Rajesh Singh

JUDGEMENT

Shampa Dutt (Paul), J.- **[1]** The present appeal has been preferred by the claimants against the Judgment and Award dated 9th March, 2010 passed by Judge, Motor Accident Claims Tribunal, Additional District Judge, 4th Court at Alipore, 24 Parganas (South) in Motor Accident Claim Case No. 188 of 2009, **under Section 166 of the Motor Vehicles Act, 1988.**

[2] The FACTS:-

> "On 27.05.2007 at about 9 p.m., the victim Debasish Dey was returning to his house on foot when he was dashed by a vehicle No. WMT-5290 being driven in rash and negligent manner near Dabur Gate, Narendrapore causing fatal injuries to his person and he died on the spot. Hence, this claim"

[3] Shyamalendu Ghosal /O.P. No. 1, Owner of the offending vehicle and the Oriental Insurance Co. Ltd./O.P. No. 2 contested the case by filing separate written objections denying all the material allegation made in the claim application.

[4] The claimants have examined **five witnesses** and proved relevant documents, which were marked **Exhibits 1 to 7.**

[5] The tribunal finally held as follows:-

"…..MACC No. 188 of 2009

Dated 9th March, 2010

……..The evidence adduced with regard to the income of the deceased is not believe worthy. I have no hesitation in holding that the petitioner failed to prove the income of the deceased. But even a day labourer earns Rs. 2,000/- pm. At least these day and therefore, the deceased may be deemed to have income of Rs.24,000/- per annum.

Having come to this finding, I proposed to calculate the amount of compensation as follows:-

Rs. 16,000/- X 16 = Rs. 2,56,000/-

Petitioners are also entitled to Rs. 9,500/- by way of funeral expenses, loss of consortium and loss of estate. So petitioners are entitled to a total compensation of Rs. 2,65,500/- beside interest @ 6% from the date of filing application till realization on the aforesaid amount of compensation u/s 166 M.V. Act but this amount includes interim compensation u/s 140 M.V. Act, if any……

Sd/-
Tribunal Judge, 4th Court,
Alipore, South 24 Parganas……"

[6] Being aggrieved, the claimants have preferred the appeal on the ground that:-

The learned tribunal did not grant "Just Compensation" inspite of there being sufficient evidence in favour of the claimants.

[7] Considering the materials and evidence on record, the following is evident:-

i) The deceased used to do various kind of jobs and earn certain amounts from each of them, the **highest being Rs. 3,100/- per month** as an Electrician Consultant. The Tribunal accepted Rs. 2000/- per month as his income. But considering that the accident occurred in the year 2007, his income be taken as **Rs 3000/- per month.**

ii) Age of the deceased be taken as **36 years** as his date of Birth is 23.10.1970 as seen from **Exhibit 7 (Admit Card)** and as such **Multiplier 15** is applicable. (**Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr.**, 2009 6 SCC 121)

iii) Future prospects be taken at 40% of established income. (National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., 2017 16 SCC 680)

iv) The initial number of claimants being three **(3), 1/3rd** be deducted towards personal expenses of the deceased. **(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)).**

v) General damages of **Rs. 70,000**/- under the conventional heads of Loss of estate: **Rs.15,000**, Loss of consortium: **Rs.40,000**, Funeral expenses: **Rs.15,000 to be added. (National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

[8] Thus the **"Just Compensation"** in this case would be as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (3,000 x 12)	Rs. 36,000/-
Less: **1/3**rd towards personal and living expenses	Rs. 12,000/-
	Rs. 24,000/-
Add: Future prospects @ **40**% of the annual income of the deceased	**Rs. 9,600/-**
	Rs. 33,600/-
Multiplier x 15 (33,600 x 15)	**Rs. 5, 04, 000/-**
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	**Rs. 84,000/-**
Total amount:-	**Rs. 5, 88, 000/-**

[9] Admittedly, the Claimants have received the amount of compensation of **Rs. 2,65,500/-** together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **balance amount of compensation of Rs. 3, 22, 500/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

[10] Taking into consideration, the amount already received by the Claimants/Appellants, the **Respondent No. 1/Insurance Company** shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of consortium to the claimant/wife, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

[11] The appeal being FMA 450 of 2011/FMAT 697 of 2010 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

[12] All connected applications, if any, stand disposed of.

[13] Interim order, if any, stands vacated.

[14] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[15] Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities

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2024(2)GMAJ524

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A T; C A N No. 992 of 2005; 1 of 2024, 2 of 2024 **dated 19/09/2024**

Neoti Debnath

Versus

Oriental Insurance Co Ltd

COMPENSATION ENHANCEMENT IN FATAL ACCIDENT

Indian Penal Code, 1860 Sec. 304A, Sec. 279 - Motor Vehicles Act, 1988 Sec. 163A - Compensation Enhancement in Fatal Accident - Appellants sought enhancement of compensation for the death of their son in a road accident - Tribunal awarded Rs. 1,60,000/- based on outdated schedule - High Court applied the new schedule under Sec. 163A of Motor Vehicles Act, setting compensation at Rs. 5,00,000/- - Respondent insurance company allowed to recover the compensation from the vehicle owner due to driver's invalid license - Appeal Allowed

Law Point: In motor accident claims under Sec. 163A MV Act, compensation must be updated to reflect the new schedule even for prior cases, with insurers entitled to recover from vehicle owners if policy violations are proven.

ભારતીય દંડ સંહિતા, 1860 કલમ 304A, કલમ 279 - મોટર વાહન અધિનિયમ, 1988 કલમ 163A - જીવલેણ અકસ્માતમાં વળતરમાં વૃદ્ધિ - અરજદારોએ તેમના પુત્રનું માર્ગ અકસ્માતમાં થયેલ મૃત્યુ માટે વળતરમાં વધારો કરવાની માગણી કરેલ - ટ્રિબ્યુનલે રૂ. 1,60,000/- જૂની સૂચિ પ્રમાણે મંજૂર કરેલ - વડી અદાલતે નવી સૂચિને લાગુ કરી, મોટર વાહન અધિનિયમની કલમ 163A હેઠળ રૂ. 5,00,000/- નો ચુકાદો આપેલ -

સામાવાળી વિમા કંપનીને વાહન માલિક પાસેથી વળતરની રકમ વસૂલવા માટે પરવાનગી આપેલ કારણકે ડ્રાઈવર પાસે અમાન્ય લાયસન્સ હતો - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- મોટર અકસ્માત ક્લેઈમ કેસોમાં, મોટર વાહન અધિનિયમની કલમ 163A હેઠળ, વળતર અપડેટ થયે, નવી, સૂચિ પ્રમાણે ભલે તે જૂના કેસો હોય તો પણ અને વ્યાજ સહિત, જો પોલીસીની શરતોમાં ભંગ થયેલ હોય તેવું સાબિત થાય તો, વિમા કપંની વાહન માલિક પાસેથી વસૂલ લેવા હકદાર છે.

Acts Referred:
Indian Penal Code, 1860 Sec. 304A, Sec. 279
Motor Vehicles Act, 1988 Sec. 163A

Counsel:
Krishanu Banik, Rajesh Singh, Sucharita Paul

JUDGEMENT

Shampa Dutt (Paul), J.- [1]

Re: IA No.: CAN 1 of 2024

Ia No.: CAN 1 of 2024 is filed praying for amendment of the name of the appellant no.1 as also for amendment of the address of the appellant nos.1 and 2. On hearing both side IA No.: CAN 1 of 2024 stand allowed, the same being formal in nature.

[2] Let the name of the appellant no.1 and address of the appellant nos. 1 and 2 be amended.

[3] Necessary note may be made immediately in the cause title.

[4] Ia No.: CAN 1 of 2024 stands disposed of.

Re: IA No.: CAN 2 of 2024

[5] Ia No. CAN 2 of 2024 is filed praying for condonation of delay in preferring the appeal.

[6] Considering the grounds as made out and in the interest of justice, delay is condoned.

[7] Ia No.: CAN 2 of 2024 stands disposed of.

[8] The present appeal has been preferred by the Claimants/Appellants against the Judgement and Award dated **30th day of September, 2004** passed by the learned

Judge, Motor Accident Claims Tribunal, Durgapur, Burdwan (hereinafter called as the Learned Tribunal Judge) in M.A.C Case No.62 of 2002, **under Section 163A of the M.V Act.**

[9] Facts:-

" ..On 16.09.1999 at about 6 p.m. the victim along with Sanjib was proceeding by a by-cycle along kanccha portion of the link Road near Rabindra-Pally and at material time the lorry bearing No.WGH-9016 was proceeding at a terrific high sped recklessly endangering human life and safety of the others and dashed against the victim Sanjit Mukhopadhyay @ Sanjib Mukherjee and Ripan Debnath as a result they sustained injuries and caused their death. The driver of the vehicle was driving the said lorry rashly and negligently which caused such accident. Police started a criminal case against the driver of the said vehicle under Section 279/304A of I.P.C. It is stated in the petition that Ripan Debnath was aged about 18 years at the time of the accident and death. It is also stated in the petition that he used to earn Rs.3,000/- per month. He was taken to Bidhannagar Hospital for examination. The owner of the said vehicle is Sanjoy Yadav of Durgapur Akbar Road, Burdwan and the Insurance of the said offending vehicle is with Oriental Insurance Company Limited, Uma Bhaban, Asansol, Cover Note A3-AL-054146 dated 30.10.98 issued by Durgapur Divisional Office.

The petitioners claim compensation of Rs.3,00,000/ ..."

[10] The Opposite Party/Oriental Insurance Company filed W.S and Additional W.S denying the claim of the petitioners. It is stated therein that the claimants have no cause of action to file this claim petition against the Oriental Insurance Company Limited. The claim petition is vague and defective and it has not been filed according to the provision of M.V. Rules, 1989. The accident took place on 16.09.1999 and the FIR was lodged on 19.09.1999. The delay of lodging the FIR, raises doubt. So, it is not maintainable in the eye of law. The claimants have not produced the Birth Certificate, to prove the age of the victim. There is no document to prove the monthly income of Rs.3,000/- of the deceased. They denied that the lorry No.WGH-9016 was proceeding at a high speed recklessly endangering human life and safety. The victims were going by bi-cycle along with Kancha portion of the Link Road and for their own laches the accident took place. So the O.P No.2 is not liable to pay any compensation to the claimants. The driving licence of the driver is not legal and valid. The Route Permit, certificate of registration, Insurance Policy etc. are to be proved.

[11] They have also filed additional W.S stating therein that the Insurance Company applied for information regarding the D.L of the driver of the offending lorry and on verification, a report was received from RTA Godda. It is found that the

D.L. No.12393/97/Prof. as mentioned in the D.L. is fake. So, the Insurance Co. has no liability to pay compensation for the said accident to the claimants.

[12] The claimants examined **four witnesses** and proved relevant documents which were marked as **Exhibit-1 series**.

[13] The opposite party/Insurance Company examined only one witness.

[14] The Tribunal considering the materials on record finally held as follows:-

"……..M.A.C Case No.62 of 2002

Dated: 30th day of September, 2004

……...As per Schedule „B? multiplier should be calculated considering the age of the victim and the multiplier in between age of 15 years to 20 years should be 16. So, the compensation should as per account of the learned counsel for the Insurance Company Rs.10,000/- x 16=Rs.1,60,000/-. As such the amount of compensation should be Rs.1,60,000/-.

In the conclusion the petitioners have proved the claim case and they are entitled to get compensation of Rs.1,60,000/-……

Sd/-
Judge
Motor Accident Claims Tribunal, Durgapur……"

[15] Being aggrieved the Appellants/Claimants has preferred the present appeal on the ground:- That the learned tribunal did not grant '"just compensation' to which the claimants are entitled as per law.

[16] Considering, the materials including the evidence on record, the following is evident:-

i) It is seen that the deceased was the son of the claimants.

ii) Offending vehicle is a Lorry bearing No.WGH-9016.

iii) The deceased was aged about 18 years and he died as a result of the accident in the present case.

iv) The claimants have stated that the deceased was a supplier of goods, thus self employed.

v) The deceased was a Bachelor.

vi) The witness on behalf of the Insurance Company as DW-1 has submitted that Exhibit-A is the document which shows that the seized driving licence of the driver of the offending vehicle is fake. Document shows that the licence is not a valid licence and it was duly proved before the tribunal.

vii) The offending vehicle was covered with a valid insurance of the Respondent No. 1/Insurance Company at the time of accident.

viii) The learned tribunal considering the materials on record granted compensation of Rs.1,60,000/- in favour of the claimants.

[17] In the present case the appeal was preferred in the year 2005, from the judgement and Award of the tribunal passed in the year 2002. The report of the department dated 06.03.2005 shows that the appeal was defective, being out of time.

[18] The application for condonation of delay was filed by the appellant only in the year 2024.

[19] Learned counsel for the Insurance Company has relied upon the following judgments:-

a) **Kajal vs Jagdish Chand & Ors.**, 2020 AIR(SC) 776, wherein the Supreme Court held:-

" .Interest

31. The High Court enhanced the amount of compensation by Rs 14,70,000 and awarded interest @ 7.5% p.a. but directed that the interest of 7.5% shall be paid only from the date of filing of the appeal. This is also incorrect. We are constrained to observe that the High Court was not right in awarding interest on the enhanced amount only from the date of filing of the appeal. Section 171 of the Act reads as follows:

"**171. Award of interest where any claim is allowed**. Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

Normally interest should be granted from the date of filing of the petition and if in appeal enhancement is made the interest should again be from the date of filing of the petition. It is only if the appeal is filed after an inordinate delay by the claimants, or the decision of the case has been delayed on account of negligence of the claimant, in such exceptional cases the interest may be awarded from a later date. However, while doing so, the Tribunals/High Courts must give reasons why interest is not being paid from the date of filing of the petition. Therefore, we direct that the entire amount of compensation including the amount enhanced by us shall carry an interest of 7.5% p.a. from the date of filing of the claim petition till payment/deposit of the amount "

b) Kohinur Begum & Ors. vs. New India Assurance Co. Ltd. And Ors., in FMAT No. 2846 of 2007,decided on 06.03.2008, the Calcutta High Court held:-

" .10. In our view, ordinarily, if a claim-application succeeds and the Tribunal comes to the conclusion that any amount of compensation is payable, it should also grant interest on that amount from the date of making of claim-application before the Tribunal unless the Tribunal finds that for the delayed disposal of the claim-application, the claimant himself was responsible and that the grant of interest would be a hardship upon the owner or the Insurance Company who were not responsible for the grant of the delayed relief to the claimants. If knowing fully well that the car involved with the accident was really covered by the insurance and that there was no just reason for contesting the claim on the basis of materials on record, the Insurance Company unnecessarily contested the litigation and ultimately, becomes unsuccessful thereby causing delay in granting the just relief in favour of the claimant, there is no reason why interest should not be granted on the awarded sum. By the delayed disposal, it is the owner of the vehicle or the Insurance Company, the award-debtor, are really benefitted as they had been enjoying and utilising the money ultimately to be handed over to the claimant "

[20] The present claim is under Section 163A of the Motor Vehicles Act.

[21] (A) In Urmila Halder Vs. New India Assurance Co. Ltd. & Ors., in F.M.A. 446 of 2010, decided on 9th August,2018, the Calcutta High Court held:-

"9. Sub-section (1) of Section 163-A of the 1988 Act ordains that notwithstanding anything contained therein or in any other law for the time being in force, upon proof of death in an accident involving the use of a motor vehicle, compensation is payable either by the owner of such vehicle or the authorized insurer thereof as indicated in the Second Schedule to the legal heirs of the victim. The Second Schedule appended to the 1988 Act, referring to Section 163-A thereof, provides the structured formula for determining compensation.

11. As it stands now, the Second Schedule after its amendment by the said notification prescribes lumpsum compensation in the following manner:

1. Fatal accidents - Rs. 5,00,000.00 is payable as compensation in case of death;

2. Accidents resulting in permanent disability - Rs. 5,00,000.00 x percentage of disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923), provided that the minimum compensation in case of permanent disability of any kind shall not be less than Rs. 50,000.00;

3. Accidents resulting in minor injury - A fixed compensation of Rs. 25,000.00.

14. With that in view, we invited such learned advocates to address us on the following issue: Whether, after the amendment brought about by the said notification, the new schedule would be applicable to pending claim applications under Section 163-A before the motor accident claim tribunals as well as the appeals arising out of awards delivered there under prior to May 22, 2018?

118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.

126. Turning to the facts in the appeal, we find that had this appeal been decided prior to May 22, 2018, the appellant would have been entitled to whatever sum were determined as payable in terms of the old schedule. Admittedly, Rs.5,00,000.00 was not payable to the appellant by the respondent no.1 any time prior to May 22, 2018 and, therefore, she was not entitled to such sum as on date she exercised her "right of action". Therefore, in each case where the claim is pending before the tribunal or if this Court has been approached in appeal as on May 22, 2018, we feel it to be the duty of the tribunal/Court to determine the amount of compensation payable to the claimant in terms of the structured formula and award interest at such rate it considers proper thereon from the date of filing of the claim application till May 21, 2018. To avoid any charge of arbitrariness, it would be safe to award interest at the prevailing bank rate of interest on term deposits on the date the award is made. Thereafter, that is from May 22, 2018, interest on Rs.5,00,000.00 may be directed to be paid till realization as per the prevailing bank rate of interest on term deposits.

127. To determine what the appellant could have lawfully claimed as compensation based on the old schedule, we need to look into the evidence. The version of the appellant that the victim was earning Rs.2,000.00 per month could not be dislodged by the respondent no. 1 in cross-examination. The victim being self-employed in the unorganized sector, the tribunal put an onerous burden on the appellant to produce documentary evidence to prove her monthly income. Having regard to the decision in **Syed Sadiq v. United India Insurance Co. Ltd.**, 2014 2 SCC 735, we hold that it was not necessary for the appellant to prove the income of the victim by producing documentary evidence. The loss of dependency, thus, has to be worked out reckoning Rs.24,000.00 as the notional yearly income of the victim. Capitalizing it on a multiplier of 17, the resultant amount would be

Rs.4,08,000.00. Deducting 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining herself had she been alive, and adding Rs.4.500.00 on account of loss of estate and funeral expenses, we arrive at the sum of Rs.2,76,500.00.

128. In the final analysis, we hold that the appellant shall be entitled to Rs.5,00,000.00 on account of compensation under Section 163-A of the 1988 Act read with the new schedule. However, since she has received Rs. 1,14,500.00 that was awarded by the tribunal, the respondent no.1 shall pay Rs.3,85,500.00 more to the appellant within 2 (two) months from date of service of a copy of this judgment and order on it.

The appellant is further held entitled to interest as follows:

(i) @ 9% per annum on Rs.2,76,500.00 from the date of filing of the claim application, i.e., February 8, 2005 till May 21, 2018; and

(ii) @ 6% per annum on Rs. 5,00,000.00 from May 22, 2018 till such time payments of Rs. 3,85,500.00 and interest as in (i) above are effected in favour of the appellant."

(b) In appeal, the Supreme Court in The New India Assurance Co. Ltd. Vs. Urmila Halder, Civil Appeal No. ____ of 2024 (@ Special Leave Petition (Civil) No. 6260 of 2019), decided on 8th February, 2024, upheld the above judgment and held:-

"4. The short point for consideration before this Court is whether the amendment in Section 163-A of the Motor Vehicles Act, 1988, which came into effect by a Gazette Notification on 22nd May, 2018, would relate to an accident which had occurred prior to the said date.

10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellantInsurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs 5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks."

[22] In the present appeal, the claim was decided by the tribunal on **30th day of September, 2004,** thus prior to 22nd May, 2018 and compensation of a sum of **Rs. 1,60,000/-** was granted in terms of the old schedule.

[23] Now, in terms of the guidelines of the Courts, in the judgments, Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra) and The New India Assurance Co. Ltd. Vs. Urmila Halder (Supra), the Appellants/Claimants are entitled to compensation of a total sum of Rs. 5,00,000/- under Section 163A of the 1988 M.V. Act read with the new schedule, the victim having died in the accident in this case.

[24] Admittedly, the **Appellants/Claimants** have already received the amount of compensation of **Rs. 1,60,000/-** in terms of order of the Learned Tribunal. Accordingly, the Appellants/Claimants are now entitled to the balance amount of compensation of **Rs. 3,40,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

[25] Respondent No. 1/Insurance Company, thus is directed to deposit the balance amount along with interest as indicated above, by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date. The **Respondent No. 1/Insurance Company** shall also pay the interest upon the **sum of Rs. 1,60,000/-** at the rate of 6% till deposit if not already paid, within the period as specified above.

[26] Upon deposit of the aforesaid amount along with interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of the **Appellants/Claimants (2)** in equal proportion, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already deposited.

[27] The insurance company has proved that the driver of the offending vehicle did not have a valid licence, thus there has been a violation of the policy conditions.

[28] The Respondent No. 1/Insurance Company/Oriental Insurance Co. Ltd. has now prayed for leave to recover the compensation from the Owner/Respondent no. 2 of the offending vehicle (being a Lorry) bearing no. WGH-9016 (insured with the Respondent No. 1) on the ground that the driver of the offending vehicle did not have a valid licence. (Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in SLP (C) No. 33638 of 2017, on 3rd November,2022)

[29] It is proved that the driver of the offending vehicle (bearing no. WGH9016, Lorry) did not have a valid licence at the time of accident, though the vehicle had valid insurance with the Respondent No. 1/Insurance Company/Oriental Insurance Co. Ltd. and thus there being a violation of the condition of the rules in the policy, **the Respondent No. 1/Insurance Company is entitled to recover the compensation paid, by due process of law from the owner of vehicle no. WGH-9016, the Respondent No. 2 herein.**

[30] The appeal being FMAT No. 992 of 2005 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

[31] No order as to costs.

[32] All connected applications, if any, stand disposed of.

[33] Interim order, if any, stands vacated.

[34] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[35] Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking

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2024(2)GMAJ533

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before M M Sathaye]

First Appeal No 252 of 2021 **dated 18/09/2024**

Bajaj Allianz General Insurance Company Ltd

Versus

Kekanaje Balkrishna Bhat; Atmaram K Balkrishna Bhat; Kakanje Shivram Sharma; Noushad Abbas

ACCIDENT COMPENSATION CLAIM

Motor Vehicles Act, 1988 Sec. 166, Sec. 173 - Accident Compensation Claim - Appellant challenged liability for compensation awarded in a motor accident claim - Deceased died in a car accident due to internal injuries - Insurance company disputed liability, citing that death may have occurred earlier, and that driver lacked a valid license - Doctor's testimony on postmortem findings was considered, but not conclusive on whether death occurred before or due to accident - Tribunal held accident as probable cause of death and rejected insurer's argument regarding driver's license due to lack of evidence - Court found no merit in appeal - Appeal Dismissed

Law Point: Compensation cannot be denied based on inconclusive medical evidence or unsupported claims of breach of policy conditions by insurer.

મોટર વાહન અધિનિયમ, 1988 કલમ 166, 173 - અકસ્માતમાં વળતરનો દાવો - અરજદારે મોટર અકસ્માતનાં દાવામાં આવેલ વળતરની જવાબદારીને પડકારેલ - મરણ જનાર, કાર અકસ્માતમાં આંતરિક ઈજાને કારણે મૃત્યુ પામેલ - વિમા કંપનીએ જવાબદારી માટે વિવાદ ઊભો કરેલ, કારણકે મૃત્યુ અગાઉ પણ થયેલ હોઈ શકે તેવું હતું, અને વળી તે અકસ્માતનાં ડ્રાઈવર પાસે માન્ય લાયસન્સ પણ ન હતું - પોસ્ટમોર્ટમનાં તારણોમાં ડૉક્ટરની જુબાની પણ ધ્યાનમાં લેવામાં આવેલ હતી - પરંતુ મૃત્યુ અકસ્માત પહેલાં થયું કે અકસ્માતમાં થયું તે નિર્ણય લઈ શકાયો નહીં - ટ્રિબ્યુનલે અકસ્માતને

મૃત્યુનું સંભવિત કારણ ગણાવ્યું હતું અને વિમા કંપનીની, ડ્રાઈવર પાસે લાયસન્સ ન હોવાની દલીલને પુરાવાના અભાવે નકારી કાઢી હતી - અદાલતને અપીલમાં કોઈ યોગ્યતા દેખાતી નથી તેથી અપીલ બરતરફ કરવામાં આવી - અપીલ નામંજૂર કરવામાં આવી.

કાયદાનો મુદ્દોઃ- અનિર્ણિત તબીબી પુરાવા અથવા ઈન્સ્યુરર દ્વારા પોલીસીની શરતોનાં ભંગના અસમર્થિત દાવાઓનાં આધારે વળતર આપવાનો ઈન્કાર કરી શકાય નહીં.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 166, Sec. 173

Counsel:
Sarthak Diwan, Shailendra Kanetkar

JUDGEMENT

M M Sathaye, J.- [1] Heard learned counsel for the Appellant/Insurance Company and learned counsel for Respondent No.1 and 2/Claimants. As regards Respondent No.3 (driver), the appeal is already dismissed. None appears for Respondent No.4 (owner) though served.

[2] This is an appeal under Section 173 of the Motor Vehicles Act, 1988 ('the said Act' for short) challenging the Judgment and Award dated 22.02.2021 passed in Motor Accident Claims Petition (MACP) No. 22 of 2017 by the Motor Accident Claims Tribunal (MACT), Sindhudurg-Oros. By the impugned Judgment and Award, the Appellant/Insurance Company is jointly and severally held liable to pay Rs. 21,60,760/- along with interest 9% p.a. to the claimants from the date of claim.

[3] Few facts are as follows. On 16.05.2016 at about 2.15 p.m. one Prabhavati Balkrushna Bhat (deceased) was travelling with her husband and son (claimants) from Manglur to Jaigad-Ratanagiri in Alto Car bearing No. KA-19-MC-0254 (offending vehicle). When the car reached Zarap Muslimwadi area, Respondent No.3-the Driver, who is brother of Claimant No.1, lost control of the car which swerved on one side of the road and while trying to control the vehicle, it collided against the divider on the road and turned turtle. In the said accident, deceased suffered internal injuries, who was shifted to hospital, where she was declared dead on examination.

[4] Learned counsel for the Appellant/Insurance company submitted that the evidence of its witness No.1 (Dr. Smita Prashant Pandit), who had performed postmortem on deceased Prabhavati is not considered in proper perspective. He invited this Court's attention to the deposition of the said Doctor. It is submitted that it is clearly stated by the said Doctor that the postmortem was conducted at 7.00 p.m. on the date of the accident and it was found that rigor mortis had already set in deceased's whole body and in her opinion, the deceased would have died about 18 to 20 hours

before conducting postmortem. It is contended that accident had taken place about 2.15 p.m. and therefore, if time of postmortem is considered (7.00 p.m.), it can be concluded that the deceased had not died in the accident, but prior to that. On this ground the liability is disputed by the Insurance company. Learned counsel for the Appellant also submitted that according to the Appellant/Insurance Company, there was breach of policy terms viz. the driver of the offending vehicle was not holding valid and effective license at the time of accident. On these grounds, the appeal is pressed.

[5] Per contra, the learned counsel for the Respondent/Claimants invited this Court's attention to the statements of the said Doctor, pointing out that the Doctor has admitted that rigor mortis may develop even within 8 to 12 hours of the death. He pointed out that in examination in chief itself, the said doctor has stated that on going through pathological report, in her opinion, deceased would have died due to lung intraalvelor hemorrhage, which may be natural or accidental and it may be due to blunt trauma to lungs. He pointed out that the said Doctor has also admitted that the bleeding to lungs may happen due to accidental shock. He submitted that if the deposition of the Doctor is considered as whole, it cannot be conclusively said that the death had occurred prior to accident.

[6] I have considered the submissions and perused the record. Perusal of the deposition of the said Doctor shows that she has stated that she cannot say that the deceased might have died naturally and even she cannot say that the deceased died accidentally. After going through pathological report, she has opined that deceased would have died due to lung intraalvelor hemorrhage which according to the said Doctor can be both natural or accidental. It is also stated that the said hemorrhage may be due to blunt trauma to the lungs. It is admitted in the cross-examination that rigor mortis may develop even within 8 to 12 hours of the death. She has also admitted that bleeding to lungs may happen due to accidental shock. Finally and importantly, it is also admitted by the said doctor in cross examination that coldness of body starts after 8 to 10 hours of death and when she started conducting the postmortem, the body was semi-cold.

[7] Perusal of the impugned order shows that the learned Tribunal has considered these aspects in paragraphs 18 and 19 of the impugned Judgment and has concluded that the possibility of the death due to accident is not completely denied. Based on these admissions, the Tribunal has found that accidental death is possible on preponderance of probabilities. It is therefore held that the provisions for compensation under the beneficial legislation such as the Motor Vehicles Act, 1988, specifically Section 166 therein, cannot be denied to the claimants in the present matter.

[8] Having considered the deposition of the doctor who conducted the postmortem, as indicated above and the admissions narrated above and having

considered the appreciation of the said evidence at the hands of the Tribunal, I do not find that there is any error in the view taken by the Tribunal. The view taken is most probable view. It is not the case of the Appellant Insurance company that the body of the deceased was planted or someone else was falsely included in the record of the accident as deceased. No such questions are put to Claimants' witnesses by the Appellant in cross-examination. There is not even a hint of any such doubt. Unless there is unequivocal evidence indicating that the deceased was not involved in the accident at all, it is not possible to disbelieve the evidence of Respondent No.1 coupled with police papers including the FIR lodged, statements recorded and Panchnama drawn after the said accident, recording the death of the deceased in the said accident. As such, no fault can be found with the conclusion drawn by the Tribunal in this regard.

[9] So far as the argument about driver not holding valid and effective license is concerned, perusal of the impugned judgment would show that the Claimants have in fact brought before the Court the driving license of the driver at Ex.11 and R.C. Book of the offending vehicle at Ex.12. The Tribunal has clearly held that apart from claiming that there is a breach of policy condition, the Insurance company has not brought before the Court any evidence to support the case. No such evidence is pointed out to this Court also. In that view of the matter, the said argument of the Insurance Company also cannot be accepted.

[10] No other argument is advanced by the Appellant Insurance Company.

[11] In view of the aforesaid facts and circumstances and for reasons stated above, there is no merit in the appeal and the same is accordingly dismissed. No costs.

[12] Statutory amount deposited by the Appellant/Insurance Company in this Court, may be transferred to concerned Tribunal at Sindhudurg - Oros as soon as possible, for appropriate adjustment.

[13] All concerned to act on duly authenticated or digitally signed copy of this order.

2024(2)GMAJ536

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A T; C A N No. 409 of 2016; 1 of 2024 **dated 18/09/2024**

Man Kumari Khalling

Versus

Oriental Insurance Company Limited

ENHANCED COMPENSATION CLAIM

Motor Vehicles Act, 1988 Sec. 166 - Enhanced Compensation Claim - Claimant appealed against the tribunal's award of Rs. 1,17,000/- for the death of her son in a motor accident - Tribunal considered lower income and multiplier - High Court reviewed evidence and increased monthly income to Rs. 3,000/- with 40% future prospects - Applied multiplier of 18 and awarded Rs. 84,000/- in general damages - Total compensation set at Rs. 5,37,600/- minus amount already paid, with interest at 6% - Appeal Allowed

Law Point: In fatal accident claims, courts may adjust income, future prospects, and apply appropriate multipliers to ensure just compensation based on available evidence and legal guidelines.

મોટર વાહન અધિનિયમ, 1988 કલમ 166 - વળતરમાં વધારો કરવા દાવો - દાવેદારે ટ્રિબ્યુનલ દ્વારા મંજૂર કરાયેલ પોતાનાં પુત્રનું અકસ્માતમાં થયેલ મૃત્યુનાં વળતર પેટે રૂ. 1,17,000/- માં વધારો કરવા અપીલ કરેલ - ટ્રિબ્યુનલે ઓછી આવકની આકારણી તથા નીચા ગુણાંકની ગણતરી કરેલ - વડી અદાલતે પુરાવાઓની સમીક્ષા કરતાં માસિક આવક રૂ. 3,000/- તથા સાથે 40% ભાવિ સંભાવનાઓની ગણતરી નક્કી કરેલ - તથા 18 ના ગુણાંક સાથે રૂ. 84,000/- સામાન્ય નુકસાન ગણેલ - અને કુલ વળતર રૂ. રૂ. 5,37,600/- આપેલ જેમાં અગાઉ ચૂકવણી કરેલને તે વળતરમાંથી બાદ કરવાનો તથા 6% વ્યાજ પણ ચઢાવેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- જીવલેણ અકસ્માતનાં દાવાઓમાં અદાલતો આવક, ભાવિ સંભાવનાઓનો સમાવેશ કરી શકે છે તથા મળી આવેલ પુરાવા તથા કાયદાકીય માર્ગદર્શિકાને આધારે ન્યાયી વળતર આપવાની ખાતરી કરવા માટે યોગ્ય ગુણાંક લાગુ કરી શકે છે.

Acts Referred:

Motor Vehicles Act, 1988 Sec. 166

Counsel:

Jayanta Banerjee, Sandip Bandyopadhyay, Rakib Hussain, Rukmini Basu Roy, Parimal Kumar Pahari

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The present appeal has been preferred by the claimant against the Judgment and Award dated 31.08.2015 passed by Judge, Motor

Accident Claims Tribunal, 1st Court, Additional District Judge, Siliguri in M.A.C. Case No. 09(02) of 2012, **under Section 166 of the Motor Vehicles Act, 1988.**

[2] The FACTS:-

" ..On 08.05.2010 at about 10.30p.m.her son Sewak Khaling was returning from his working place at Royal Sarovar Hotel at Sevoke Road, Siliguri to his home. On the way at Siliguri Salugara Road in front of Sona Motor, one Motor Cycle being No. WB-74P-1962 being driven rashly and negligently hit her son, as a result of which he sustained severe injuries and he was immediately shifted to Anandalok Nursing Home where he died on 12.05.2010.

At the time of accident her son was 22 years old, and used to earn Rs. 6,000/- per month from his job of painter and polish. She herself along with her family were totally dependent upon the income of her son as her husband is a patient of Glaucoma since long and is almost blind.

The offending Vehicle being Regd. No. WB-74P1962 was insured with the Oriental Insurance Co. Limited. She prays for compensation amounting to Rs. 8,25,500/- ."

[3] O.P. No.1/Oriental Insurance Co. Ltd. is contested the case by filing written statement denying the materials averments of the petition and contended inter alia that the case is not maintainable in law and the case is liable to be dismissed.

[4] The Claimant examined **two witnesses** and proved relevant documents which were marked **Exhibit 1 to 9**.

[5] The opposite parties cross examined the P.W's but did not adduce any evidence on behalf of the opposite party.

[6] The Tribunal finally held as follows:-

"……MAC Case No. 09(02) 2012

Dated 31st August, 2015

……..**The amount of compensation is thus as follows:-**

1/2 of Rs. 15000/- x 15 (multiplier) = Rs. 1,12,500/-

I am also inclined to grant a sum of Rs. 2,000/- as funeral expenses and a sum of Rs. 2,500/- as loss of estate. In all it comes to the tune of Rs. 1,17,000/- to which the petitioner, Smt. Man Kumari Khaling (being the mother & legal heir of the deceased) is entitled to get as compensation…….

Sd/-
Tribunal Judge, MAC Cases &

Addl. Dist. Judge, 1st Court,
Siliguri, Darjeeling……..”

[7] Beings aggrieved, the claimant has preferred the present appeal on appeal on the ground:-

That the learned tribunal without considering the actual income of the victim, did not grant "Just Compensation? to the claimant, in accordance with the relevant provision of law.

[8] From the materials including the evidence on record, the following is evident:-

i) From the FIR and seizure list (**Exhibit-4 and 5**) it appears that the victim died on **12.05.2010**, in the accident by the offending vehicle, caused by its rash and negligent driving.

ii) The offending vehicle had valid Insurance (**Ext. 8**).

iii) Income of the deceased be taken as **Rs. 3000/- p.m.** considering that the accident occurred in 2010 and the salary certified/proved was not in accordance with law.

iv) The age of the victim was 25 years (voter card Ext.1) so multiplier 18 will be applicable. (Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., 2009 6 SCC 121)

v) Future prospect shall be 40% of income. (National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., 2017 16 SCC 680)

vi) Deceased being a bachelor, 50% deduction of income to be made. (Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra))

vii) General damages of **Rs. 70,000/-** under the conventional heads of Loss of estate: **Rs.15,000**, Loss of consortium: **Rs.40,000**, Funeral expenses: **Rs.15,000**. **(National Insurance Company Ltd. Vs Pranay Sethi & Ors., (Supra)).** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

[9] Thus the "Just Compensation" in this case would be as follow:-

Monthly Income	Rs. 3,000/-
Annual Income (3,000 x 12)	Rs. 36,000/-
Less: **Deduction on Income 50% (Bachelor)**	Rs. 18,000/-
	Rs. 18,000/-
Add: Future prospects @ **40**% of the annual income of the deceased	**Rs. 7,200/-**
	Rs. 25,200/-

Multiplier x 18 (25, 200 x 18)	**Rs. 4,53,600/-**
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	**Rs. 84,000/-**
Total amount:-	**Rs. 5,37,600/-**

[10] Admittedly, the Claimant has received an amount of compensation of **Rs. 1,17,000/-** together with interest in terms of order of the learned Tribunal. Accordingly, the Claimant is now entitled to the **balance amount of compensation of Rs. 4,20,600/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

[11] Taking into consideration, the amount already received by the **Claimant/Appellant**, the Respondent No. 1/Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimant, upon satisfaction of her identity and payment of ad-valorem Court fees, if not already paid.

[12] The appeal being FMAT 409 of 2016 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

[13] All connected applications, if any, stand disposed of.

[14] There will be no order as to costs.

[15] Interim order, if any, stands vacated.

[16] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[17] Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities

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2024(2)GMAJ540

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A T; C A N; Old No Can No. 640 of 2013; 1 of 2018; 6350 of 2018

dated 17/09/2024

Arjiya Bewa Mondal

Versus

Oriental Insurance Company Ltd

ENHANCED COMPENSATION AWARD

Motor Vehicles Act, 1988 Sec. 163A - Enhanced Compensation Award - Claimants filed for compensation under Sec. 163A of the Motor Vehicles Act due to the death of a victim in a bus accident - Tribunal awarded Rs. 2,97,500/- based on notional income - Appellants argued the tribunal ignored actual income - High Court, following legal precedents, applied the new schedule under Sec. 163A, which provides Rs. 5,00,000/- as compensation - Appellants had already received Rs. 2,97,500/-, thus entitled to an additional Rs. 2,02,500/- with 6% interest - Tribunal's judgment modified accordingly - Appeal Allowed

Law Point: In pending motor accident compensation cases under Sec. 163A of the Motor Vehicles Act, the new schedule providing Rs. 5,00,000/- compensation must be applied, even if the accident occurred prior to the amendment.

મોટર વાહન અધિનિયમ, 1988 કલમ 163A - વળતરનાં ચુકાદામાં વધારો કરવા દાવેદારોએ મોટર વાહન અધિનિયમ ની કલમ 163A હેઠળ દાવો દાખલ કરેલ - બસ અકસ્માતમાં ભોગબનનાર નાં મૃત્યુને કારણે અપીલ દ્વારા વળતર માંગવામાં આવેલ - ટ્રિબ્યુનલે રૂ. 2,97,500/- નું વળતર ભોગબનનારની આવકને ધ્યાનમાં લઈ આપેલ - અપીલકર્તાએ એવી દલીલ કરેલ કે, ટ્રિબ્યુનલે વાસ્તવિક આવકની અવગણના કરેલ છે - વડી અદાલતે કાયદાકીય રીતે અગાઉ અપાયેલ નિર્ણયનાં દાખલાઓને અનુસરીને કલમ 163A હેઠળ નવું શેડ્યુલ લાગુ કરેલ, જે મુજબ રૂ. 5,00,000/- વળતર તરીકે મંજૂર કરેલ - અપીલકર્તાઓને આ અગાઉ રૂ. 2,97,500/- આપ્યાં હતાં - આ અપીલથી તેમને વધારાના રૂ. 2,02,500/- 6% વ્યાજ સાથે આપી ટ્રિબ્યુનલનાં ચુકાદામાં ફેરફાર કર્યો - અપીલ મંજૂર કરવામાં આવી.

કાયદાનો મુદ્દોઃ- મોટર વાહન અધિનિયમની કલમ 163A હેઠળ, અકસ્માત વળતરના કેસોમાં નવી અનુસૂચિને લાગુ કરવું આવશ્યક છે, ભલે પછી તેમાં અકસ્માત કાયદાકીય સુધારો થયાની પહેલા થયેલ હોય.

Acts Referred:

Motor Vehicles Act, 1988 Sec. 163A

Counsel:

Biswarup Biswas, Rajesh Singh, Sucherita Pal

JUDGEMENT

Shampa Dutt (Paul), J.- [1] Ia CAN 6350 of 2018 is moved by the learned counsel for the appellant in presence of the learned counsel for the respondent/insurance company praying for condonation of delay in filing the appeal.

[2] Considering the averments made in the application and in the interest of justice, the delay is condoned.

[3] The application being CAN 6350 of 2018 stands disposed of.

[4] The present claim appeal has been preferred by Claimants/Appellants against the judgment and award dated 28th September, 2012 passed by the learned Judge, Motor Accident Claims Tribunal and the Additional District Judge, 5th Court, Krishnanagar, Nadia, in MAC Case No. 198 of 2007, **under Section 163A of the Motor Vehicles Act, 1988.**

[5] Facts:-

> " ..The victim Ashmat Mondal was travelling himself in a bus having registration no. WB 51- 6768 plying on the Krishnagar-Karimpur Coalter Road on 25.02.2007 at about 11.00 a.m. with a high and excessive speed. The driver of the bus suddenly pressed the brake near Taranipur Mathpara to save an old lady who suddenly had come in front of the bus. The victim fell down from the roof of the bus. The victim sustained severe injuries and he was immediately removed to Tehatta Hospital and he was transferred to Nadia District Hospital at Saktinagar for better treatment. The victim, however, died on 26.02.2007 in the hospital. The victim was a self employed person having monthly income of Rs.3,150/- at the time of his death. The petitioners have claimed compensation for the said premature death of the victim as his legal heirs .."

[6] The O.P. No. 2 the United Insurance Company Ltd. entered appearance and contested the case by filing written objection thereby denying all the material facts contending, inter alia, that the case is not maintainable, barred by limitation, barred by principles of estoppel, waiver and acquiescence.

[7] The specific case of the O.P. Insurance company is that the bus being registration No. WB 51-6768 is not liable for the accident and the said vehicle was not driven with a high speed and in a rash and negligent manner. The claim of compensation is exaggerated, baseless, imaginary and without any mathematical calculation. The instant is liable to be dismissed with cost.

[8] The Claimants have examined himself and one eye witness in the present case.

[9] Relevant documents have been marked as Exhibits in the present case being **Exhibits 1 to 5.**

[10] The learned Tribunal considering the materials on record held as follows:-

"……..MAC Case No. 198 of 2007

Dated 28th September, 2012

…….I feel inclined that the deceased used to earn Rs.100/- per day. I have already discussed that the deceased used to work for twenty days in a month in average. The monthly income of the deceased, thus, comes as Rs.2,000/-. The annual income of the deceased, therefore, comes as to Rs.2,000x12 = Rs.24,000/-. The said amount shall be reduced by one third for the expenses which the deceased/victim would have incurred towards his maintenance had he been alive. The net annual income of the deceased, therefore, comes to Rs.16,000/-. By applying multiplier 18, the total loss of dependency is worked to Rs.2,88,000. In addition to that, the claimants are also entitled to get Rs.2,000/- funeral expenses and Rs.2,500/- for the loss of estate. The Petitioner No. 1 being the wife of the deceased is also entitled to get Rs.5,000/- as loss of consortium. Thus, the total award of compensation is worked out to Rs.2,97,500/-. The O.P. Insurance company is liable to pay the said compensation to the claimants with interest @ 6% per annum in case of default to pay the same within the stipulated period…..

Sd/-
Member
Motor Accident Claim Tribunal
Additional District Judge,
5th Court, Nadia……..."

[11] Being aggrieved the present appeal has been preferred by the Claimants/Appellants on the ground:-

That the learned Tribunal did not consider the actual income of the deceased and, as such, awarded compensation on the basis of notional income, for which the appellant has been denied "Just Compensation?.

[12] (A) In Urmila Halder Vs. New India Assurance Co. Ltd. & Ors., in F.M.A. 446 of 2010, decided on 9th August,2018, the Calcutta High Court held:-

"9. Sub-section (1) of Section 163-A of the 1988 Act ordains that notwithstanding anything contained therein or in any other law for the time being in force, upon proof of death in an accident involving the use of a motor vehicle, compensation is payable either by the owner of such vehicle or the authorized insurer thereof as indicated in the Second Schedule to the legal heirs of the victim. The Second Schedule appended to the 1988 Act, referring to Section 163-A thereof, provides the structured formula for determining compensation.

11. As it stands now, the Second Schedule after its amendment by the said notification prescribes lumpsum compensation in the following manner:

1. Fatal accidents - Rs. 5,00,000.00 is payable as compensation in case of death;

2. Accidents resulting in permanent disability - Rs. 5,00,000.00 x percentage of disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923), provided that the minimum compensation in case of permanent disability of any kind shall not be less than Rs. 50,000.00;

3. Accidents resulting in minor injury - A fixed compensation of Rs. 25,000.00.

14. With that in view, we invited such learned advocates to address us on the following issue: Whether, after the amendment brought about by the said notification, the new schedule would be applicable to pending claim applications under Section 163-A before the motor accident claim tribunals as well as the appeals arising out of awards delivered there under prior to May 22, 2018?

118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.

126. Turning to the facts in the appeal, we find that had this appeal been decided prior to May 22, 2018, the appellant would have been entitled to whatever sum were determined as payable in terms of the old schedule. Admittedly, Rs.5,00,000.00 was not payable to the appellant by the respondent no.1 any time prior to May 22, 2018 and, therefore, she was not entitled to such sum as on date she exercised her "right of action". Therefore, in each case where the claim is pending before the tribunal or if this Court has been approached in appeal as on May 22, 2018, we feel it to be the duty of the tribunal/Court to determine the amount of compensation payable to the claimant in terms of the structured formula and award interest at such rate it considers proper thereon from the date of filing of the claim application till May 21, 2018. To avoid any charge of arbitrariness, it would be safe to award interest at the prevailing bank rate of interest on term deposits on the date the award is made. Thereafter, that is from May 22, 2018, interest on Rs.5,00,000.00 may be directed to be paid till realization as per the prevailing bank rate of interest on term deposits.

127. To determine what the appellant could have lawfully claimed as compensation based on the old schedule, we need to look into the evidence. The version of the appellant that the victim was earning Rs.2,000.00 per month could not be dislodged by the respondent no. 1 in cross-examination. The victim being self-employed in the unorganized sector, the tribunal put an onerous burden on the appellant to produce documentary evidence to prove her monthly income. Having regard to the decision in **Syed Sadiq v. United India Insurance Co. Ltd.**, 2014 2 SCC 735, we hold that it was not necessary for the appellant to prove the income of the victim by producing documentary evidence. The loss of dependency, thus, has to be worked out reckoning Rs.24,000.00 as the notional yearly income of the victim. Capitalizing it on a multiplier of 17, the resultant amount would be Rs.4,08,000.00. Deducting 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining herself had she been alive, and adding Rs.4.500.00 on account of loss of estate and funeral expenses, we arrive at the sum of Rs.2,76,500.00.

128. In the final analysis, we hold that the appellant shall be entitled to Rs.5,00,000.00 on account of compensation under Section 163-A of the 1988 Act read with the new schedule. However, since she has received Rs. 1,14,500.00 that was awarded by the tribunal, the respondent no.1 shall pay Rs.3,85,500.00 more to the appellant within 2 (two) months from date of service of a copy of this judgment and order on it. The appellant is further held entitled to interest as follows:

(i) @ 9% per annum on Rs.2,76,500.00 from the date of filing of the claim application, i.e., February 8, 2005 till May 21, 2018; and

(ii) @ 6% per annum on Rs. 5,00,000.00 from May 22, 2018 till such time payments of Rs. 3,85,500.00 and interest as in (i) above are effected in favour of the appellant."

(b) In appeal, the Supreme Court in The New India Assurance Co. Ltd. Vs. Urmila Halder, Civil Appeal No. ____ of 2024 (@ Special Leave Petition (Civil) No. 6260 of 2019), decided on 8th February, 2024, upheld the above judgment and held:-

"4. The short point for consideration before this Court is whether the amendment in Section 163-A of the Motor Vehicles Act, 1988, which came into effect by a Gazette Notification on 22nd May, 2018, would relate to an accident which had occurred prior to the said date.

10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any

specific bar to the same. In the present case, the liability of the appellantInsurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs 5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks."

[13] In the present appeal, the claim was decided by the tribunal on 28th September, 2012, thus prior to 22nd May, 2018 and compensation of a sum of Rs.2,97,500/- was granted in terms of the old schedule.

[14] Now, in terms of the guidelines of the Courts, in the judgments, Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra) and The New India Assurance Co. Ltd. Vs. Urmila Halder (Supra), the Appellants/Claimants are entitled to compensation of a total sum of Rs. 5,00,000/- under Section 163A of the 1988 M.V. Act read with the new schedule.

[15] Admittedly, the **Appellants/Claimants** have already received the amount of compensation of **Rs. 2,97,500/-** in terms of order of the Learned Tribunal. Accordingly, the **Appellants/Claimants** are now entitled to the balance amount of compensation of **Rs. 2,02,500/-** together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

[16] The **Respondent No. 1/Insurance Company**, is directed to deposit the balance amount and the interest as indicated above, by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date. The **Respondent No. 1/Insurance Company** shall also pay the interest upon the **sum of Rs. 2,97,500/-** at the rate of 6% till deposit if not already paid, within the period as specified above.

[17] Upon deposit of the aforesaid amount and the interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of the Appellants/Claimants in equal proportion, **after payment** of the amount for loss of consortium to the appellant/wife, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

[18] The appeal being FMAT 640 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

[19] No order as to costs.

[20] All connected applications, if any, stand disposed of.

[21] Interim order, if any, stands vacated.

[22] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[23] Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking

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2024(2)GMAJ547

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Anil L Pansare]

Writ Petition No. 5989 of 2023 **dated 12/09/2024**

Divisional Controller, Maharashtra State Road Transport

Versus

Devendra Baburao Khobragade

NEGLIGENT DRIVING

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 Sec. 28 - Negligent Driving - Petitioner challenged orders by Industrial Court regarding the conduct of departmental inquiry against the respondent, a driver charged with negligence leading to an accident - Respondent faced charges for an accident causing a fatality and serious injury - Departmental inquiry held him guilty of negligence, and punishment of permanent reduction of basic pay was imposed - Respondent retired and filed a complaint under the MRTU & PULP Act alleging unfair labour practice - Complaint filed after two years without condoning delay - Industrial Court initially upheld the fairness of the inquiry but later overturned the findings, citing perversity - Petitioner argued that once fairness was undisputed, findings of misconduct could not be challenged - Citing Supreme Court judgment, it was held that findings of misconduct cannot be reopened if correctness or validity of inquiry is not disputed - Writ petition allowed, setting aside the Industrial Court's orders. - Petition Allowed

Law Point: Once fairness of inquiry is undisputed, findings regarding misconduct cannot be reopened unless the delinquent challenges the inquiry's correctness, legality, or validity.

મહારાષ્ટ્ર રેકગ્નિશન ઓફ ટ્રેડ યુનિયન્સ એન્ડ પ્રિવેન્શન ઓફ અનફેયર લેબર પ્રેક્ટીસ એક્ટ, 1971 કલમ 28 - બેદરકારી ભરી ડ્રાઈવીંગ - અરજદારે પ્રતિવાદી સામે વિભાગીય તપાસ હાથ ધરવા અંગેનાં ઔદ્યોગિક અદાલતનાં આદેશોને પડકારેલ - ડ્રાઈવર પર બેદરકારીથી અકસ્માત કર્યાનો આરોપ થયેલ - પ્રતિવાદીએ અકસ્માતમાં જીવલેણ અને ગંભીર ઈજા પહોંચાડવાના આરોપોનો સામનો કરવો પડ્યો હતો - ખાતાકીય તપાસમાં

તેને દોષિ ઠેરવવામાં આવ્યો હતો - પ્રતિવાદી નિવૃત થયેલ હતાં અને MRTU અને PULP એક્ટ હેઠળ અયોગ્ય મજૂર પ્રથા નિવારણ હેઠળ ફરિયાદ દાખલ કરવામાં આવેલ - બે વર્ષ બાદ વિલંબને માફ કર્યા વગર ફરિયાદ થયેલ - ઔદ્યોગિક અદાલતે શરૂઆતમાં, તે કેસમાં થયેલ તપાસની ન્યાયિતાને સમર્થન આપેલ - પરંતુ પછીથી તેમાં વિકૃતતા થયાનું ટાંકીને તારણોને ઉથલાવી નાખવામાં આવેલ - અરજદારની એવી દલીલ હતી કે, એક વખત નિષ્પક્ષતા કોઈપણ વાદ વગર થઈ ગઈ હોય, તો તેમાં ગેરવર્તણૂંક થયાનાં તારણોને પડકારી શકાય નહીં - સર્વોચ્ચ અદાલતનાં અન્ય એક ચુકાદાને ટાંકીને એવું માનવામાં આવેલ કે, જો તપાસમાં સાચાપણું અથવા તેમાંની માન્યતા વિવાદીત ન હોય, તો ગેરવર્તણૂંકનાં તારણોને ફરીથી ધ્યાને લઈ ખોલી શકાતા નથી - રીટ અરજીને ઔદ્યોગિક અદાલતના ચુકાદાવાળા હુકમને રદ્દ કરી મંજૂર કરવામાં આવેલ - પીટીશન મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- એક તપાસમાં વ્યાજબીતા કોઈપણ વાદ વગર થઈ જાય, તો ગેરવર્તણૂંક સંબંધિત તારણો ફરીથી ખોલી શકાય નહીં સિવાય કે ગુનેગાર તપાસની સત્યતા કે કાયદેસરતાને પડકાર કરે.

Acts Referred:
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 Sec. 28

Counsel:
R S Charpe, S T Harkare

JUDGEMENT

Anil L Pansare, J.- [1] Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

Heard Mr. R. S. Charpe, learned counsel for the petitioner and Mr. S. T. Harkare, learned counsel for respondent.

[2] The petitioner - Corporation is aggrieved by order dated 06.12.2018 so also judgment and order dated 08.03.2023 passed by Industrial Court, Amravati. The Industrial Court, vide order dated 06.12.2018, declared that the inquiry conducted against the respondent was fair and proper and despite such finding, held that the finding drawn by the Inquiry Officer are perverse, not legal and proper. Accordingly, granted permission to the petitioner to prove the misconduct. Thereafter, vide

judgment and order dated 08.03.2023, allowed the complaint filed by the respondent and set aside the order of punishment.

[3] The respondent was working as driver. He faced charge of negligent driving. In an accident dated 21.07.2007, rider of motorcycle died and his wife was seriously injured. Departmental Inquiry was conducted. Charge of negligence and damage to the vehicle was proved. The punishment of reduction of basic pay by two stages permanently was imposed on 29.06.2012.

[4] The respondent retired on 28.02.2014 on superannuation. Thereafter on 06.09.2014, he filed complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter referred to as the, "MRTU & PULP Act") alleging that the petitioner indulged in unfair labour practice. This complaint was filed after more than two years. Section 28 of the MRTU & PULP Act provides for limitation of 90 days to file complaint. The respondent did not seek to condone the delay nor did the petitioner point out before the Court below this aspect.

[5] The Industrial Court, framed preliminary issue as to whether inquiry conducted against the complainant is fair and proper and whether the finding of inquiry officer is perverse.

[6] The representative of the respondent, during the course of argument before the Industrial Court, contended that he is not disputing the fairness of the inquiry but the finding of the inquiry officer was perverse and not legal and proper.

[7] Counsel for the petitioner submits that once fairness of inquiry is not disputed, the Industrial Court could not have gone into the finding recorded by the Industrial Court regarding misconduct committed by the respondent. In support, he has relied upon judgment of the Supreme Court in the case of **Uttar Pradesh State Road Transport Corporation Vs. Vinod Kumar**, 2008 1 SCC 115, wherein the Supreme Court in paragraph 10 held thus:

> "10. As stated in the preceding paragraphs, the respondent had confirmed his case only to the conclusions reached by the Enquiry Officer as well as the quantum of punishment. Therefore, since the respondent had not challenged the correctness, legality or validity of the enquiry conducted, it was not open to the Labour Court to go into the findings recorded by the Enquiry Officer regarding the misconduct committed by the respondent. This Court in a number of judgments has held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the Courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. That, there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. That, in such cases, there is no place for perversity

or misplaced sympathy in the part of the judicial forums and interfering with the quantum of punishment...."

(Emphasis now)

[8] As could be seen, the Supreme Court held that if the respondent therein had not challenged the correctness, legality or validity of the inquiry conducted, it was not open to the Labour Court to go into the finding recorded by the Inquiry Officer regarding misconduct committed by the respondent.

[9] Similar is the case in hand. In the present case, the inquiry officer, in operative part has categorically held that the inquiry conducted against the complainant was fair and proper. Despite recording such a finding the Industrial Court proceeded to examine charge of misconduct and held that the finding drawn by the inquiry officer is perverse and not maintainable. This finding being contrary to the judgment passed by the Supreme Court, the same is liable to be quashed and set aside.

[10] As against, the counsel for the respondent submits that the finding in Vinod Kumar's case is in context where the delinquent was found guilty of misappropriation of funds.

[11] I do not find substance in the said argument inasmuch as the Supreme Court has categorically held that since the respondent had not challenged correctness, legality or validity of the inquiry conducted, it was not open to the Labour Court to go into the finding recorded by the inquiry officer regarding misconduct committed by the respondent. Thus, what has been held by the Supreme Court is that the finding of the inquiry officer regarding misconduct was not open for challenge once the delinquent failed to challenge or in a way admits the correctness, legality or validity of the inquiry. In the circumstance, what may be permissible for the Industrial Court is to only examine the aspect of proportionality of the punishment but it will be impermissible to reopen the finding recorded by the inquiry officer regarding misconduct committed by the delinquent. In the present case because of negligence of the respondent, one person expired in the accident. This charge has been proved. The punishment imposed is reduction of basic pay by two stages permanently. Considering the seriousness of the charge, the punishment imposed cannot be said to be disproportionate.

[12] So far as the point of limitation is concerned, admittedly, the respondent has not filed any application seeking to condone the delay. Counsel for the petitioner has, by relying upon the judgment of the Hon'ble Supreme Court in the case of **Kamlesh Babu & Ors. Vs. Lajpat Rai Sharma & Ors.**, 2008 12 SCC 577, argued that the Limitation Act, 1963, casts a duty upon the Court to dismiss the suit or appeal or application if made after the prescribed period, although the limitation is not set up as defence. He submits that this being question of law, can be agitated at any stage including writ petition.

[13] As against, counsel for the respondent has relied upon judgment of the Division Bench of this Court in the case of M.S.R.T.C. and anr. Vs. Maharashtra State Transport Kamgar Sanghatana,1983 SCCOnLineBom 502, to contend that the issue of limitation cannot be raised for the first time in the writ petition. I have gone through the judgment. It does not lay down a law that issue of limitation cannot be raised for the first time in writ petition. In the facts and circumstances of the case before it, the said view was taken. The Division Bench noted that the appellant therein had impliedly admitted that the ULP Complaint was of continuous nature. It is so because respondent therein had specifically pleaded, "that the unfair labour practice which is of continuous nature and falls", to which there was no denial by the appellant-Corporation. Accordingly, the Court held that the issue of limitation could not have been raised in the writ petition. The Court had then assigned other reasons also for not permitting to raise the issue of limitation.

[14] Such are not the facts in the present case. There is no admission by the petitioner herein of continuous nature of alleged unfair labour practice. The cause of action arose when the order of punishment was passed. This cannot be said to be continuation of the unfair labour practice. The aforesaid judgment, therefore, will be of no assistance.

[15] The counsel has then referred to judgment of the Supreme Court in the case of **State of Punjab .Vs. Darshan Singh**, 2004 1 SCC 328. The Supreme Court noted that in the case before it, the issue of limitation was not framed though the Government had taken a specific plea in the written statement. The said plea was not taken in the first appeal or even in the second appeal. That being so, the Supreme Court declined to go into the said question. This finding is fact based and cannot be said to be a ratio of the judgment to contend that plea of limitation cannot be raised in the writ petition. The judgment, therefore, is of no relevance in the present case.

[16] For the reasons stated above, the writ petition is allowed. Order dated 06.12.2018 as also judgment dated 08.03.2023 passed by Industrial Court, Amravati in Complaint ULP No.65/2014 is quashed and set aside.

Rule is made absolute in the above terms. No order as to costs

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2024(2)GMAJ551

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A No 841 of 2010 **dated 30/08/2024**

Beauti Barman

Versus

National Insurance Co Ltd

FATAL BICYCLE ACCIDENT

Indian Penal Code, 1860 Sec. 279, Sec. 304 - Motor Vehicles Act, 1988 Sec. 166, Sec. 157 - Fatal Bicycle Accident - Claim filed under Section 166 of the Motor Vehicles Act - Victim was knocked down by a truck while riding a bicycle, leading to his death in the hospital - The claimants sought Rs. 4,56,192 in compensation, but the tribunal dismissed the claim due to discrepancies in the vehicle's insurance details - On appeal, the court found that the vehicle was correctly identified and insured at the time of the accident - The deceased's age was 34, and the court applied a multiplier of 16 and added future prospects of 40% - The court awarded Rs. 6,88,800 as compensation with interest at 6% from the claim date until deposit. - Appeal Allowed

Law Point: In fatal accident claims, discrepancies in vehicle registration and insurance must be carefully examined. If proven valid, compensation should be calculated based on the victim's age, future prospects, and applicable multipliers.

ભારતીય દંડ સંહિતા, 1860 કલમ 279, કલમ 304 - મોટર વાહન અધિનિયમ, 1988 કલમ 166, કલમ 157 - જીવલેણ સાઈકલ અકસ્માત - મોટર વાહન અધિનિયમની કલમ 166 હેઠળ દાવો દાખલ કરવામાં આવેલ - ભોગ બનેલ, સાઈકલ ચલાવતી વખતે ટ્રક દ્વારા ઠોકર મારવાથી નીચે પટકાયેલ હતો જેના કારણે દવાખાનામાં તેનું મૃત્યુ થયેલ - દાવેદારો દ્વારા રૂ. 4,56,192/- વળતર પેટે માગણી કરેલ - પરંતુ, ટ્રિબ્યુનલે અકસ્માતમાં ના વાહનના વિમાની વિગતોમાં વિસંગતતાઓ હોવાનું માનીને તે કારણે દાવો નકારી કાઢેલ - તેથી અપીલ કરવામાં આવેલ, તેમાં અદાલતને જાણવા મળેલ કે, અકસ્માત સમયે વાહનને યોગ્ય રીતે ઓળખી કાઢવામાં આવેલ અને તેમાં વિમો પણ ઉતારવામાં આવ્યો હતો - મરણ જનારની ઉંમર 34 વર્ષની હોય, અદાલતે 16 નો ગુણાંક લાગુ કરેલ - અદાલતે 40% ભાવિ સંભાવનાઓનો ઉમેરો કરેલ અને દાવાની તારીખથી ડિપોઝીટ જમા કરાવવા સુધી 6% વ્યાજ સાથેનાં વળતર તરીકે રૂ. 6,88,800/- મંજૂર કરેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- જીવલેણ અકસ્માતનાં દાવાઓમાં વાહનની નોંધણી અને વિમા પોલીસીમાં વિસંગતતાઓની કાળજીપૂર્વકની તપાસ થવી જરૂરી છે, જો માન્ય કરી શકાય તેવું સાબિત થાય, તો વળતરની ગણતરી, ભોગ બનનારની ઉંમર, ભાવિ સંભાવનાઓ અને લાગુ પડતા ગુણાંકને આધારે ગણતરી કરવી જોઈએ.

Acts Referred:

Indian Penal Code, 1860 Sec. 279, Sec. 304

Motor Vehicles Act, 1988 Sec. 166, Sec. 157

Counsel:

Saidur Rahaman, Parimal Kr Pahari

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The present appeal has been preferred by the Claimants against the judgment and award dated **10.9.2008** passed by the Judge, Motor Accident Claims Tribunal, 3rd Fast Track Court, Cooch Behar in Motor Accident Claims Case No. 66 of 2003, **under Section 166 of the Motor Vehicles Act, 1988.**

[2] The facts as stated by the claimants:-

"On 21.06.2002, when the victim was returning to his house from Tufanganj on his bi-cycle through Salbari P.W.D. road, at that time, at about 8.30 P.M. there was an accident and a motor vehicle knocked down the victim from behind and the vehicle in question fled away. As a result the victim sustained grave multiple injuries in his person and was admitted at S.D. Hospital, Tufanganj where he died. The said accident occurred due to rash and negligent driving of the driver of the said offending vehicle. The victim was an educated boy having passed 12 examination in 1990. He was 34 years old, having good health and he was the only earning member of his family.

The claimants have prayed for an award of compensation of Rs. 4,56,192/- (Rupees Four Lakh Fifty Six Thousand One Hundred Ninety Two) only. The offending vehicle was No. WB-63/2268 Truck. The deceased used to earn Rs. 3168/- per month before his death."

[3] The owner of the offending vehicle is Deownath Choudhury, S/O. Lalji Choudhury, P.O. Telipara, P.S. Kumargram, Dist Jalpaiguri and the Insurer of the vehicle is The National Insurance Co. Ltd. Cooch Behar Branch.

[4] The instant claim case was contested by **Respondent No.1/Owner** of the offending vehicle by filing W.S. As per O.P. No.1 there is no cause of action for the petitioners which is bad for non-joinder or mis-joinder of the parties. So, the petition is not maintainable in law and fact also barred by the principle of waiver, estoppel and acquisance. So, they prayed for dismissal of the claim case.

[5] The **Respondent No. 2/National Insurance Company Ltd.** has contested the claim petition by filing separate written objection. According to the Insurance Company, the present petition is not maintainable and is liable to be rejected.

[6] The Claimants examined **four witnesses** and proved relevant documents, which were marked **Exhibit 1 and 2 series**.

[7] The Opposite parties did not examine any witness.

[8] The tribunal finally held as follows:-

"M.A.C. 66 of 2003

Dated: 10.9.2008

……As Insurance policy of a vehicle different from the offending vehicle, so the petitioners have failed to satisfy the court on their claims. As a result, all the issues are decided negatively and the petition for compensation is liable to be dismissed.

Hence,

Ordered

The petition for claim is dismissed on contest. There is no order as to costs.

Sd/-
Judge, Claims Tribunal,
3rd Fast Track Court,
Cooch Behar"

[9] Being aggrieved the present appeal has been preferred on the following ground:-

That the tribunal was wrong in dismissing the claim of the claimants.

[10] From the materials including the evidence on record, the following is evident:-

i) The tribunal refused to believe that the offending vehicle No. A.S.C. 2836 of T.D.V. truck of 1978 was later transferred to West Bengal and renumbered as W.B. 63/2298, as no supporting documents were produced.

ii) **Ext. 2**, the Charge Sheet in this case has been filed under **Section 279/304(A) IPC**.

The vehicle (offending) as shown in the charge sheet is WB63/2268 with valid Insurance Certificate.

iii) By the seizure list (**Ext 4**) the said offending vehicle along with its document were seized.

iv) The Insurance policy in this case is related to vehicle no. ASG 2836, also a Truck.

v) It is the case of the Respondent No.1/owner in his Written Statement that:-

"The statements made in para 17 of the claim petition is admitted and answering Respondent No.1 insured the vehicle No. ASG-2836 (T) WB-63/2268 (Truck) with the National Insurance Co. Ltd. vide Policy No.

200701/2001/67/00618 valid from 17.08.01 to 16.08.2002 a copy of the same is annexed herewith.

That the Respondent/owner is not liable to pay any compensation as the alleged vehicle was duly insured with National Insurance Co. Ltd."

vi) The Opposite Party/Insurance Company denied that the alleged accident had taken place by the vehicle No. WB63/2268(Truck).

vii) It appears that the fresh registration and renumbering of the vehicle (Truck) as stated by the Respondent/O.P. No. 1/Owner has not be denied by the Insurance Company, who has denied that the vehicle (named in the Charge Sheet) was involved in the accident. No evidence was adduced by the Insurance Company to negate the case of the Respondent/Owner, whose statement has also been corroborated by the Charge Sheet.

viii) It is thus proved that the offending vehicle (truck) as per charge sheet being driven in a rash and negligent manner, caused the accident of the victim in this case, leading to his death.

Thus, the findings of the tribunal on this issue being not in accordance with law is set aside.

[11] Section 157 M.V. Act lay down:-

"157. Transfer of certificate of insurance. (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter, transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, **the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.**

[Explanation. For the removal of doubts, it is hereby clarified that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance."

[12] The Supreme Court in **Surendra Kumar Bhilawe vs The New India Assurance Company Ltd.**, 2020 AIR(SC) 3149, decided on 18th June, 2020, relates to a case where there was an agreement for sale of the vehicle.

> "9. However, instead of reimbursing the loss, the Insurer issued a show cause Letter dated 22.3.2012 to the Appellant requiring the Appellant to show cause why the claim of the Appellant should not be repudiated, on the allegation that, he had already sold the said truck to the said Mohammad Iliyas Ansari on 11.4.2008. It is, however, not in dispute that the Appellant continued to be the registered owner of the said truck, on the date of the accident.
>
> 17. From the judgment and order dated 9.1.2014 of the District Forum, it is patently clear that the complaint had been resisted by the Insurer on the purported ground that the Appellant had sold the said truck to Mohammad Iliyas Ansari for a consideration of Rs.1,40,000/- and also on the ground of delay in filing a police complaint and in lodging the claim for reimbursement of losses.
>
> 36. It would also be pertinent to note the difference between the definition of owner in Section 2(30) of the Motor Vehicles Act, 1988 and the definition of owner in Section 2(19) of the Motor Vehicles Act, 1939 which has been repealed and replaced by the Motor Vehicles Act, 1988. Under the old Act "owner" meant the person in possession of a motor vehicle. The definition has undergone a change. Legislature has consciously changed the definition of "owner" to mean the person in whose name the motor vehicle stands.
>
> 37. The National Commission also overlooked other applicable provisions of the Motor Vehicle Act 1988, particularly Sections39 to 41, 50, 51, 66, 69, 82, 84 (g), 86(c), 146, 157, 177 and 192A.
>
> 38. Some of the relevant provisions of the Motor Vehicles Act are set out herein below:
>
> "50. Transfer of ownership
>
> 1) Where the ownership of any motor vehicle registered under this Chapter is transferred-
>
> (a) the transferor shall,-
>
> (i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and
>
> (ii) .

(b) **the transferee shall, within thirty days of the transfer, report the transfer to the registering authority** within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transfer of ownership may be entered in the certificate of registration.

(3) If the transferor of the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make an application under sub-section (2) (hereafter in this section referred to as the other person) fails to make such application within the period the period prescribed, the registering authority may, having regard to the circumstances of the case, required the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5).

Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount.

xxx xxx xxx

66. Necessity for permits-

(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle **in that place** in the manner in which the vehicle is being used.

xxx xxx xxx

82. Transfer of permit-

(1) Save as provided in sub-section (2), a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

xxx xxx xxx

84. General conditions attaching to all permitThe following shall be conditions of every permit

..

(g) that the name and address of the operator shall be painted or otherwise firmly affixed to every vehicle to which the permit relates on the exterior of the body of that vehicle on both sides thereof in a colour or colours vividly contrasting to the colour of the vehicle centered as high as practicable below the window line in bold letters.

xxx xxx xxx

86. Cancellation and suspension of permits:-

(1) The Transport Authority which granted a permit **may cancel the permit or may suspend it** for such period as it thinks fit-

.

(c) if the holder of the permit ceases to own the vehicle covered by the permit,

xxx xxx xxx

140. Liability to pay compensation in certain cases on the principle of no fault-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

xxx xxx xxx

146. Necessity for insurance against third party risk-

(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that person, as the case may be, a policy of insurance complying with the requirement of this Chapter.

xxx xxx xxx

157. Transfer of certificate of Insurance-

(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate

of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regards to the transfer of insurance.

xxx xxx xxx

163A. Special provisions as to payment of compensation on structured formula basis-

(1) Notwithstanding anything contained in this Act or in any other law for time being in force or instrument having the force of law, **the owner of the motor vehicle or the authorised insurer** shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

xxx xxx xxx

177. General provision for punishment of offences

Whoever contravenes any provisions of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundered rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees.

xxx xxx xxx

192A. Using vehicle without permit-

(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purposes for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both.

Provided that the Court may for reasons to be recorded, impose a lesser punishment.

44. The explanation to Section 157 clarifies, for the removal of all doubts, that such deemed transfer would include transfer of rights and liabilities of the said certificate of insurance and policy of insurance. The transferee might, within 14 days from the date of transfer, apply to the Insurer in the prescribed form, for making requisite changes in the certificate of insurance and the policy of insurance with regard to the factum of transfer of insurance. There could be no reason for a transferee of an insured motor vehicle, to refrain from applying for endorsement of the transfer in the Insurance Policy Certificate when insurance covering third party risk is mandatory for using a vehicle.

47. In Pushpa @ Leela And Others vs. Shakuntala and Others, 2011 2 SCC 240 the question before this Court was, whether liability to pay compensation to third parties as determined by the Motor Vehicles Accidents Claims Tribunal in case of an accident, was that of the purchaser of the vehicle alone, or whether the liability of the recorded owner of the vehicle was coextensive, and from the recorded owner it would pass on to the Insurer of the vehicle. This Court found that the person whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation, having regard to the provisions of Section 2(30) read with Section 50 of the Motor Vehicles Act, 1988 and since an insurance policy had been taken out in the name of the recorded owner, he was indemnified and the Insurer would be liable to satisfy the third party claims.

48. In **Naveen Kumar vs. Vijay Kumar and Others**, 2018 3 SCC 1 a three-Judge Bench of this Court held that in view of the definition of the expression owner in Section 2(30) of the Motor Vehicles Act, 1988, it is the person in whose name the motor vehicle stands registered, who, for the purposes of the said Act, would be treated as the owner of the vehicle. Where the registered owner purports to transfer the vehicle, but continues to be reflected in the records of the Registering Authority as the owner of the vehicle, he would not stand absolved of his liability as owner.

50. The policy of insurance in this case, was apparently a comprehensive policy of Insurance which covered third party risk as well. The Insurer could not have repudiated only one part of the contract of insurance to reimburse the owner for losses, when it could not have evaded its liability to third parties under the same contract of Insurance in case of death, injury, loss or damage by reason of an accident.

54. In view of the definition of owner in Section 2(30) of the Motor Vehicles Act, the Appellant remained the owner of the said truck on the date of the accident and the Insurer could not have avoided its liability for the losses suffered by the owner on the ground of transfer of ownership to Mohammad Iliyas Ansari.

55. The judgment of this Court in Oriental Insurance vs. Sony Cheriyam, 1999 6 SCC 451 was rendered in the context of liability of an Insurer in terms of the insurance policy and is not attracted in this case, where the claim of the insured has not been rejected on the ground of the same not being covered by the policy of insurance, but on the ground of purported transfer to a third party by entering into a sale agreement.

57. The judgment and order of the National Commission is unsustainable. The appeal is, therefore, allowed. The impugned order of the National Commission under appeal is set aside and the order of the District Forum is restored. The Insurer shall pay to the Appellant a sum of Rs.4,93,500/-as directed by the District Forum with interest as enhanced by this Court to 9% per annum from the date of claim till the date of payment. The sum of Rs.5,000/- awarded by the District Forum towards compensation for mental agony and Rs.2,000/- awarded towards the cost of litigation, is in our view grossly inadequate. The Insurer shall pay a composite sum of Rs.1,00,000/- to the Appellant towards costs and compensation for the agony caused to the Appellant by withholding his legitimate dues. The amounts as directed above shall be paid to the Appellant within six weeks from date of the judgment and order."

[13] In **Mallamma (Dead) By L.R.s Vs. National Insurance Co. Ltd & Ors.**, 2014 14 SCC 137, decided on 7th April 2014, the Supreme Court held:-

"12. On the other hand, learned counsel for the National Insurance Company, mainly contended that unless it is proved by evidence that the vehicle has been transferred in the name of Jeeva Rathna Setty, the deeming provision of Section 157 of the M.V. Act would not be applicable. In the absence of such evidence on record the High Court has rightly absolved the Insurance Company from the liability and the order passed by the High Court does not require any interference from this Court.

13. The counsel for the Insurance Company of course contended that as per their records, on the date of accident, the vehicle was registered in the name of Gangadhara. Hence in the absence of a valid proof that the ownership of the vehicle has been transferred in the name of Jeeva Ratna Setty, the benefits of insurance policy cannot be given to Jeeva Ratna Setty. However, the said

contention is contrary to record. A specific finding by the Commissioner to this effect in his order dated 28th February, 2003 reads thus:

"The 4th respondent had stated that on the date of the accident, this vehicle was in the name of Sh. Gangadhara. But the applicants have proved the said statement as false through documents and on the date of the accident, the vehicle was in the name of the Respondent No.1."

15. In view of the above discussion we are of the considered view that as on the date of accident, the deceased workman was in the course of employment of Jeeva Rathna Setty in whose name the ownership of the vehicle stood transferred and the said vehicle was covered under a valid insurance policy, the High Court ought not have simply brushed aside the decision of the Commissioner fastening joint liability on the Insurance Company in the light of the deeming provision contained in Section 157 (1) of the M.V. Act."

[14] In the present case too, the evidence of the Respondent/Owner could not be destroyed by the Insurance Company. The fresh registration and renumbering of the vehicle (Truck) as stated by the Respondent/O.P. No. 1/Owner has not be denied by the Insurance Company.

[15] Thus in view of the Judgments in Surendra Kumar Bhilawe vs The New India Assurance Company Ltd. (Supra) and Mallamma (Dead) By L.R.s Vs. National Insurance Co. Ltd & Ors. (Supra), the Insurance Company in this case in liable to pay the Insurance to the Claimants, there being a valid insurance in respect of the offending vehicle on the date of accident.

[16] Accordingly, as the accident took place in the year **2002**, the income of the deceased be taken as **Rs. 3000/- per month,** as no documents in support of income has been proved.

[17] The deceased was aged **34 years** (Post Mortem Report marked Ext -3), thus **multiple of 16** be applied. (**Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr.**, 2009 6 SCC 121)

[18] Future prospects at 40% of Income, the deceased being self employed. (National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., 2017 16 SCC 680)

[19] Deduction shall be **1/4**th of the victim's income, there being 5 **Claimants** on the date of application. **(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)).**

[20] General damages of **Rs. 70,000/-** under the conventional heads of loss of estate **Rs.15,000/-**, loss of the consortium **Rs.40,000/-** and funeral expenses **Rs.15,000/-. (National Insurance Company Ltd. Vs Pranay Sethi & Ors., (Supra)).** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

[21] Thus the "Just Compensation" in this case would be:-

Monthly Income	Rs. 3,000/-
Annual Income (3,000 x 12)	Rs. 36,000/-
Less: **1/4**th towards personal and living expenses	Rs. 9,000/-
	Rs. 27,000/-
Add: Future prospects @ **40**% of the annual income of the deceased	**Rs. 10,800/-**
	Rs. 37,800/-
Multiplier x 16 (37, 800 x 16)	**Rs. 6, 04, 800/-**
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	**Rs. 84,000/-**
Total amount:-	**Rs. 6, 88, 800/-**

[22] Steps for service was taken by the appellant at the time of filing of the appeal.

[23] Admittedly, the Claimants have not received any **compensation/interest** by the order of the learned Tribunal, as the **claim case was dismissed.** Accordingly, the Claimants are now entitled to the **total amount of compensation of Rs. 6, 88, 800/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

[24] The **Respondent No. 1/Insurance Company** shall deposit the total amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of consortium to the Claimant/Wife, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

[25] The appeal being FMA 841 of 2010 stands allowed. The impugned judgment and award dated 10.9.2008 passed by the Judge, Motor Accident Claims Tribunal, 3rd Fast Track Court, Cooch Behar in Motor Accident Claims Case No. 66 of 2003, under Section 166 of the Motor Vehicles Act, 1988, **being not in accordance with law is set aside.**

[26] All connected applications, if any, stand disposed of.

[27] There will be no order as to costs.

[28] Interim order, if any, stands vacated.

[29] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[30] Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities

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2024(2)GMAJ564

THE HIGH COURT OF JUDICATURE AT MADRAS

[Before R Sakthivel]

C M A (Civil Miscellaneous Appeal); C M P (Civil Miscellaneous Petition) No 1250 of 2022; 9209 of 2022 **dated 29/08/2024**

Manager Shriram General Insurance Co Ltd

Versus

Kalaiarasan; Raghu

MOTORCYCLE COLLISION CLAIM

Indian Penal Code, 1860 Sec. 279, Sec. 337 - Motor Vehicles Act, 1988 Sec. 163A - Motorcycle Collision Claim - Appeal under Section 163A of the Motor Vehicles Act - Petitioner borrowed a motorcycle and was injured in an accident involving an unidentified vehicle - Tribunal awarded Rs. 1,00,000 under personal accident coverage - Insurance Company appealed, arguing that the borrower was not entitled to compensation under Section 163A as he was not a third party - The court held that since the petitioner was a borrower, the claim under Section 163A was not maintainable - Further, compensation under personal accident coverage applies only to the owner-driver, not borrowers - The Tribunal's award was set aside. - Appeal Allowed

Law Point: A borrower of a vehicle is not entitled to compensation under Section 163A of the Motor Vehicles Act or under personal accident coverage, which is limited to the owner-driver of the vehicle.

ભારતીય દંડ સંહિતા, 1860 કલમ 279, કલમ 337 - મોટર વાહન અધિનિયમ, 1988 કલમ 163A - મોટર સાઈકલ અથડાવવાનો દાવો - મોટર વાહન અધિનિયમની કલમ 163A હેઠળ અપીલ કરવામાં આવેલ - અરજદારે મોટર સાઈકલ કોઈ પાસેથી માગીને લીધી હતી અને એક અજાણ્યા વાહન સાથે થયેલ અકસ્માતમાં તેને ઈજાઓ થઈ આવેલ - ટ્રિબ્યુનલે, પર્સનલ એક્સીડેન્ટ કવરેજ હેઠળ રૂ. 1,00,000/- આપવાનો ચુકાદો આપેલ - વિમા કંપનીએ તે સામે અપીલ કરેલ, જેમાં તેની દલીલ એવી હતી કે, કોઈ અન્ય

પાસેથી માગીને લેનાર તે કલમ 163A હેઠળ પર્સનલ એક્સીડેન્ટ કવરેજનો અધિકારી થઈ શકતો નથી, કારણકે તે થર્ડ પાર્ટી નથી - અદાલતે એવું જણાવેલ કે, અરજદાર ઉધાર લેનારો હોવાથી કલમ 163A હેઠળ આ દાવાને જાળવી રાખી શકતો નથી - વધુમાં જણાવેલ કે, પર્સનલ એક્સીડેન્ટ કવરેજ ફક્ત વાહનનાં માલિક કે તેના ડ્રાઈવરને જ લાગુ પડે છે, માગીને વાહન લાવનાર ને નહીં - ટ્રિબ્યુનલે આપેલ ચુકાદાને રદ્દ કરવામાં આવેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- માગીને વાહન લાવનાર, મોટર વાહન અધિનિયમની કલમ 163A હેઠળ અથવા વ્યક્તિગત અકસ્માત કવરેજ હેઠળ વળતર મેળવવા માટે હકદાર નથી, તે ફક્ત વાહનનાં માલિક તથા ડ્રાઈવર સુધી જ મર્યાદિત છે.

Acts Referred:
Indian Penal Code, 1860 Sec. 279, Sec. 337
Motor Vehicles Act, 1988 Sec. 163A

Counsel:
S Dhakshnamoorthy, T Gobinath

JUDGEMENT

R Sakthivel, J.- [1] Dissatisfied with the Award dated November 26, 2021, made in M.C.O.P.No.188 of 2014 on the file of 'Motor Accident Claims Tribunal (Additional Sub Court), Mayiladuthurai' [henceforth 'Tribunal'], the appellant/second respondent has filed this Civil Miscellaneous Appeal.

[2] For the sake of convenience, the parties will henceforth be referred to as per their array before the Tribunal.

Petitioner's case

[3] The case of the petitioner is that on October 15, 2013, at about 08.30 p.m., the petitioner was travelling on a Motorcycle bearing Registration No.TN-51-L-6890 belonging to the first respondent, in Malliyakollai Main Road in south to north direction. At that time, a Motorcycle coming from opposite direction collided with the petitioner's Motorcycle causing an accident, and fled the scene of occurrence. In the accident, the petitioner sustained severe injuries as he was knocked off the bike. Immediately, the petitioner was rushed to Government Hospital, Mayiladuthurai and thereafter, he was admitted as an in-patient in Tiruvarur Government Medical College Hospital where he took treatment for ten days. Thereafter, the petitioner was referred to Thanjavur Medical College Hospital where he took treatment for another ten days. Due to the accident, the petitioner suffered fracture in his right leg toe, fracture in right

hand fingers and multiple other injuries. Plastic surgery has also been performed on the petitioner. The petitioner incurred more than a sum of Rs.1,00,000/- as medical expenses. At the time of accident, the petitioner had completed B.E. Civil Engineering and was working as a Supervisor in a private construction company, thereby earning a sum of Rs.15,000/- per month. A case in Crime No.504/2013 on the file of Manalmedu Police Station was registered under Sections 279 and 337 of Indian Penal Code, 1860 against an 'unidentified vehicle'. Accordingly, the petitioner filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 before the Tribunal seeking a sum of Rs.10,00,000/- as compensation.

1st Respondent's case

[4] The first respondent who is the owner of the Motorcycle bearing Registration No.TN-51-L-6890 did not contest the petition. He was called absent and set ex-parte before the Tribunal.

2nd Respondent's case

[5] The second respondent Insurance Company filed a counter stating that the accident was not due to the negligence of the driver of the first respondent's vehicle. Instead, it was caused by the negligence, rashness and over speeding of the driver of an unknown two-wheeler. The petitioner possessed a valid driving license to drive the first respondent vehicle at the time of accident. When no negligence can be attributed to the driver of the first respondent's vehicle, no compensation can be sought against the second respondent. Since the FIR was filed against the unknown vehicle, this respondent, who is the insurer of the petitioner travelled vehicle, is not liable to pay any compensation. Further, the petition is bad for non-joinder of necessary parties, namely the owner and insurer of the unknown vehicle. Accordingly, the second respondent Insurance Company sought to dismiss the claim petition.

[6] At trial, on the side of the petitioner, the petitioner himself was examined as P.W.1 and Ex-P.1 to Ex-P.9 were marked. On the side of the second respondent, one Mr.Stephen James Michael, Legal Officer attached to the second respondent Insurance Company was examined as R.W.1 and the insurance policy was marked as Ex-R.1.

[7] The Tribunal found that the claim petition under Section 163-A of the Motor Vehicle Act, 1988, is not maintainable as the petitioner is a borrower of the vehicle of the 1st respondent. Further found that the accident occurred due to the rash and negligent riding of the rider of the unidentified motorcycle, and not by any negligence on the part of the petitioner. The first respondent had a personal accident coverage policy. At the time of accident, the petitioner had a valid driving license. Accordingly, the Tribunal held the second respondent Insurance Company is liable to pay a sum of Rs.1,00,000/- to the petitioner as Personal Accident Cover.

[8] Feeling aggrieved with the Award, the Insurance Company has preferred this Civil Miscellaneous Appeal.

[9] The learned counsel appearing for the appellant Insurance Company submitted that the petitioner being a borrower of the insured vehicle is neither a third party nor is he contractually covered under the policy. Thus, the claim petition under Section 163-A of the Motor Vehicles Act, 1988 is not maintainable. It was further argued that the Tribunal failed to consider the terms and conditions of Ex-R.1 Insurance Policy. As per the Insurance Policy, the Insurance Company is liable to compensate only the owner-driver of the vehicle with the sum insured of Rs.1,00,000/- as personal accident cover, that too only when the accident results in death, or loss of two limbs, or loss of sight in both eyes or results in permanent total disablement to the owner of the vehicle. In short, learned counsel appearing for the appellant submitted that the appellant is neither a third party nor owner of the vehicle and hence, the appellant Insurance Company is not liable to pay any compensation to the petitioner. Accordingly, he prayed to allow the Civil Miscellaneous Appeal and set aside the Award passed by the Tribunal against the Insurance Company.

9.1.In support of his submission, learned Counsel for the appellant relied on the following judgments:

(i) Judgment of the Hon'ble Supreme Court in Ramkhiladi and Others Vs. The United India Insurance Company and Others, 2020 2 SCC 550];

(ii) Judgment of this Court in M/s.National Insurance Co. Ltd., Vs. Rani and Others [CMA No.1848 of 2017 decided on 12.03.2020];

(iii) Judgment of this Court in The Cholamandalam MS General Insurance Company limited Vs. Ramesh Babu [MANU/TN/4713/2020];

[10] Per contra, learned Counsel appearing for the first respondent/ petitioner submitted that the Insurance Policy Ex-R.1 is a package policy (comprehensive). Since the petitioner being a borrower of the vehicle steps into the shoes of the first respondent owner, he is entitled to claim compensation under the personal accident cover as per the terms of Ex-R.1. There is no reason to interfere with the Award of the Tribunal. Accordingly, he prayed to dismiss the Civil Miscellaneous Appeal.

[11] This Court has considered the submissions made on either side and perused the materials available on record.

[12] Admittedly, the petitioner borrowed the vehicle from the first respondent and while riding the first respondent's motorcycle, he met with an accident. FIR Ex-P.1 and the evidence of P.W.1 would show that an unidentified vehicle hit the petitioner's motorcycle and fled the scene. The Tribunal found that there was no negligence on the part of the petitioner. The unidentified vehicle was the cause of the accident. Under these circumstances, the petitioner who steps into the shoes of the first respondent / owner, not being a third party, is not entitled to claim compensation against the first respondent / owner. It is pertinent to cite here the decision of the Hon'ble Supreme

Court in **Ramkhiladi and Others Vs. The United India Insurance Company and Others**, 2020 2 SCC 550]. Relevant paragraph from the said judgment is as follows:

> "5.9.Now, so far as the submission made on behalf of the claimants that in a claim under Section 163A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163A of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi (supra), the aforesaid cannot be accepted. In Rajni Devi (supra), it has been specifically observed and held that the provisions of Section 163A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in the cases of **Oriental Insurance Co. Ltd. V. Jhuma Saha**, 2007 9 SCC 263; Dhanraj (supra); **National Insurance Co. Ltd. V. Laxmi Narain Dhut**, 2007 3 SCC 700 and **Premkumari v. Prahlad Dev**, 2008 3 SCC 193, it is ultimately concluded by this Court that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of Ashalata Bhowmik (supra), it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed hereinabove."

12.1.Hence, the claim petition under Section 163(A) of the Motor Vehicles Act, 1988 is not maintainable against the Insurance Company.

[13] As far as the personal accident cover is concerned, admittedly, as per the terms and conditions of the policy, only the owner driver is entitled to claim compensation under the personal accident coverage policy. Since the policy does not cover the petitioner, who is not the owner driver, the petitioner is not entitled to claim any amount.

[14] In this regard, it is apposite to cite the judgment of this Court in National Insurance Co. Ltd., Vs. Rani and Others [CMA No.1848 of 2017 decided on 12.03.2020], wherein it has been held as follows:

> "10.In the event of interpreting any Special Provision in isolation to the other provisions of the Statute, then the very object would be defeated and therefore, the Courts cannot make an interpretation of a Special Provision,

which is otherwise intended to grant certain benefits in respect of grant of compensation in the event of not establishing negligence. Thus, this Court is of the considered opinion that, even the Personal Accident Coverage cannot be considered in certain cases, where the victim is not the registered owner of the vehicle. Three conditions are required even under Personal Accident Policy (which is not a statutory coverage in terms of Section 147 of the Act.). The said three conditions are mandatory, so as to avail compensation under the Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act). The conditions are:- (a) the owner-driver is the registered owner of the vehicle insured; (b) the owner-driver is the insured named in the policy; (c) the owner-driver holds an effective driving license, in accordance with the provisions of Law.

11.With reference to Section 163-A of the Motor Vehicles Act, 1988, the Hon'ble Supreme Court has taken a view that if a borrower of the vehicle met with an accident while riding the vehicle, he cannot claim compensation under Section 163-A of the Act. The reason being in the event of granting compensation without adjudication of negligence, then the same would result in defeating the very object of the Act, under Sections 147 and 166 of the Motor Vehicles Act. When Section 147 categorically enumerates requirements of policies, limits and liabilities, the same cannot be whittled down, while dealing with the claim petitions under Section 163-A of the Act. All these provisions are to be read conjointly for the purpose of granting the benefit of Special Provision enacted under Section 163-A of the Act, for payment of compensation on structured formula basis. When the Special Provision is specifically provided for a structured formula basis, it cannot be read in isolation with reference to the nature of the contracted policy and the requirement of policy and limited liabilities clauses, which all are well enumerated under the provisions of the Act. Thus, this Court is of the considered opinion that a person, who borrowed a vehicle from the registered owner and while driving the same met with an accident sustained injuries or dead, then he is not entitled to claim any compensation under Section 163-A of the Act and even for claiming Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act), he is bound to establish the three mandatory conditions and in the absence of compliance with the said three conditions, he is not entitled for compensation.

[15] It is also apposite to cite the Judgment of the Hon'ble Division Bench of this Court in **Shanmugam's case** [M/s. Tata AIG general, Insurace Company Limited -vs- Shanmugam] in **C.M.A. No. 1395 of 2021** dated 19.08.2024 wherein, in Paragraph No.25, it has held as follows:-

> "The question before us is whether a claim petition can be filed before the Claims Tribunal under Section 163A by an owner/insured. Considering the language of Chapter XI and the decision in Ramkhiladi's case, the first question is answered against the claimant by observing that an owner/insurer cannot approach the Motor Accident Claims Tribunal by filing a claim petition under Section 163A of the Motor Vehicles Act, 1988 for the injuries sustained by him relying upon the personal accident cover. This does not prevent the owner of a vehicle, who has taken a personal accident cover, from claiming compensation from his insurer. However, the Claims Tribunal is not the Forum, before which he can make his claim, as he is not a Third Party. It is open to the owner of the vehicle to directly approach the insurer on the basis of the personal accident cover. In case, the Insurance Company fails to compensate him, it is well open to him to approach the Consumer Forum or any other appropriate Forum. In view of the answer to the first question as referred to us, the second question does not arise for consideration."

[16] In these circumstances, on the strength of **Shanmugam's case** and Rani's case, this Court is of the considered view that the petitioners are not entitled to claim benefits under the personal accident coverage. Hence, the Tribunal is not right in awarding compensation under personal accident claim coverage policy and the same is liable to be set aside.

[17] Accordingly, the Decree and Judgment dated November 26, 2021 made in M.C.O.P.No.188 of 2014 on the file of Motor Accidents Claims Tribunal (Additional Sub Court), Mayiladuthurai is set aside and consequently, C.M.A.No.1250 of 2022 is allowed. However, there shall be no order as to costs. Connected Civil Miscellaneous Petition is also closed.

[18] The amount deposited by the appellant / Insurance Company, if any, to the credit of M.C.O.P.No.188 of 2014 on the file of Motor Accidents Claims Tribunal (Additional Sub Court) Mayiladuthurai is permitted to be withdrawn by the appellant / Insurance Company, by filing an appropriate application

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2024(2)GMAJ570

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A; F M A T No 3910 of 2016, 2296 of 2016; 633 of 2016 **dated 23/08/2024**

Mousumi Jana; National Insurance Company Ltd

Versus

National Insurance Company Ltd; Mousumi Jana

MOTORCYCLE FATAL ACCIDENT

Motor Vehicles Act, 1988 Sec. 166 - Motorcycle Fatal Accident - Claim filed under Section 166 of the Motor Vehicles Act - Victim, while riding a motorcycle, stopped due to mechanical issues and was hit by a Maruti Omni, leading to his death on the spot - Claimants sought compensation, stating that the accident occurred due to the rash and negligent driving of the car driver - Tribunal awarded Rs. 32,24,128, considering the victim's age of 45 and his monthly income of Rs. 30,857 after tax - On appeal, the court revised the compensation to Rs. 51,38,377, applying a multiplier of 14 and future prospects at 30%, along with general damages under conventional heads - Balance amount of Rs. 19,14,249 with 6% interest ordered - The insurance company's appeal contesting vehicle involvement was dismissed. - Appeal Allowed

Law Point: In fatal accident cases, compensation should be calculated based on future prospects, age, and income deductions, with appropriate multipliers applied. Disputes regarding vehicle involvement must be supported by strong evidence to be considered.

મોટર વાહન અધિનિયમ, 1988 કલમ 166 - મોટર સાઈકલ દ્વારા અકસ્માતમાં મૃત્યુ - મોટર વાહન અધિનિયમની કલમ 166 હેઠળ દાવો દાખલ કરવામાં આવેલ - ભોગ બનનાર મોટર સાઈકલ ચલાવતો હતો ત્યારે મોટર સાઈકલમાં યાંત્રિક સમસ્યાઓને કારણે અટકી જતાં મારૂતિ ઓમની સાથે અથડાઈ જવાના કારણે તેનું ઘટના સ્થળે જ મૃત્યુ થયેલ - દાવો કરનારે વળતરની માગણી કરતા આક્ષેપ કરેલ કે, અકસ્માત કાર ચાલકની બેદરકારી તથા રફ ડ્રાઈવીંગને કારણે થયેલ, જેમાં ભોગ બનેલનું મૃત્યુ થયેલ - ટ્રિબ્યુનલે રૂ. 32,24,128/- મંજૂર કરેલ જેમાં મૃતકની ઉંમર 45 વર્ષ અને તેની માસિક આવક રૂ. 30,857/- બધા જ ટેક્સ કપાત પછીની હતી - સદર ચુકાદાને અપીલમાં પડકારતા, અપીલ અદાલતે 14 નો ગુણાંક લાગુ કરીને, 30% ભાવિ સંભાવનાઓ સાથે કન્વેન્શનલ હેડ હેઠળ જનરેલ ડેમેજ સાથે રૂ. 51,38,377/- નો વળતર મંજૂર કરેલ - ઘટતી રકમ રૂ. 19,14,249 ને 6% વ્યાજ સાથે ચુકવવાનો હુકમ કરેલ - વિમા કંપનીની વાહન બાબતની દલીલને અદાલતે રદ કરેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- અકસ્માતમાં મૃત્યુ થયેલ હોય તેવા કેસોમાં, વળતરની ગણતરીમાં ભાવિ સંભાવનાઓ, વય તથા આવકમાં કપાતને આધારે યોગ્ય ગુણાંક લાગુ કરવો જોઈએ.

વાહનની સંડોવણી સંબંધિત વિવાદોને ધ્યાનમાં લેવા મજબૂત પુરાવાઓ દ્વારા સમર્થન આપવું આવશ્યક છે.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 166

Counsel:
Krishanu Banik, Tathagata Banik, P K Pahari

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The present appeal has been preferred by the claimants against the Judgment and Award dated 13th day of March, 2015 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, 2nd Court, Tamluk, Purba Medinipur, in M.A.C. Case No. 6/129 of 2012/2011, **under Section 166 of the Motor Vehicles Act.**

[2] The FACTS:-

"On 05.01.2011 at about 7.20 p.m. when the victim was going towards Mecheda by riding a motor cycle from Deulia Bazar through NH6 then near Bhanga gate he stopped his motor cycle due to some mechanical problem and just then one Maruti Omni car bearing No. WB34Y/8687 dashed him and as a result the victim sustained grievous injury on his head and died on spot. **The said accident was caused due to rash and negligent driving on the part of the driver of the offending vehicle bearing no. WB34Y/8687 (Maruti Omni).** The victim was a service holder and he was the only earning member of the family and his age was 45 years while such accident took place and he used to earn Rs. 34,021.61 per month. Due to such death untimely his family members, the present claimants suffered mental sufferings a lot as well as they had to face acute economic crisis."

[3] The opposite party/owner did not contest the case. Whereas the Insurance Company appeared and filed the written objection denying the allegation raised in the petition. It was stated therein that there was no rash and negligent driving of the driver of the said offending vehicle. The accident took place due to carelessness of the victim and due to rash driving of the victim riding in the motor cycle, so neither the owner nor the Insurance Company are liable to pay any compensation.

[4] The Claimants examined **four witnesses** and proved relevant documents which were marked Ext. 1 to 13.

[5] The Opposite Party/Insurance Company examined **two witnesses.**

[6] The tribunal finally held as follows:-

"M.A.C. Case No. 6/ 2012

M.A.C. Case No. 129 /2011

Dated: 13.03.15

……. So, though in the F.I.R. the vehicle was written as unknown yet the evidence of O.P.W.2 made it concrete that actually such accident took place due to fault on the part of the driver of the said car. Regarding the burden of payment of compensation it is the rule that if the vehicle is found under coverage of any insurance and if it is not established that the owner violated any terms in that case the liability is upon the Insurance Company. Here exbt.4 is adduced to that effect from where I find that the said car was under coverage of O.P. No. 2 Company and so the liability should be upon the Insurance Company. The age of the victim is stated as 45 years when the accident took place. As per Voter's identity card his age was in the year 1995 was 28. So, when the accident took place his age was about 44 plus. In the Post mortem report his age is written as 45 years. In the exbt. 9 (Pay Slip) the date of birth of the victim is written as on 20.01.65. So his age at the time of his death was above 45 years. Regarding his income and occupation the petitioners have filed numbers of documents which are marked herein as exbts. 7 to 11. As per pay certificate (exbt.9) I find that he drew salary of Rs. 34,000/- (around) and he used to pay Income Tax of Rs. 3,143/- per month. So at the time of calculation of his total income the tax will be deducted and thus the total income will be Rs. 34,000/- - Rs. 3,143/-=Rs. 30,857/- X 12 = Rs. 3,70,284/-. Out of that 1/3rd will be deducted. So the amount remains on the basis the loss of income can be estimated is Rs. 3,70,284/- - Rs.1,23,428 = Rs. 2,46,856/-. He died at the age of 45, so the multiplier will be 13. Thus the amount will be Rs. 2,46,856/-X 13=Rs. 32,09,128/-. In addition to the Rs. 5000/- will be added as funeral costs and other costs and as he died only at age of 45 so the wife will get a compensatory amount of Rs. 10,000/-. So the total amount of compensation will be Rs. 32,24,128/- Thus O.P. No. 2 is directed to pay the compensation amount of Rs. 32,24,128/- towards the claimants along with interest at the rate of Rs. 6% per annum from the date of its filing till its recovery while it is directed to pay the award within one month from the date of order. The O.P. No.2 is directed to pay the total amount of compensation amongst the claimants in the following manner:- Rs. 3,00,000/- is to be given to the claimant No.4 whereas Rs. 15,00,000/- is given to the claimant No.1 along with interest whereas the rest amount along with interest be given in equal halves to the minor claimants Nos. 2 & 3 respectively.

Sd/-
Judge

M A C Tribunal,
2nd Court,
Tamluk, Purba Medinipur"

[7] From the materials including evidence on record, the following is evident:-

i) Charge Sheet **(Exhibit 1/2)** has been filed against offending vehicle having valid policy **(Ext. 4)**, for rash and negligent driving under **Section 279/304A/427 IPC.**

ii) Victim was aged 45 year (Voter Card Ext.5), (PM report Ext.2) and (Ext.9 pay slip). So multiplier of 14 shall be applicable. (Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., 2009 6 SCC 121)

iii) Income of the victim as per Exhibit 9 (Payslip) P.M. is Rs. 34,000/- - Rs. 3143 (Income Tax) = Rs. 30, 857/- per month.

iv) Future prospect shall be 30% of Income. (National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., 2017 16 SCC 680)

v) Number of (initial) Claimants being 4, **1/4th** is to be deducted towards personal expenses. **(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra))**

vi) General damages of Rs. 70,000/- under the conventional heads of Loss of estate: Rs.15,000/- Loss of Consortium: Rs.40,000/- Funeral expenses: Rs.15,000/- . **(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

[8] Thus the "Just Compensation" in this case would be:-

Monthly Income	Rs. 30, 857 /-
Annual Income (30, 857 x 12)	Rs. 3,70,284/-
Less: **1/4**th towards personal and living expenses	Rs. 92,571/-
	Rs. 2,77,713/-
Add: Future prospects @ **30**% of the annual income of the deceased	**Rs. 83,313.9/-**
	Rs. 3,61,026.9/-
Multiplier x 14 (3,61,026.9 x 14)	**Rs. 50, 54, 376.6/-**
Add: General damages Loss of estate: Rs.15,000/- Loss of Consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	**Rs. 84,000/-**
Total amount:-	**Rs. 51, 38, 376.6/-**
Total Round off amount:-	**Rs. 51,38,377/-**

[9] Admittedly, the Claimants have received an amount of compensation of **Rs. 32, 24, 128/-** together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **balance amount of compensation of Rs. 19, 14, 249/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit, as the insurance company has also filed an appeal being FMA 2296 of 2016.**

[10] Taking into consideration the amount already received by the Claimants/Appellants, the Respondent No. 1/Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal installments, **after payment** of the amount for loss of consortium to the claimant/wife, upon satisfaction of their identity and payment of advalorem Court fees, if not already paid.

[11] The appeal being FMA 3910 of 2016 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

[12] Fma 2296 of 2016 is treated on today's list and taken up for hearing in presence of both sides. By the instant appeal, the appellant/National Insurance Company has preferred the appeal on the ground that the offending vehicle as held by the learned tribunal was not involved in the accident in this case.

[13] It appears from the charge sheet (Exbt. 1/2) that only the driver of Maruti Car No. WB34Y/8687 (offending vehicle) has been chargesheeted. As such the submission of the learned counsel for the insurance company/appellant holds no substance the finding of the tribunal being in accordance with law and accordingly there being no merit in the said appeal, FMA 2296 of 2016 stands dismissed.

[14] All connected applications, if any, stand disposed of.

[15] There will be no order as to costs.

[16] Interim order, if any, stands vacated.

[17] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[18] Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities

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2024(2)GMAJ576

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A T No 332 of 2015 **dated 20/08/2024**

Behula Ruidas

Versus

Oriental Insurance Company Ltd

FATAL MOTORCYCLE ACCIDENT

Motor Vehicles Act, 1988 Sec. 163A - Fatal Motorcycle Accident - Claim filed under Section 163A of the Motor Vehicles Act - Deceased was hit by a speeding motorcycle while walking home, resulting in his death after multiple hospitalizations - Claimants sought compensation of Rs. 4,31,900 based on the deceased's monthly income of Rs. 3,300 - Tribunal awarded Rs. 1,25,000, considering the notional income of Rs. 3,000 per month and a multiplier of 5 based on the claimant's age - Appeal found that the compensation should be revised to Rs. 5,00,000 as per the new schedule - The balance of Rs. 3,75,000 was ordered to be paid by the insurance company with 6% interest. - Appeal Allowed

Law Point: In fatal accident claims under Section 163A, compensation is determined using structured formula-based schedules. Courts must apply new schedules if beneficial, even to older cases, and adjust the award accordingly.

મોટર વાહન અધિનિયમ, 1988 કલમ 163A - મોટરસાઈકલનું જીવલેણ અકસ્માત - મોટર વાહન અધિનિયમની કલમ 163A હેઠળ દાવો દાખલ કરવામાં આવેલ - મરણ જનાર, ચાલીને ઘરે જઈ રહ્યો હતો ત્યારે એક પૂરઝડપે આવતી મોટર સાઈકલ સાથે અથડાયો હતો, જેના પરિણામે હોસ્પિટલમાં દાખલ થયાં પછી ત્યાં તેનું મૃત્યુ થયેલ - દાવેદારોએ રૂ. 4,31,900/- નું વળતર માંગેલ હતું - જેમાં મૃતકની આવક રૂ. 3,300/- માસિક લેખેનો આધાર લેવામાં આવેલ - પરંતુ ટ્રિબ્યુનલે મૃત્તકની કાલ્પનિક માસિક આવક રૂ. 3,000/- ગણીને રૂ. 1,25,000/- નો વળતર મંજૂર કરેલ તથા દાવેદારની ઉંમરના આધારે 5 નો ગુણાંક નક્કી કરેલ - તે સામેની અપીલમાં એવું જાણવા મળેલ કે વળતરને સુધારીને રૂ. 5,00,000/- નું વળતર નવી સૂચિ પ્રમાણે આપેલ, જેમાં ઉપર મુજબનાં બાકી રૂ. ,3,75,000/- વીમા કંપની દ્વારા 6% વ્યાજ સાથે ચુકવવાનો આદેશ આપવામાં આવેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- કલમ 163A હેઠળ, જીવલેણ અકસ્માતના દાવાઓમાં, માળખાગત ફોર્મ્યુલાને આધારિત સમય પત્રકનો ઉપયોગ કરીને વળતર નક્કી કરવામાં આવે, તેમાં કોઈ જૂના કેસોમાં પણ અદાલતોએ નવા સમય પત્રકને લાગુ કરવો જોઈએ અને તે મુજબ એવોર્ડને એડજસ્ટ કરવો જોઈએ.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 163A

Counsel:
Jayanta Banerjee, Gopa Das Mukherjee

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The present appeal has been preferred by the claimant against the judgment and award dated 3rd December, 2014, passed by the learned Motor Accident Claims Tribunal, Durgapur, in MAC Case No. 38 of 2011, **under Section 163A of the Motor Vehicles Act, 1988.**

[2] Facts:-

"On 16.11.2010 at about 10 p.m. in the night Ram Ruidas was returning his home from Kirti Ceramics after completion of his days work through mud road besides Trilokchandrapur- Debsala Road. Suddenly, near a factory gate, one motor cycle bearing no. WB-40R-3902 coming with a high speed dashed him from behind and as a result thereof Ram Ruidas fall on the road and immediately after the accident, local people shifted him to S.D. Hospital, Durgapur and thereafter, on 17.11.2010, he was referred to Burdwan Medical College & Hospital and as per advice of doctor he was transferred to S.S.K.M. Hospital, Kolkata where he died on 21.11.2010 at p.m.

A police case was registered at Kanksa P.S. being no. 176/10 dated 24.11.2010 u/s 279/304A of I.P.C. and the post mortem was held at S.S.K.M. Hospital dated 23.11.2010. It is also stated that due to sudden death of Ram Ruidas, his family members sustained lost of dependency and financial crisis and he was the only earning member of his family. It is also stated that deceased was a labourer at Kirti Ceramics and the concerned offending motor cycle was under insurance coverage under policy no. 313490/31/2010/1305 which was valid from 23.2.2010 to 22.2.2011. Income of the deceased was considered at Rs.3300/- per month and claim was made in the tune of Rs.4,31,900/-."

[3] Oriental Insurance Co. Ltd/ O.P. No. 2, filed written statement denying, inter alia, all the statements made in the petition for compensation u/s 163(A) of M.V. Act. O.P. No.2 has stated that the claim is made an excessive and without reasonable

basis and O.P. no.2 strictly challenged the cause of death by the vehicle covered by insurance policy. Insurance company also raised dispute about the insurance coverage of the Bajaj motor cycle as the vehicle number is not mentioned in the insurance policy. Finally insurance company has prayed for dismissal of the claim.

[4] Owner of the offending vehicle filed a separate written statement denying the claim of the petitioner and it is his specific plea that at the time of alleged accident on 16.12.2010, the motor cycle being no. WB40R-3902 was duly insured with the Oriental Insurance Co. Ltd. through its policy no. 313490/31/2010/1305 valid from 23.2.2010 to 22.2.2011. According to the owner if the petitioner is entitled to get any compensation that is to be paid by the **O.P. no.2 i.e. insurance company.**

[5] The claimant examined **one witness** and proved relevant documents marked **Exhibits 1 to 5.**

[6] The Tribunal finally held as follows:-

"MAC Case No. 38 of 2011

Dated: 3rd December, 2014

…… Petitioner could not able to prove the income of deceased by any cogent evidence. So, notional income of Rs. 3000/- p.m. is considered in favour of the deceased out of which one-third is to be deducted from his personal income and loss of dependency would be of Rs. 3000 - Rs. 1000 = Rs.2000/- per month i.e. Rs.24,000/- p.a.

The claimant mother is aged about 60 years as appears from her voter identity card. Although age of the deceased is shown as 18 years. For the purpose of computation here in this case the age of the dependent mother would come into consideration. That being the position multiplier would be 5 in this case.

In that event, compensation would be Rs. 24,000/- X 5 = Rs.1,20,000/-. In addition to that petitioners are also entitled to get of Rs.5000/- on account of funeral expenses Totaling Rs. 1,20,000/- + Rs.5000/- =Rs. 1,25,000/-. Petitioners are also entitled to get interest @ 7% p.a. upon the awarded compensation amount from the date of filing of the claim till realization of the entire awarded amount……

Sd/-
Judge,
MAC Tribunal
Durgapur"

[7] From the materials and evidence on record, it appears that:-

(i) The **delay** in lodging the FIR has been **duly explained** and decided by the tribunal.

(ii) The finding of the tribunal as to the involvement of the offending vehicle in the accident in this case and having a **valid insurance** is also in accordance with law.

(iii) The death of the victim as a result of the injuries sustained in the accident in this case has also been duly proved.

[8] The present appeal is an appeal from a claim application under Section 163A of M.V. Act and the position of law in such a proceeding is already in place and the same is also applicable to the present case.

[9] (A) In Urmila Halder Vs. New India Assurance Co. Ltd. & Ors., in F.M.A. 446 of 2010, decided on 9th August,2018, the Calcutta High Court held:-

> "9. Sub-section (1) of Section 163-A of the 1988 Act ordains that notwithstanding anything contained therein or in any other law for the time being in force, upon proof of death in an accident involving the use of a motor vehicle, compensation is payable either by the owner of such vehicle or the authorized insurer thereof as indicated in the Second Schedule to the legal heirs of the victim. The Second Schedule appended to the 1988 Act, referring to Section 163-A thereof, provides the structured formula for determining compensation.
>
> 11. As it stands now, the Second Schedule after its amendment by the said notification prescribes lumpsum compensation in the following manner:
>
> 1. Fatal accidents - Rs. 5,00,000.00 is payable as compensation in case of death;
>
> 2. Accidents resulting in permanent disability - Rs. 5,00,000.00 x percentage of disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923), provided that the minimum compensation in case of permanent disability of any kind shall not be less than Rs. 50,000.00;
>
> 3. Accidents resulting in minor injury - A fixed compensation of Rs. 25,000.00.
>
> 14. With that in view, we invited such learned advocates to address us on the following issue: Whether, after the amendment brought about by the said notification, the new schedule would be applicable to pending claim applications under Section 163-A before the motor accident claim tribunals as well as the appeals arising out of awards delivered there under prior to May 22, 2018?
>
> 118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself

regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.

126. Turning to the facts in the appeal, we find that had this appeal been decided prior to May 22, 2018, the appellant would have been entitled to whatever sum were determined as payable in terms of the old schedule. Admittedly, Rs.5,00,000.00 was not payable to the appellant by the respondent no.1 any time prior to May 22, 2018 and, therefore, she was not entitled to such sum as on date she exercised her "right of action". Therefore, in each case where the claim is pending before the tribunal or if this Court has been approached in appeal as on May 22, 2018, we feel it to be the duty of the tribunal/Court to determine the amount of compensation payable to the claimant in terms of the structured formula and award interest at such rate it considers proper thereon from the date of filing of the claim application till May 21, 2018. To avoid any charge of arbitrariness, it would be safe to award interest at the prevailing bank rate of interest on term deposits on the date the award is made. Thereafter, that is from May 22, 2018, interest on Rs.5,00,000.00 may be directed to be paid till realization as per the prevailing bank rate of interest on term deposits.

127. To determine what the appellant could have lawfully claimed as compensation based on the old schedule, we need to look into the evidence. The version of the appellant that the victim was earning Rs.2,000.00 per month could not be dislodged by the respondent no. 1 in cross-examination. The victim being self-employed in the unorganized sector, the tribunal put an onerous burden on the appellant to produce documentary evidence to prove her monthly income. Having regard to the decision in **Syed Sadiq v. United India Insurance Co. Ltd.**, 2014 2 SCC 735, we hold that it was not necessary for the appellant to prove the income of the victim by producing documentary evidence. The loss of dependency, thus, has to be worked out reckoning Rs.24,000.00 as the notional yearly income of the victim. Capitalizing it on a multiplier of 17, the resultant amount would be Rs.4,08,000.00. Deducting 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining herself had she been alive, and adding Rs.4.500.00 on account of loss of estate and funeral expenses, we arrive at the sum of Rs.2,76,500.00.

128. In the final analysis, we hold that the appellant shall be entitled to Rs.5,00,000.00 on account of compensation under Section 163-A of the 1988 Act read with the new schedule. However, since she has received Rs. 1,14,500.00 that was awarded by the tribunal, the respondent no.1 shall pay Rs.3,85,500.00 more to the appellant within 2 (two) months from date of

service of a copy of this judgment and order on it. The appellant is further held entitled to interest as follows:

(i) @ 9% per annum on Rs.2,76,500.00 from the date of filing of the claim application, i.e., February 8, 2005 till May 21, 2018; and

(ii) @ 6% per annum on Rs. 5,00,000.00 from May 22, 2018 till such time payments of Rs. 3,85,500.00 and interest as in (i) above are effected in favour of the appellant."

(b) In appeal, the Supreme Court in The New India Assurance Co. Ltd. Vs. Urmila Halder, Civil Appeal No. ____ of 2024 (@ Special Leave Petition (Civil) No. 6260 of 2019), decided on 8th February, 2024, upheld the above judgment and held:-

"4. The short point for consideration before this Court is whether the amendment in Section 163-A of the Motor Vehicles Act, 1988, which came into effect by a Gazette Notification on 22nd May, 2018, would relate to an accident which had occurred prior to the said date.

10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-Insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs 5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks."

[10] In the present appeal, the claim was decided by the tribunal on 3rd December, 2014, thus prior to 22nd May, 2018 and compensation of a sum of Rs. 1,25,000/- was granted in terms of the old schedule.

[11] Now, in terms of the guidelines of the Courts, in the judgments, Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra) and The New India Assurance Co. Ltd. Vs. Urmila Halder (Supra), the Appellant/Claimant is entitled to compensation of a total sum of Rs. 5,00,000/- under Section 163A of the 1988 M.V. Act read with the new schedule.

[12] Admittedly, the **Appellant/Claimant** has already received an amount of compensation of **Rs. 1,25,000/-** in terms of order of the Learned Tribunal. Accordingly, the **Appellant/ Claimant** is now entitled to the balance amount of compensation of **Rs. 3, 75, 000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

[13] Respondent No. 1/ Insurance Company, thus is directed to deposit the balance amount and the interest as indicated above, by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date. The **Respondent No. 1/ Insurance Company** shall also pay the interest upon the **sum of Rs. 3, 75, 000/-** at the rate of 6% till deposit, within the period as specified above.

[14] Upon deposit of the aforesaid amount with interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of the **Appellant/Claimant**, upon satisfaction of his identity and payment of ad-valorem Court fees, if not already paid.

[15] The appeal being FMAT 332 of 2015 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

[16] No order as to costs.

[17] All connected applications, if any, stand disposed of.

[18] Interim order, if any, stands vacated.

[19] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[20] Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking

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2024(2)GMAJ582

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A T; C A N No. 451 of 2014; 2 of 2024 **dated 19/08/2024**

Marjina SK

Versus

National Insurance Company Limited

FATAL TRACTOR ACCIDENT

Motor Vehicles Act, 1988 Sec. 166 - Fatal Tractor Accident - Claim filed under Section 166 of the Motor Vehicles Act - Dhula Chand Sk. was hit by a tractor while walking, resulting in severe injuries and death on 06.03.2011 - The claimants sought Rs. 6 lakhs in compensation - Tribunal awarded Rs. 3,69,500, using a monthly income of Rs. 3,000 and a multiplier of 15 - Appeal challenged the age used by the Tribunal and claimed higher compensation - Court revised the compensation based on the victim's age of 32, applying a multiplier of 16, future prospects of 40%, and Rs. 84,000 under conventional heads - Final award of Rs. 8,90,400 granted with 6% interest from

2024, but no interest awarded from 2014 to 2023 due to delayed filing. - Appeal Allowed

Law Point: In fatal accident cases, compensation should consider future prospects and apply the appropriate multiplier based on the victim's age. Even if the driver holds only a learner's license, the insurance company may be directed to pay and recover the amount from the vehicle owner.

મોટર વાહન અધિનિયમ, 1988 કલમ 166 - જીવલેણ ટ્રેક્ટર અકસ્માત - મોટર વાહન અધિનિયમની કલમ 166 હેઠળ દાવો દાખલ કરવામાં આવેલ - ધુલા ચંદ એસ.કે. રસ્તે ચાલતી વખતે ટ્રેક્ટર સાથે અથડાયાં હતાં, જેને પરિણામે તા. 06-03-2011 નાં રોજ ગંભીર ઈજાઓને લીધે મૃત્યુ પામ્યાં હતાં - દાવેદારોએ રૂ. 6 લાખનું વળતર માગેલ - ટ્રિબ્યુનલે રૂ. 3,69,500/- ના વળતરનો ચુકાદો આપેલ, જેમાં માસિક આવક રૂ. 3,000/- તથા 15 ના ગુણાંકની ગણતરી કરેલ હતી - તે ચુકાદાને પડકારવામાં આવતાં, અદાલતે તેમાં સુધારો કરીને મૃત્તકની ઉંમર 32 વર્ષની ગણીને 16 નો ગુણાક લાગુ કરેલ તથા ભાવિ સંભાવનાઓ ગણી અને પરંપરાગત શીર્ષક હેઠળ રૂ. 84,000/- ગણી અંતિમ વળતરનાં ચુકાદામાં રૂ. 8,90,400/- ને 6% વ્યાજ સાથે વર્ષ 2024 થી ગણવાનો ફેંસલો આપેલ - પરંતુ વર્ષ 2014 થી 2023 સુધીનો વ્યાજ દાવાને દાખલ કરવામાં વિલંબ થયાનાં લીધે આપવાનો ઈન્કાર કરેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- જીવલેણ અકસ્માતનાં કેસોમાં, વળતરમાં ભાવિ સંભાવનાઓ ધ્યાનમાં લેવી જોઈએ તથા ભોગ બનેલની વયને આધારે યોગ્ય ગુણાંક લાગુ કરવો જોઈએ. જો ડ્રાઈવર પાસે માત્ર શિખાઉ લાયસન્સ હોય, તો પણ વીમા કંપનીને વાહન માલિક પાસેથી રકમ ચૂકવવા અને વસૂલ કરવાનો નિર્દેશ આપવામાં આવી શકે છે.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 166

Counsel:
Amit Ranjan Roy, Sanjay Paul, Jaita Ghosh

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The present appeal has been preferred by the claimants against the Judgment and Award passed on 15th July 2013 by Member, Motor Accident Claims Tribunal and Additional District Judge, 2nd Court, Nadia,

Krishnanagar in M.A.C. Case No. 115 of 2011, **under Section 166 of the Motor Vehicles Act, 1988.**

[2] Facts:-

"On 22.02.2011 at about 11 a.m., Dhula Chand Sk. was coming to his house from Laxmi Gachha. When he came near ATM Brick field, he was dashed by a Tractor bearing no. WB 51A 1350. The Driver of the Tractor was rash and negligent in driving the vehicle on the public road. Dhula Chand was taken to Chapra Hospital. From there, he was sent to Shaktinagar Hospital. Dhula Chand was thereafter taken to Sarada Seba Sadan Nursing Home and from there he was shifted to Titagarh MRC Nursing Home. On 06.03.2011, Dhula Chand succumbed to his injuries. Police was informed. Chapra P.S. Case No. 97/11 was registered. It is further contended that Dhula Chand was 41 years old and a Mason by profession, who used to earn Rs. 4,500/- per month. The claimants further contended that the offending vehicle was insured with O.P./Insurer. They are claiming a sum of Rs. 6 lakhs as compensation."

[3] The O.P./Insurer, National Insurance Co. Ltd. contested the case by filing written objection denying all materials allegations. It is contended that the case is bad for non-joinder of necessary parties. No accident took place near ATM Brick field on 22.02.2011. The driver of the Tractor was not responsible for the accident as alleged. The victim had his contribution in accident caused by a Vehicle, if any. The owner of the Tractor did not follow the terms and conditions of Policy of insurance. Hence, the O.P./Insurer is not under obligation to indemnity the owner.

[4] The claimants examined 3 witnesses and relevant documents were marked as Exhibits on proof. The opposite parties did not adduce any evidence.

[5] The tribunal granted compensation as follows:-

"MAC 115 of 2011

Dated:-15th July, 2013

……..I have carefully perused the Charge Sheet and the Seizure list. I do not find anything to hold that the Driving licence was issued to a learner driver. From the Charge Sheet also, I find that the victim sustained injuries caused by the offending Tractor and he was taken to Sarada Seba Sadan, Barrackpore, where he died. Thus, I have no hesitation to hold that victim succumbed to injuries caused by motor vehicle in use and the claimants are entitled to compensation. From Post Mortem Report, Report, Ext.5, I find that victim was 32 years old but from the petition itself, I find that victim was 41 years old. P.W.1, being the widow stated that she did not disclose the age of her husband to the Doctor. Hence, I would like to go by the statement made by the legal heirs of the victim regarding age of the

deceased and not the age recorded by the Autopsy Surgeon. P.W. 1 has not been able to prove the income of her husband. Hence, I am of the view that the victim used to earn Rs. 3000/- per month and Rs. 36,000/- per annum. I deduct 1/3rd out of the said amount towards his personal expenditure and remaining sum of Rs. 24,000/- was the contribution of the victim to the family, which was lost. Taking multiplier 15, I compute the compensation to the tune of Rs. 3,60,000/- In addition to that, the claimants are entitled to Rs. 4,500/- towards loss of estate and funeral cost. Thus, each of the claimants no. 2, 3, 4 & 5 are entitled to compensation to the tune of Rs. 72,900/- each and claimant no. 1, being the widow is entitled to a sum of Rs. 5000/- towards loss if consortium in addition to Rs. 72,900/-. As the offending vehicle was insured with O.P./Insurer, I am inclined to hold that O.P./Insurers are liable to indemnify the owner and to pay compensation. The evidence of P.W.2 & P.W.3 are not sufficient to determine the cost of treatment incurred by the family of the victim…….

Sd/-
Member,
Motor Accident Claim Tribunal
& Additional District Judge,
2nd Court, Nadia."

[6] From the materials and evidence on record, it appears that:-

i) The offending vehicle had valid insurance and **the driver had a licence (learners).**

A Learner's Licence is an official document issued by the Regional Transport Office (RTO) that grants legal permission to learn and practise driving on roads. It serves as a provisional licence and acts as a precursor to obtaining a permanent Driving Licence (DL).

It provides you with the opportunity to learn and familiarise yourself with the rules of the road, traffic regulations, and safe driving practices under the supervision of a driver holding a valid DL.

This, thus was clearly a violation of the Insurance Policy rules.

ii) The tribunal was wrong in taking the age of the victim as 41 years as the Post Mortem report, Charge Sheet and the FIR show the victim's age as 32 years, **So multiplier 16** shall be applicable. (**Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr.**, 2009 6 SCC 121)

iii) Future prospects would be 40% as he was self employed and aged 32 years. (National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., 2017 16 SCC 680)

iv) There being no documents in support of income and the accident taking place in 2011, **Rs. 4000/- per month** is taken as income.

v) Number of Claimants being 5, **1/4th** is to be deducted from income, towards personal expense of the deceased.

vi) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of the consortium and funeral expenses **(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

[7] So, the **"Just Compensation"** in this case would be as follows:-

Monthly Income	Rs. 4,000/-
Annual Income (4,000 x 12)	Rs. 48,000/-
Less: **1/4**th towards personal and living expenses	Rs. 12,000/-
	Rs. 36,000/-
Add: Future prospects @ **40**% of the annual income of the deceased	**Rs. 14,400/-**
	Rs. 50,400/-
Multiplier x 16 (50,400 x 16)	**Rs. 8,06,400/-**
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	**Rs. 84,000/-**
Total amount:-	**Rs. 8, 90, 400/-**

[8] The award under challenge is dated 15.06.2013. The appeal was filed in 2014. Application for condonation of delay was filed on 18.12.2023, (CAN 1 of 2024) though the department noted the defect on 05.05.2014. Matter was first moved on 30.01.2024, thus the appellants are not entitled to the interest for the period from 2014 to 2023.

[9] Admittedly, the Claimants/Appellants have received the amount of compensation of **Rs.3,69,500/-** together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **balance amount of compensation of Rs. 5,20,900/- together with interest at the rate of 6% per annum from the date of filing of the claim application to the year 2013 and from the January, 2024 till deposit.**

[10] Taking into consideration, the amount already received by the Claimants/Appellants, the Respondent No. 1/Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar General, High

Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of consortium to the Appellant/wife, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

[11] Admittedly the driver of the tractor had only a Learner Licence. There is no proof that there was a driver with a permanent Driving Licence was supervising the driver (learner) in this case and thus a clear violation of Insurance Policy rules.

[12] The Hon'ble Supreme Court in Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in SLP (C) No. 33638 of 2017, on 3rd November, 2022, held as follows Para 8 to 14:-

> "8. Hence, the only aspect for our consideration herein, is as to whether in the facts and circumstances of the present case, an order to direct the Insurance Company to "pay and recover", is required to be made. On this aspect, the law is well settled that if the liability of the Insurance Company is decided and they are held not to be liable, ordinarily, there shall be no direction to "pay and recover". However, in the facts and circumstances arising in each case, appropriate orders are required to be made by this Court to meet the ends of justice.
>
> 9. In the instant case, the appellant has relied on the judgment dated 21.02.2017 passed by this Court in Civil Appeal No.(s). 3047 of 2017 titled as **"Manuara Khatun & Ors. Vs. Rajesh Kr. Singh & Ors.".** In the said case also, a Bench of this Court, having referred to the earlier decisions in Para-15 and 16 of that Judgment, has concluded that normally, there would be no order to "pay and recover". However, in the said facts, this Court, to meet the ends of justice, had taken into consideration the fact situation though, the claimant therein, was a "gratuitous passenger" and had kept in view that the benevolent object of the Act and had directed the payment by the Insurance Company and to recover the amount.
>
> 10. Therefore, on the legal aspect, it is clear that in all cases such order of "pay and recover" would not arise when the Insurance Company is not liable but would, in the facts and circumstances, be considered by this Court to meet the ends of justice.
>
> 11. If this aspect of the matter is kept view, in the instant facts, it is noticed that the appellant, as on the date of the accident, was aged about 19 years and due to the injuries suffered in the accident by him, his left leg was amputated below the knee.
>
> 12. Even, if the contention that the appellant was in the vehicle getting trained to be as a cleaner, is not taken into consideration, the fact remains that any other avocation that is to be undertaken by the appellant would involve

physical labour which the appellant will not be able to perform and in such circumstance, if the appellant is not able to realize the amount of compensation awarded in his favour at this stage from the owner of the vehicle, the appellant would be prejudiced. However, the Insurance Company, if ordered to pay to the appellant and recover it from the owner of the vehicle, it would not be prejudiced to that extent.

13. Therefore, keeping all aspects in view, and not making this case as a precedent, but, only to serve the ends of justice in the facts of this case, we direct that respondent no. 1 (Insurance Company) to deposit the compensation amount before the MACT within eight weeks from the date of the receipt of a copy of this judgment, whereupon, the MACT shall disburse the amount of compensation to the appellant.

14. The respondent no. 1 (Insurance Company) is reserved the liberty to recover the compensation from the owner of the vehicle."

[13] Thus, in view of the finding in Para 9 of this judgment, the Respondent/ Insurance Company in this case shall be at liberty to recover the compensation from the owner of the vehicle **(Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors. (Supra)).**

[14] In the present case, it has been proved that the driver was driving the offending vehicle without a valid licence (learners) and thus the Insurance Company is not liable. But considering the helplessness of the claimants, interest of justice requires that the Insurance Company shall pay and then recover the same from the owner of vehicle, by due process of law.

[15] The appeal being FMAT 451 of 2014 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

[16] No order as to costs.

[17] All connected applications, if any, stand disposed of.

[18] Interim order, if any, stands vacated.

[19] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[20] Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities

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2024(2)GMAJ589

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A T No. 694 of 2014 **dated 14/08/2024**

Basanti Das

Versus

Oriental Insurance Company Ltd

FATAL ROAD ACCIDENT

Motor Vehicles Act, 1988 Sec. 163A - Fatal Road Accident - Claim filed under Section 163A of the Motor Vehicles Act - The victim, a 26-year-old mason, was hit by a speeding lorry and died on the spot - Claimants (mother and sister of the deceased) sought compensation of Rs. 5,00,000 - Tribunal awarded Rs. 3,10,500, considering the victim's monthly income to be Rs. 3,000 and applying a multiplier of 17 - The Insurance Company contested, but the court ruled that they were liable to indemnify the owner - On appeal, compensation was enhanced to Rs. 5,00,000 under the new schedule, with 6% interest from the date of filing - The balance of Rs. 1,89,500 was to be deposited by the Insurance Company. - Appeal Allowed

Law Point: In fatal accident claims under Section 163A, compensation is calculated using structured formula-based schedules. If new schedules are beneficial to claimants, they must be applied, even for older cases.

મોટર વાહન અધિનિયમ, 1988 કલમ 163A - જીવલેણ રોડ અકસ્માત - મોટર વાહન અધિનિયમની કલમ 163A હેઠળ દાવો દાખલ કરવામાં આવ્યો - ભોગ બનનાર તે એક 26 વર્ષીય કડિયા કામ કરનાર હતો - પૂર ઝડપે આવતા એક ટ્રકે તેને ઠોકર મારતાં ઘટના સ્થળે જ તેનું મૃત્યુ થયેલ - તેના દાવેદારોમાં તેની માતા તથા બહેન છે, તેમણે વળતર પેટે રૂ. 5,00,000/- ની માંગણી કરેલ, પરંતુ ટ્રિબ્યુનલે અકસ્માતમાં ભોગ બનનારની આવક તરીકે રૂ. 3,000 અને 17 નાં ગુણાંકને લાગુ કરી રૂ. 3,10,500/- વળતર પેટે મંજૂર કરેલ - વિમા કંપનીએ એવી દલીલ કરીને વિરોધ કરેલ, પરંતુ અદાલતે ચુકાદો આપતા કહેલ કે, ટ્રક માલિક ભરપાઈ માટે જવાબદાર બને છે - તેમાં અરજદાર દ્વારા અપીલ કરાતા નવી અનુસૂચિ પ્રમાણે ગણતરી કરતાં 6% નાં વ્યાજ સાથે રૂ. 5,00,000/- દાવો દાખલ કર્યાની તારીખથી મંજૂર કરવામાં આવેલ - બાકી નીકળતા

રૂ. 1,89,500/- ની રકમ વિમા કંપનીએ ભરી આપવાનો હુકમ કરેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- કલમ 163A હેઠળ, જીવલેણ અકસ્માતનાં દાવાઓમાં માળખાગત ફોર્મ્યુલા-આધારીત અનુસૂચિ પ્રમાણે વળતરની ગણતરી કરવાની હોય છે. જો નવો શેડ્યુલ તે દાવેદારોને ફાયદાકારક ઠરતું હોય, તો તે શેડ્યુલ જૂના કેસોને પણ લાગુ કરવા જોઈએ.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 163A

Counsel:
Amit Ranjan Roy, Sucharita Paul

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The present appeal has been preferred by the claimants against the Judgment and Award passed on 29th November, 2012, by Member, Motor Accident Claims Tribunal and Additional District Judge, 2nd Court, Nadia in MAC Case No. 90 of 2010, **under Section 163A of the Motor Vehicles Act, 1988.**

[2] Facts:-

> "On 30.01.2010 at about 7 a.m. while one Astam Das alias Faring, a mason by profession was coming down the road leading to Krishnanagar from Nabadwip, when he was dashed by a speeding lorry registered as W.B. 37A/0414 which was proceeding towards Krishnanagar from Nabadwip and as a result, Astam Das died on the spot. He was a bachelor and 26 years old young man who used to earn Rs. 40,000/- per annum. It is further contended that police was informed about the accident and Kotwali P.S. Case No. 60/10 dated 30.01.10 was registered. The claimant no.1 being the mother and claimant no.2 sister of the victim are the claimants."

[3] The owner of the offending vehicle did not contest the case while the O.P./Insurer contested the case by filling written objection denying all the material contentions made by the claimants. According to the O.P. /Insurer, the application is bad for mis-joinder and non-joinder of parties. It is mala fide and misconception. The O.P./Insurer denied that the offending vehicle No. W.B. 37A/0414 was at all involved in the alleged accident. According to the O.P./Insurer, the victim did not succumb to injuries caused by motor vehicle in use. The O.P./Insurer prayed for dismissal of the case.

[4] The Claimant No.1 has examined herself as a witness. Relevant documents were proved and marked **Exhibit 1 to 4.**

[5] The tribunal granted compensation as follows:-

"MAC Case No. 90 of 2010

Dated: 29th November 2012

The claimant no.1 while adducing evidence as P.W.1 has not been able to prove the income of the victim. Therefore, we can presume that the victim used to earn Rs. 3000/- per month. Since the victim was a bachelor, it should be held that 50% of his income he used to spend for himself and Rs. 50% of his income was the contribution towards his family which was lost. From exhibit-4, I find that the victim was 25 years old. Therefore, I take "17" as multiplier to compute the extent of compensation and the compensation comes to Rs. 3,06,000/- and in addition to that the claimant No.1 is entitled to Rs. 2500/- towards funeral expenses and Rs. 2000/- towards loss of estate. Thus, the total amount of compensation comes around to Rs. 3,10,500/-. As the vehicle involved with the accident was insured with the O.P./Insurer, the O.P./Insurer is under obligation to indemnify the owner.

Thus, the O.P./Insurer is liable to pay such compensation.

Sd/-
Member,
Motor Accident Claim Tribunal &
Addl. District Judge, 2nd Court, Nadia"

[6] The present case is under Section 163A of the M.V. Act.

[7] (A) In Urmila Halder Vs. New India Assurance Co. Ltd. & Ors., in F.M.A. 446 of 2010, decided on 9th August,2018, the Calcutta High Court held:-

"9. Sub-section (1) of Section 163-A of the 1988 Act ordains that notwithstanding anything contained therein or in any other law for the time being in force, upon proof of death in an accident involving the use of a motor vehicle, compensation is payable either by the owner of such vehicle or the authorized insurer thereof as indicated in the Second Schedule to the legal heirs of the victim. The Second Schedule appended to the 1988 Act, referring to Section 163-A thereof, provides the structured formula for determining compensation.

11. As it stands now, the Second Schedule after its amendment by the said notification prescribes lumpsum compensation in the following manner:

1. Fatal accidents - Rs. 5,00,000.00 is payable as compensation in case of death;

2. Accidents resulting in permanent disability - Rs. 5,00,000.00 x percentage of disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923), provided that the minimum compensation in case of permanent disability of any kind shall not be less than Rs. 50,000.00;

3. Accidents resulting in minor injury - A fixed compensation of Rs. 25,000.00.

14. With that in view, we invited such learned advocates to address us on the following issue: Whether, after the amendment brought about by the said notification, the new schedule would be applicable to pending claim applications under Section 163-A before the motor accident claim tribunals as well as the appeals arising out of awards delivered there under prior to May 22, 2018?

118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.

126. Turning to the facts in the appeal, we find that had this appeal been decided prior to May 22, 2018, the appellant would have been entitled to whatever sum were determined as payable in terms of the old schedule. Admittedly, Rs.5,00,000.00 was not payable to the appellant by the respondent no.1 any time prior to May 22, 2018 and, therefore, she was not entitled to such sum as on date she exercised her "right of action". Therefore, in each case where the claim is pending before the tribunal or if this Court has been approached in appeal as on May 22, 2018, we feel it to be the duty of the tribunal/Court to determine the amount of compensation payable to the claimant in terms of the structured formula and award interest at such rate it considers proper thereon from the date of filing of the claim application till May 21, 2018. To avoid any charge of arbitrariness, it would be safe to award interest at the prevailing bank rate of interest on term deposits on the date the award is made. Thereafter, that is from May 22, 2018, interest on Rs.5,00,000.00 may be directed to be paid till realization as per the prevailing bank rate of interest on term deposits.

127. To determine what the appellant could have lawfully claimed as compensation based on the old schedule, we need to look into the evidence. The version of the appellant that the victim was earning Rs.2,000.00 per month could not be dislodged by the respondent no. 1 in cross-examination. The victim being self-employed in the unorganized sector, the tribunal put an

onerous burden on the appellant to produce documentary evidence to prove her monthly income. Having regard to the decision in Syed Sadiq v. United India Insurance Co. Ltd.: (2014) 2 SCC 735, we hold that it was not necessary for the appellant to prove the income of the victim by producing documentary evidence. The loss of dependency, thus, has to be worked out reckoning Rs.24,000.00 as the notional yearly income of the victim. Capitalizing it on a multiplier of 17, the resultant amount would be Rs.4,08,000.00. Deducting 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining herself had she been alive, and adding Rs.4.500.00 on account of loss of estate and funeral expenses, we arrive at the sum of Rs.2,76,500.00.

128. In the final analysis, we hold that the appellant shall be entitled to Rs.5,00,000.00 on account of compensation under Section 163-A of the 1988 Act read with the new schedule. However, since she has received Rs. 1,14,500.00 that was awarded by the tribunal, the respondent no.1 shall pay Rs.3,85,500.00 more to the appellant within 2 (two) months from date of service of a copy of this judgment and order on it. The appellant is further held entitled to interest as follows:

(i) @ 9% per annum on Rs.2,76,500.00 from the date of filing of the claim application, i.e., February 8, 2005 till May 21, 2018; and

(ii) @ 6% per annum on Rs. 5,00,000.00 from May 22, 2018 till such time payments of Rs. 3,85,500.00 and interest as in (i) above are effected in favour of the appellant."

(b) In appeal, the Supreme Court in The New India Assurance Co. Ltd. Vs. Urmila Halder, Civil Appeal No. ____ of 2024 (@ Special Leave Petition (Civil) No. 6260 of 2019), decided on 8th February, 2024, upheld the above judgment and held:-

"4. The short point for consideration before this Court is whether the amendment in Section 163-A of the Motor Vehicles Act, 1988, which came into effect by a Gazette Notification on 22nd May, 2018, would relate to an accident which had occurred prior to the said date.

10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-Insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to ?5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was

stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks."

[8] In the present appeal, the claim was decided by the tribunal on **29th November, 2012** (thus prior to 22nd May, 2018) and compensation of a sum of **Rs. 3,10,500/-** was granted in terms of the old schedule.

[9] Now, in terms of the guidelines of the Courts, in the judgments, Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra) and The New India Assurance Co. Ltd. Vs. Urmila Halder (Supra), the Appellants/Claimants are entitled to compensation of a total sum of Rs. 5,00,000/- under section 163A of the 1988 M.V. Act read with the new schedule.

[10] Admittedly, the **Appellants/ Claimants** have already received the amount of compensation of **Rs. 3,10,500/-** in terms of order of the Learned Tribunal. Accordingly, the Appellants/ Claimants are now entitled to the balance amount of compensation of **Rs. 1,89,500/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

[11] Taking into consideration, the amount already received by the **Claimants/Appellants**, the **Respondent No. 1/Insurance Company** shall deposit the balance amount **of Rs. 1,89,500/-** along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the **Claimants/Appellants** (wife and daughter of the deceased) in equal proportion, **after payment** of the amount for loss of consortium to the Appellant/wife, upon satisfaction of their identity and payment of advalorem Court fees, if not already paid.

[12] The appeal being FMAT No. 694 of 2014 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

[13] All connected applications, if any, stand disposed of.

[14] There will be no order as to costs.

[15] Interim order, if any, stands vacated.

[16] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[17] Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities

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2024(2)GMAJ595

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A; F M A T No. 1207 of 2021; 1149 of 2014 **dated 13/08/2024**

Krishna Mohan Ghosh

Versus

New India Assurance Co Ltd

PEDESTRIAN ACCIDENT INJURY

Motor Vehicles Act, 1988 Sec. 166 - Pedestrian Accident Injury - Claim filed under Section 166 of the Motor Vehicles Act - Appellant, along with others, was hit by a rashly driven Tata 407 while walking on the road - The appellant sustained severe injuries leading to permanent disability - Tribunal dismissed the claim, stating that the victim was a gratuitous passenger in a goods vehicle and not entitled to compensation - On appeal, the court rejected the tribunal's reasoning, proving that the victim was a pedestrian and not a passenger - The appellant's income was assessed at Rs. 3,000 per month, and a 40% disability was established - Compensation of Rs. 5,87,869 with 6% interest awarded - Insurance Company was allowed to recover the amount from the vehicle's owner. - Appeal Allowed

Law Point: In cases involving pedestrian accidents, compensation is determined based on the victim's income, percentage of disability, and medical expenses. The insurance company may be ordered to pay compensation first and recover it from the vehicle owner when passengers are wrongly classified as gratuitous.

મોટર વાહન અધિનિયમ, 1988 કલમ 166 - ચાલીને જતાં અકસ્માત થતા ઈજાઓ થઈ - મોટર વાહન અધિનિયમની કલમ 166 હેઠળ દાવો દાખલ કરવામાં આવેલ - અરજદારને અન્ય લોકોની સાથે રસ્તા પર ચાલતી વેળાએ, ઝડપવાળી ગતિથી દોડતી ટાટા 407 વાહનવાળાએ ટક્કર મારેલ હતી - અપીલકર્તાને ગંભીર ઈજાઓ થઈ આવી હતી, જેના કારણે કાયમી અપંગતા થઈ આવેલ - ટ્રિબ્યુનલે દાવો ફગાવી દીધો હતો, ટ્રિબ્યુનલનું કહેવું હતું કે, ભોગ બનનાર માલ-સામાન લઈ જનાર વાહનમાં એક ભાડૂ આપનાર પેસેન્જર હતો અને તેથી વળતર મેળવવા હકદાન નથી - તેમાં અપીલ કરવામાં આવતા, અદાલતે ટ્રિબ્યુનલનાં તર્કને નકારી કાઢેલ અને સાબિત કરેલ કે, અરજદાર પગપાળા ચાલનાર રાહદારી હતો અને નહીં કે પેસેન્જર - અપીલ કરનારની આવક માસિક રૂ. 3,000/- ને 40% વિકલાંગતા સ્થાપિત કરવામાં આવેલ - વળતર

પેટે 6% વ્યાજ સહિત રૂ. 5,87,869/- નો હુકમ કરવામાં આવેલ - વીમા કંપનીને વાહનના માલિક પાસેથી રકમ વસૂલ કરવાની મંજૂરી આપવામાં આવેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- રસ્તે ચાલીને જતા રાહદારી સાથે થતા અકસ્માતનાં કેસોમાં વળતર, પિડિતની આવક, અપંગતાની ટકાવારી અને તબીબી ખર્ચનાં આધારે નક્કી કરવામાં આવે છે. વિમા કંપનીને વળતર ચૂકવવાનો આદેશ આપવામાં આવ્યો અને તે પછીથી વાહન માલિક પાસેથી વસૂલવામાં આવવો જોઈએ, જ્યારે મુસાફરોને ખોટી રીતે ભાડું આપનાર પેસેન્જર તરીકે વર્ગીકૃત કરવામાં આવ્યાં હોય.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 166

Counsel:
Saidur Rahamanm Gopa Das Mukherjee

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The appeal has been preferred by the claimant against the judgment and award dated 30.06.2014 passed by Judge, Motor Accident Claims Tribunal, 3rd Court, Alipore, District South 24 Parganas in MAC Case No. 17 of 2013, **under Section 166 of the Motor Vehicles Act, 1988.**

[2] Facts:-

"On 02.12.2002 while the victim Krishna Mohan Ghosh along with Ashoka Ghosh, Bhim Ghosh and Biswajit was returning after attending a marriage ceremony (Bhowbhat) on foot following the extreme western side non-metal led portion of the Diamond Harbour Jagannathpore Road near Jagannathpore more, the driver of the offending vehicle bearing registration number WB-19A/5739 was proceeding with his vehicle in a rash and negligent manner and thereby dashed against the pedestrains namely Krishna Mohan Ghosh, Ashoka Ghosh, Bhim & Biswajit Ghosh and they sustained severe injuries on their person causing permanent disablement. Rash, reckless and negligent driving of the driver of the offending vehicle (Tata 407) was the sole and direct cause for this pathetic accident which could have been easily avoided had the driver been not reckless, rash and negligent and did not fail to take reasonable care and attending while driving the said vehicle at the material time. The injured Krishna Mohan Ghosh had an active life till the date of accident but after the accident and owing to sustaining permanent disablement he has lost his active life and is unable to lead a normal life. He

has become completely dependent on the assistance and help of others and has sustained immense pecuniary loss besides suffering from perpetual pain, shock and mental agony."

[3] O.P. no. 1, the owner of the offending vehicle did not appear to contest the case. However, the O.P. no.2/The New India Assurance Co. Ltd. appeared and filed Written Statement to contest the case. In the Written Statement, the O.P. 2 disputed the statements of the claimant and further stated that the claimant himself was **travelling in a goods vehicles** in violation of the terms and conditions of the Insurance policy and therefore he could not take the advantage of any wrong committed by him and consequently the O.P. no.2 was not liable for any compensation towards the injuries sustained by the claimant, if any and therefore, a prayer was made for dismissal of the case. On its application filed u/s 170 of the M.V. Act, 1988 the O.P. no.2 was also permitted by order dated 20.03.10 to contest the case on all the grounds that are available to the insured.

[4] The claimants **examined 10 (Ten) witnesses** and proved relevant documents, which were marked **Exhibit 1 to 33.**

[5] The Insurance Company/O.P. examined one witness on their behalf and proved documents marked **Exhibit A to C.**

[6] The tribunal finally held as follows:-

"MAC Case No. 17 of 2013

Dated: 30.06.2014

Therefore it is clear that the claimant and others were in the offending vehicle **as gratuitous passengers** of a Goods vehicle and they met with an accident which caused them injuries and accordingly in view of the judgment of the Hon?ble Supreme Court of India as relied upon by the Ld. Counsel for the O.P.no.2 **they are not entitled for compensation** from the Insurance Co. (O.P. no. 2) as they willingly, knowingly and willfully had travelled in the goods vehicle and clearly in order to gain some compensation had filed the present case by concealing the truth and the real facts.

Accordingly, in the light of the discussions as made above the claimant is not found entitled to any compensation.

All the issues are disposed of accordingly.
As a result, the case fails.
Hence it is accordingly,

Ordered

that the instant **case is dismissed** on contest against the O.P. no.2 and ex-parte against the O.P. no.1 but without costs.

The claimant is not found entitled to get any compensation.

Sd/-
Judge,
M.A.C Tribuna, 3rd Court Alipore"

[7] Being aggrieved the present appeal has been preferred on the following ground:-

That the judgment under appeal is not in accordance with law as the victims were hit by the offending vehicle and that they were not gratuitous passenger in a goods vehicle, as held by the tribunal.

[8] From the materials and evidence on record, it appears that:-

i) The accident by the offending vehicle **(Charge Sheet Exbt.-31)** was caused by hitting a stationary lorry by driving in a rash and negligent manner.

ii) **From the Charge Sheet** it also appears that **41 persons** were injured in the accident and they were all travelling in the offending vehicle which was a goods vehicle, thus it is proved that the victim was also **a gratuitous passenger** in the offending vehicle.

The tribunal has rejected the claim on the said ground. The offending vehicle has a valid Insurance **(Exhibit 2). Carrying passengers in a goods vehicle is a violation of the insurance policy conditions.** The offending vehicle **had valid licence.**

iii) **Exhibit 3** - Madhyamik Certificate of the claimant/injured shows that he was aged **36 years** at the time of accident (Date of Birth:- 01.02.1966) so **multiplier 15** will be applicable.

iv) Accident happened in the year 2002, the victim/injured having a grocery business, his income is taken as **Rs. 3000/- per month.**

v) The total amount of medical bills (Exbt.- 16, 17 Series, 24, 25, 26, 27, 28 & 33) is Rs. 1,45,206.95/-.

vi) **Exhibit 8** Disability Certificate, though not proved by a witness, shows **40% disability.** The reason for not believing this certificate by the tribunal is not sound and thus cannot be accepted by this Court. Disability is ascertained and decided after a person has recovered from his injuries and his treatment is primarily completed.

vii) **Exhibit 11** another Disability Certificate proved by P.W. 2 (Doctor) shows **50% disability**.

On perusal of **Exhibit 11**, it appears that the said Certificate though proved by P.W. 2 is not as per rules and as such cannot be considered.

viii) On the other hand **Exhibit 8** has been issued as per rules by the medical board of Sub-Divisional Hospital, Diamond Harbour and **can thus be relied upon.**

ix) The Supreme Court in Bajaj Allianz General Insurance Company Pvt. Ltd. Vs Union of India and ors., 2021 (4) T.A.C. 676 (S.C.), held:-

> "(iv) As far as the aspect of the issuance of certificate on disability of victims is concerned, it is reiterated that the guidelines laid down by this Court in **Raj Kumar v. Ajay Kumar and Anr.**, 2011 1 SCC 343 mandatorily must be followed by the MACTs, in respect of loss of income due to injury/disablement. **The District Medical Board is also directed to follow the guidelines issued** by the Ministry of Social Justice and Empowerment, Government of India vide Gazette Notification S. No. 61, dated 05.01.2018, **for issuance of disability Certificate** in order to bring Pan India uniformity. **The consequence is that the MACT would ascertain that permanent disability certificate issued by the District Medical Board or body authorized by it is in accordance with the Gazette Notification alone.** Once the certificate is issued in this manner, the same can be marked for purposes of being taken into consideration as evidence **without the necessity of summoning the concerned witness to give formal proof of the documents unless there is some reason for suspicion on the document;"**

x) Admittedly the claimant/injured suffered severe grievous injuries being fracture injuries on right leg, facture of backbone, fracture bone of face, fracture of nose, blindness of right eye, fracture chest, coronial nerve paralysis right side and disfiguration of face causing permanent disablement and as a result he cannot walk properly cannot sit and stand properly and cannot see in the right eye properly to chew hard food stuff, breathing problem and cannot lead normal and pleasurable life.

He has been under actual treatment for about **7(seven) months** and conservative treatment till the year 2009.

xi) Thus, considering the said materials and evidence on record and the judgment in Sidram Vs The Divisional Manager, United India Insurance Co. Ltd. and Anr.,Civil Appeal No. 8510 Of 2022, the **"Just Compensation"** in this case would be as follows:-

Rs.3000 x 12 x 15 x 40%	Rs. 2,16,000/-
Medical expenses (bills)	Rs. 1,45, 207/-
Loss of earning due to hospitalization (3000x7).	Rs. 21,000/-
Non-Pecuniary damages	Rs. 20,000/-
Loss **due to disability**	Rs. 50,000/-
	Rs.4,52,207/-
Future Prospect 30%	Rs. 1,35,662.1/-
Total amount:-	**Rs. 5,87,869.1/-**

Total round off amount	**Rs. 5,87,869/-**

xii) Admittedly, the Claimant has not received any **amount of compensation/ interest** by the order of the learned Tribunal. Accordingly, the Claimant is now entitled to the **total amount of compensation of Rs. 5,87,869/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

xiii) Respondent No. 1/Insurance Company shall deposit the total amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the Claimant, upon satisfaction of his identity and payment of ad-valorem Court fees, if not already paid.

[9] The Hon'ble Supreme Court in Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in SLP (C) No. 33638 of 2017, on 3rd November,2022, held as follows **Para 8 to 14**:-

> "8. Hence, the only aspect for our consideration herein, is as to whether in the facts and circumstances of the present case, an order to direct the Insurance Company to "pay and recover", is required to be made. On this aspect, the law is well settled that if the liability of the Insurance Company is decided and they are held not to be liable, ordinarily, there shall be no direction to "pay and recover". However, in the facts and circumstances arising in each case, appropriate orders are required to be made by this Court to meet the ends of justice.
>
> 9. In the instant case, the appellant has relied on the judgment dated 21.02.2017 passed by this Court in titled as "Manuara Khatun & Ors. Vs. Rajesh Kr. Singh & Ors.".,Civil Appeal No.(s). 3047 of 2017 In the said case also, a Bench of this Court, having referred to the earlier decisions in Para-15 and 16 of that Judgment, has concluded that normally, there would be no order to "pay and recover". However, in the said facts, this Court, to meet the ends of justice, had taken into consideration the fact situation though, the claimant therein, was a "gratuitous passenger" and had kept in view that the benevolent object of the Act and had directed the payment by the Insurance Company and to recover the amount.
>
> 10. Therefore, on the legal aspect, it is clear that in all cases such order of "pay and recover" would not arise when the Insurance Company is not liable but would, in the facts and circumstances, be considered by this Court to meet the ends of justice.
>
> 11. If this aspect of the matter is kept view, in the instant facts, it is noticed that the appellant, as on the date of the accident, was aged about 19 years and

due to the injuries suffered in the accident by him, his left leg was amputated below the knee.

12. Even, if the contention that the appellant was in the vehicle getting trained to be as a cleaner, is not taken into consideration, the fact remains that any other avocation that is to be undertaken by the appellant would involve physical labour which the appellant will not be able to perform and in such circumstance, if the appellant is not able to realize the amount of compensation awarded in his favour at this stage from the owner of the vehicle, the appellant would be prejudiced. However, the Insurance Company, if ordered to pay to the appellant and recover it from the owner of the vehicle, it would not be prejudiced to that extent.

13. Therefore, keeping all aspects in view, and not making this case as a precedent, but, only to serve the ends of justice in the facts of this case, we direct that respondent no. 1 (Insurance Company) to deposit the compensation amount before the MACT within eight weeks from the date of the receipt of a copy of this judgment, whereupon, the MACT shall disburse the amount of compensation to the appellant.

14. The respondent no. 1 (Insurance Company) is reserved the liberty to recover the compensation from the owner of the vehicle."

[10] As it has been proved that the victim was **a gratuitous passenger** the Insurance Company is granted **leave to recover** the compensation paid from the O.P./Owner by **due process of law.**

[11] The appeal being FMA 1207 of 2021/FMAT 1149 of 2014 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

[12] All connected applications, if any, stand disposed of.

[13] There will be no order as to costs.

[14] Interim order, if any, stands vacated.

[15] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[16] Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities

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2024(2)GMAJ602

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A; F M A T No 1447 of 2008; 1539 of 2002 **dated 12/08/2024**

Jahanara Bibi

Versus

National Insurance Co Ltd

FATAL ACCIDENT CLAIM

Indian Penal Code, 1860 Sec. 304A, Sec. 279; Motor Vehicles Act, 1988 Sec. 166 - Fatal Accident Claim - Claim filed under Section 166 of the Motor Vehicles Act -, the deceased, a 14-year-old boy, was hit by a vehicle driven at high speed, resulting in his death - Claimants sought Rs. 5,00,000 as compensation - Opposite party (Insurance Company) denied negligence by the driver and blamed the victim - Tribunal dismissed the claim, holding that negligence by the driver was not proven - On appeal, court ruled that the driver was driving rashly and negligently, and the accident was caused due to the high speed of the vehicle - The court awarded Rs. 5,34,000 as just compensation, with 6% interest from the filing date - Tribunal's order was set aside. - Appeal Allowed

Law Point: In fatal accident claims under Section 166 of the Motor Vehicles Act, when negligence and rash driving are established, compensation must be calculated based on the notional income of the victim, applying the appropriate multiplier for age.

ભારતીય દંડ સંહિતા, 1860 કલમ 304A, કલમ 279 - મોટર વાહન અધિનિયમ, 1988 કલમ 166 - જીવલેણ અકસ્માતનો દાવો - મોટર વાહન અધિનિયમની કલમ 166 હેઠળ દાવો દાખલ કરવામાં આવેલ - અકસ્માતમાં મૃત્યુ પામનાર, 14 વર્ષનો છોકરો હતો જેને ખૂબ ઝડપથી વાહન ચલાવી ટક્કર મારેલ હતી - જે ટક્કરથી તે છોકરાનું મૃત્યુ થયેલ - દાવેદારોએ રૂ. 5,00,000/- ની વળતર તરીકેની માગણી કરેલ - સામા પક્ષે (વિમા કંપનીએ), ડ્રાઈવર દ્વારા બેદરકારી થયાનો ઈન્કાર કરેલ અને ભોગ બનેલને દોષિત ઠરાવેલ - ટ્રિબ્યુનલે ડ્રાઈવરની બેદરકારી સાબિત થયેલ ન હોવાનું ઠરાવીને દાવાને નામંજૂર કરેલ - અપીલ કરાતા અદાલતે એવો ચુકાદો આપ્યો કે જેમાં ડ્રાઈવરની બેદરકારી અને ગફલતભરી ડ્રાઈવીંગથી અકસ્માત સર્જાયો હતો - અદાલતે રૂ. 5,34,000/- માત્ર વળતર તરીકે, દાવો દાખલ કર્યાની તારીખથી 6% ના વ્યાજ સહિત

આપવાનો હુકમ કરેલ - ટ્રિબ્યુનલનાં હુકમને રદ્દ કરવામાં આવેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- મોટર વાહન અધિનિયમની કલમ 166 હેઠળનાં જીવલેણ અકસ્માતનાં દાવાઓમાં, જ્યારે બેદરકારી તથા ગફલતભરી રીતે ડ્રાઈવીંગ થયાનું સાબિત થતું હોય ત્યારે વળતરની ગણતરી ભોગ બનનારની કાલ્પનિક આવકના આધારે, તેની ઉંમરને યોગ્ય ગુણાંક લાગુ કરવો આવશ્યક હોય છે.

Acts Referred:
Indian Penal Code, 1860 Sec. 304A, Sec. 279
Motor Vehicles Act, 1988 Sec. 166

Counsel:
Krishanu Banik, Sucharita Paul

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The present appeal has been preferred by the Claimants against the Judgment and/or Order dated March 11, 2002 passed by Learned Judge, Motor Accident Claims Tribunal, 1st Additional Court, Burdwan, in M.A.C. Case No. 78 of 2001/350 of 2001 whereby the Learned Judge dismissed the application, **under Section 166 of the M.V. Act.**

[2] Facts:-

"It is case of the claimants that Sk. Shepon @ Jafar is the son of the claimants. On 4/8/2001 at about 12.30 hours when he was playing by the side of Suri Road near Pirtola of village Kayarapur, at that time vehicle No. BR.17G/1572 was proceeding with high speed from Guskara to Burdwan and the driver lost his control and dashed the deceased Jafar Ali @ Shepon and due to such accident he sustained grievous injuries on his person and died on the spot. The death was caused due to rash and negligent driving of the driver of the vehicle.

One Sk. Moharam lodged F.I.R at Guskara Beat House which was forwarded to Aushgram P.S., post-mortem was held.

The claimants have claimed Rs. 5,00,000/- only as compensation."

[3] Opposite Party/National Insurance Co. Ltd. contested the case by filing written statement denying all the material allegations made in the application. The specific case of the contesting O.P. is that there was no negligence on the part of the driver of the vehicle. The story of rash and negligent driving on the part of the driver of the offending vehicle is also a myth and the same has been alleged for the purpose of the

case. The manner of accident as alleged in the application is totally false. It was the victim who was responsible for the alleged accident and that too the reckless act of the victim was the sole cause of the alleged accident. The vehicle was being driven in a moderate speed observing the traffic rules. The alleged accident took place solely for the negligence and fault of the victim himself and there was no rash and negligence on the part of the driver of the vehicle in question. It is averred in the written statement that the victim had no occupation nor had did he have income of Rs. 2,500/- per month. The petitioners have made such false statement for getting higher compensation. The contesting O.P. prayed for dismissal of the claim application with cost to O.P.

[4] The Claimants have examined **two witnesses** and proved relevant documents, which were marked as **Exhibits**.

[5] Considering the materials on record, the tribunal held as follows:-

"M.A.C. Case No. 78 of 2001

M.A.C. Case No. 350 of 2001

Dated: March 11, 2002

On consideration of the evidence on record I hold that the claimants have failed to prove that the driver of the offending vehicle was driving the vehicle rashly and negligently and because of such reason only deceased Sk. Shepon @ Jafar met with an accident. The claimants have also failed to prove the age and income of the deceased. Therefore, the claimants are not entitled to have any relief u/s 166 of the M.V. Act. Claimants have failed to prove that the driver of the vehicle No. 17G/1572 was responsible for the alleged accident. Issue nos. 1, 2, 3 and 5 are decided accordingly.

Hence,

Ordered

that the M.V. Case under Section 166 of the M.V. Act be and the same is **dismissed.**

Sd/-
Judge,
M.A.C. Tribunals,
1St. Addl. Court, Burdwan."

[6] From the materials and evidence on record, it appears that:-

I. The tribunal held that:-

a) Though the eyewitness **(P.W.-2)** has clearly stated that the offending vehicle was proceeding with **High Speed**, it does not mean rash and negligent driving.

b) Aushgram P.S. Case under Section 279/304A of IPC was registered in this case.

Section 279 of IPC, lays down:-

"279. Rash driving or riding on a public way. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Ingredients of offence.- The essential ingredients of the offence under sec. 279 are as follows:

(1) The accused was driving a vehicle or riding;

(2) He was doing so on a public way;

(3) He was also doing so rashly or negligently;

(4) The act of driving or riding was to endanger human life or was likely to cause hurt or injury to any other person."

Section 304A of IPC, lays down:-

"304A. Causing death by negligence.-

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients.- To bring a cause of homicide under sec. 304A IPC, the following conditions must exist, namely,

(1) there must be death of the person in question;

(2) the accused must have caused such death; and

(3) that such act of the accused was rash or negligent and that it did not amount to culpable homicide - State of Punjab v Balwinder Singh (2012)2 SCC 182."

c) P.W. 2, an eyewitness has deposed as follows:-

"The offending vehicle was proceeding with a high speed and as a result of which the driver of the offending vehicle lost his control over the vehicle and the **vehicle was capsized in a ditch** and the deceased was standing by the side of the ditch."

d) **Rash driving** means, driving a vehicle without following the safety rules and violating driving rules. The careless behaviour of the drivers are often the cause of rash and negligent driving.

The meaning of the word 'Rash' is acting without due consideration. The meaning of the word 'negligent' is failure to use normal care.

e) The vehicle in this case is a lorry. A lorry driving at **High Speed** is clearly a case of acting without due consideration, thus **rash** and going at High Speed shows that the act was also clearly **negligent,** as the accident in this case occurred due to the failure on the part of the driver of the offending vehicle to use normal case, as he was driving at High Speed.

f) Thus the finding of the tribunal is wrong. It is clearly proved by the materials on record, that the vehicle was being driven at High Speed and the accident was caused due to such rash and negligent act of the driver of the offending vehicle.

II. The accident in this case took place on 04.08.2001. School certificate of the victim shows his date of birth as 03.07.1987. The victim was thus **aged 14 years** at the time of his death.

III. Learned counsel for the opposite party has submitted that the vehicle in this case was not involved in the accident as the seizure list is dated 08.08.2001 and the accident occurred on 04.08.2001.

IV. The following judgments have been relied upon by the Insurance Company:-

1) Minu B. Mehta and Anr. Vs. Balkrishna Ramchandra Nayan and Anr., 1977 2 SCC 441.

2) Oriental Insurance Co. Ltd Vs. Meena Variyal and Ors., 2007 5 SCC 428.

3)

Surender Kumar Arora and Anr. Vs. Manoj Bisla and Ors., 2012 4 SCC 552.

4) Reshma Kumari and Ors. Vs. Madan Mohan and Anr., 2013 9 SCC 65.

5) Lachoo Ram and Ors. Vs. Himachal Road Transport Corporation, 2014 13 SCC 254.

6) Nishan Singh and Ors. Vs. Oriental Insurance Company Limited, 2018 6 SCC 765.

In the present case, the **offending vehicle has been seized** being involved in the accident caused by rash and negligent driving.

The vehicle had valid licence and insurance.

V. The Claim of the victim being employed and earning Rs. 2500/- per month has been disbelieved by the tribunal and the claim has been dismissed.

As discussed earlier, the victim was **aged 14 years** at the time accident.

The Supreme Court in Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto & Ors.,Civil Appeal No. . of 2022 **(Arising Out of Special Leave Petition (Civil) No.5345 Of 2019), dated 13th October, 2022,** has held:-

"8. Reverting to computation of compensation in the facts of this case, a child died in a road accident at the age of 12 years while playing in front of his house. He was studying in 5th class in Nehru Academy, Giridh Road, Jamtala, Dumri, however it is required to be seen how the computation of compensation may be made. As per the ocular statement given by her mother, it is clear that the deceased child was a brilliant student of Class 5 and if he had not met with the accident, he would have definitely become an officer in future. In the said factual matrix, the compensation is required to be determined.

12. In view of the foregoing decisions, it is apparent that in the cases of child death, the notional income of Rs. 15,000/- as specified in the II nd Schedule of M.V. Act was introduced and the said notional income was treated as Rs. 30,000/- in the case of **Kishan Gopal** (Supra) and Rs. 25,000/- in **Krurvan Ansari** in age group of 10 and 7 years respectively.

13. Thus applying the ratio of the said judgments, looking to the age of the child in the present case i.e. 12 years, the principles laid down in the case of **Kishan Gopal (supra)** are aptly applicable to the facts of the present case. As per the ocular statement of the mother of the deceased, it is clear that deceased was a brilliant student and studying in a private school. **Therefore, accepting the notional earning Rs. 30,000/- including future prospect and applying the multiplier of 15 in view of the decision of this Court in Sarla Verma (supra), the loss of dependency comes to Rs. 4,50,000/- and if we add Rs. 50,000/- in conventional heads, then the total sum of compensation comes to Rs. 5,00,000/-. As per the judgment of MACT, lump sum compensation of Rs. 1,50,000/- has been awarded, while the High Court enhanced it to Rs. 2,00,000/- up to the value of the Claim Petition. In our view, the said amount of compensation is not just and reasonable looking to the computation made hereinabove. Hence, we determine the total compensation as Rs. 5,00,000/- and on reducing the amount as awarded by the High Court i.e. Rs. 2,00,000/-, the enhanced amount comes to Rs. 3,00,000/-.**

14. At this state, it is necessary to clarify that as per the decision of a Three-Judge Bench of this Court in **Nagappa Vs. Grudaya Singh and others**, 2003 2 SCC 274, it was observed that under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so

claimed. The Tribuna/Court ought to award "just" compensation which is reasonable in the facts relying upon the evidence produced on record. Therefore, less valuation, if any, made in the Claim Petition would not be impediment to award just compensation exceeding the claimed amount."

VI. Therefore the age of the victim being 14 years, notional earning of Rs 30,000/- yearly be accepted and multiplier of 15 be applied, (Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., 2009 6 SCC 121) and (Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto & Ors., (Supra) (Para 13)) with loss of dependency which comes to Rs. 4,50,000/- and adding Rs. 84,000/- under conventional heads i.e. General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of child and funeral expenses (General damages Loss of estate: Rs.15,000/- Loss of Child: Rs.40,000/- and Funeral expenses: Rs.15,000/- respectively) (National Insurance Company Ltd. Vs Pranay Sethi & Ors., 2017 16 SCC 680)). General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%). Relying upon Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto & Ors., (Supra) no deduction is made.

[7] Thus the '**Just Compensation**' in this case would be as follow:-

Annual Income	Rs. 30,000/-
Multiplier x 15 (30,000 x 15)	Rs. 4, 50,000/-
Add: General damages Loss of estate: Rs.15,000/- Loss of Child: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	Rs. 84,000/-
Total Compensation	**Rs. 5,34,000/-**

[8] Admittedly, the Appellants/Claimants have not received any compensation in the order passed by the learned Tribunal. Accordingly, the Claimants are now entitled to a total **amount of compensation of Rs. 5,34,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

[9] The Respondent No. 1/Insurance Company shall deposit the total amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall then release the amount in favour of the Claimants in equal proportion, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

[10] Order of tribunal in M.A.C. Case No. 78 of 2001/350 of 2001 dated March 11, 2002 passed by Learned Judge, Motor Accident Claims Tribunal, 1st Additional Court, Burdwan, whereby the Learned Judge dismissed the application under Section 166 M.V. Act., is thus set aside.

[11] Fma 1447 of 2008/FMAT 1539 of 2002 is allowed.

[12] No order as to costs.

[13] All connected applications, if any, stand disposed of.

[14] Interim order, if any, stands vacated.

[15] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[16] Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking

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2024(2)GMAJ609

MADHYA PRADESH HIGH COURT

[Before Duppala Venkata Ramana]

Miscellaneous Appeal No 1336 of 2017 **dated 09/08/2024**

Hemlata Johar

Versus

Salman Khan

FATAL MOTORCYCLE ACCIDENT

Indian Penal Code, 1860 Sec. 304A - Motor Vehicles Act, 1988 Sec. 173 - Fatal Motorcycle Accident - Appeal under Section 173 of the Motor Vehicles Act - Deceased was riding a motorcycle when a jeep driven by the respondent collided with him, leading to the deceased's death on the spot - Tribunal awarded Rs. 7,60,240 in compensation - Appellant sought an increase, arguing incorrect application of the multiplier and failure to award conventional heads of compensation - Court found the deceased was 26 years old and applied a multiplier of 17 instead of 11, in line with Sarla Verma guidelines - Court awarded Rs. 12,46,280, including filial consortium and revised funeral and estate expenses - Interest at 9% from the date of filing was granted. - Appeal Allowed

Law Point: In fatal accident claims, applying the correct multiplier and considering conventional heads of compensation like consortium and estate loss is necessary for just compensation.

ભારતીય દંડ સંહિતા, 1860 કલમ 304A - મોટર વાહન અધિનિયમ, 1988 કલમ 173 - મોટરસાઈકલનું જીવલેણ અકસ્માત - મોટર વાહન અધિનિયમની કલમ 173 હેઠળ અપીલ કરવામાં આવેલ - મરણ જનાર મોટર સાઈકલ ચલાવી રહ્યો હતો, ત્યારે પ્રતિવાદી દ્વારા ચલાવવામાં આવેલ જીપ તેના સાથે અથડાયેલ - જેને કારણે મૃતકનું બનાવવાળી જગ્યા પર જ મૃત્યુ નિપજેલ - ટ્રિબ્યુનલે વળતર પેટે રૂ. 7,60,240/- નો હુકમ કરેલ - અપીલકર્તાએ

અપીલમાં એવું જણાવેલ કે, ટ્રિબ્યુનલે કરેલ ગણતરી ખોટી કરેલી છે તથા પરંપરાગત રીતે અપાતા વળતરનાં શીર્ષક હેઠળ નિષ્ફળ ગયેલ છે તેવી દલીલ કરીને વળતરમાં વધારો કરવાની માંગણી કરેલ - જેમાં મલ્ટીપ્લાયર (ગુણાંક) તથા પરંપરાગત વળતરરરના હેડમાં વધારો કરવાની માગણી કરેલ - અદાલતને એવું જોવા મળેલ કે મૃતકની ઉંમર 26 ની હતી અને તેને 11 નાં ગુણાંક ને બદલે 17 નો ગુણાંક લાગુ કરવાની માગણી કરેલ જે સરલા વર્માની ગાઈડલાઈન મુજબનો હતો - અદાલતે રૂ. 12,46,280/- કરી ફાઈલાઈલ કોન્સોર્ટીયમમાં સુધારો કર્યો હતો, તેમાં મૃતકની અંતિમ ક્રિયાના ખર્ચનો ઉમેરો કરવામાં આવેલ તથા 9% વ્યાજ દાવો દાખલ કર્યાની તારીખથી મંજૂર કરેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- જીવલેણ અકસ્માતનાં દાવાઓમાં સાચો ગુણાંક લાગુ કરવો અને વળતરનાં કન્વેન્શલ હેડને ધ્યાનમાં લેવું જોઈએ. અને કન્સોર્ટિયમ તથા મિલકતનું નુકસાન ગણવું જરૂરી હોવું જોઈએ.

Acts Referred:
Indian Penal Code, 1860 Sec. 304A
Motor Vehicles Act, 1988 Sec. 173

Counsel:
Shraddha Dixit, Mayank Upadhyay

JUDGEMENT

Duppala Venkata Ramana, J.- [1] In the instant appeal is preferred by the appellants/petitioners (herein referred to as the petitioners) under Section 173 of the Motor Vehicles Act (for the "Act") against the award dated 01/03/2017 passed by 14th Motor Accident Claims Tribunal, Indore in Claim Case No.1700649/2015 with a prayer to enhance the awarded amount of compensation.

[2] For the sake of convenience, the parties are referred to as they are arrayed before the Tribunal.

[3] Heard Ms. Shraddha Dixit, learned counsel for the appellants/claimants and Shri Mayank Upadhayay, learned counsel for the 2nd respondent/New India Insurance Company Limited. Notice of 1st respondent served no one entered appearance.

[4] The accident is not in dispute. The Mahindra Max Vehicle (Jeep) bearing No.M.P.-05-DA-0324 (hereinafter referred to as "the offending vehicle") being insured with the 2nd respondent and there being no breach of policy conditions, is a finding in Para No.5 (Column No.6) in the Table of the Award, which had attained finality. The 2nd respondent/New India Insurance Company Limited has not challenged its liability.

The appellants having not satisfied with the quantum of compensation granted by the Tribunal, filed the present appeal.

[5] Briefly stated the facts giving rise to the present appeal are that on 24/12/2013 deceased (Harsh) who is son of the appellants No.1 and 2 and brother of 3rd appellant was going from Ratlam to Nagda on his motor cycle. On the way, when he reached Khachrod Road By-pass Junction, the non-applicant No.1 (1st respondent) driving the Mahindra Max Vehicle (Jeep) bearing No.M.P.-05-DA-0324 in a rash and negligent manner and hit the motor cycle from behind, due to which the rider of the motor cycle (deceased) fell down and sustained serious head injuries and died on the spot, later the matter was reported to the police by Lakhan Singh Panwar against the driver of the offending vehicle (non-applicant No.1). Based on the report lodged by the Lakhan Singh Panwar, a case in crime No.513/2013, Nagda - Police Station was registered for the offence under Section 304-A IPC and FIR was issued and after investigation of the case, charge-sheet was submitted against the non-applicant No.1 to the Court.

[6] At the time of accident, the deceased was aged about 26 years, as per the certificate issued by Board of Secondary Education, Madhya Pradesh, Bhopal and he was hale and healthy and used to work in Forest Department as Untrained Forest Servant drawing salary of Rs.11,140/- per month, as per the payment slip of September, 2013 signed by Assistant Conservator of Forest, Ratlam, marked and exhibit as P/37. He was unmarried and contributing his entire income to the parents of the deceased and filed an application claiming compensation of Rs.50,00,000/- with interest before the Tribunal on the account of death of the deceased (Harsh Kumar Johar) in the alleged road accident.

[7] 1St respondent/non-applicant filed the written statement denied the averments mentioned in the claim application and further he stated that the vehicle Mahindra Max (Jeep) bearing No.M.P.05-DA-0324 was insured by non-applicant No.2 from 08/11/2013 to 07/11/2014, therefore, the claim against the non-applicant No.1 are liable to be dismissed.

[8] Non-Applicant No.2 filed written statement and denied allegations made in the claim application and further averred that the alleged accident happened due to the negligence of the deceased, while driving the vehicle. Further averred that the accident happened due to the rash and negligent driving of the vehicle by the driver (Non-applicant No.1) of the Jeep bearing No.M.P.09/CH/0324 and the said vehicle not insured with the Insurance Company/Non-applicant No.2 on the date of accident, therefore, the non-applicant No.2 is not responsible for payment of compensation. Further averred that no information about the accident has been given to the Insurance Company either by the non-applicant No.1 or by owner of the vehicle. At the time of alleged accident the driver of the Jeep in question did not have license to drive the vehicle and the said license was not valid. Further averred that owner of the Jeep in question did not have permit and fitness certificate of the vehicle, therefore, the claim

application filed by the applicants is liable to be dismissed and the non-applicant No.2 is not responsible for the compensation.

[9] In view of the pleadings of the parties, the Tribunal framed the following issues:

	Considerable Questions
1.	Did the applicant number-01 cause an accident on 24/12/2013 at 10:45 AM, at Khachrod Road, by-ass Tiraha, Police Station-Nagda, District-Ujjain by driving his own vehicle Mahindra Max No.M.P.-05/DA/0324 rashly and negligently and by hitting a motor-cycle ?
2.	Did Harsh Johar die as a result of the injuries sustained in the said accident ?
3.	Are the owner of the vehicle, motor-cycle, driver and the Insurance Company necessary parties in the case ?
4.	Whether the said accident occurred due to the contributory negligence of the rider of the accident vehicle motor-cycle ?
5.	Did applicant No.1 have a valid driving license ?
6.	Was the vehicle being driven by respondent No.01 in violation of the provisions of the insurance policy and Motor Vehicles Act ?
7.	Whether the applicants and non-applicants should be entitled to recover an amount of Rs.50 lakhs as compensation for the loss caused to Harsh Johar due to his death as a result of injuries sustained in the accident ?
8.	Aid and expenditure ?

[10] In order to establish their claim, at the time in enquiry PW/1 and PW/2 were examined and Ex.P-1 to P-23 were got marked on behalf of the claimants/petitioners and no oral evidence was adduced on behalf of the respondents/non-applicants and no documents were marked on their behalf.

[11] The Tribunal, after analyzing the entire evidence on record, passed an award for a sum of Rs.7,60,240/- as compensation. The breakup details of the compensation awarded by the Tribunal, are tabulated hereunder:-

S. No.	**Head of Compensation**	**Amount of compensation awarded in**
1	Loss of Dependency	Rs.7,35,240/-
2	Funeral expenses	Rs.25,000/-
Total		**Rs.7,60,240/-**

[12] Aggrieved and dissatisfied by the said Award, the petitioners being the appellants, filed the present appeal.

[13] Learned counsel for the appellants would submit that the learned Tribunal has applied multiplier '11' which should have been '17' as per the judgment of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**, 2009 6 SCC 121 . He would further submit that the learned Tribunal has not awarded the compensation under various conventional heads by following the Hon'ble Apex Court's judgments **National Insurance Company Limited vs.Pranay Sethi Case.**, 2017 16 SCC 680 Further, he would submit that by the date of the accident deceased was aged about 26 years and working as Untrained Forest Servant, the pay slip for the month of September, 2013 three months prior to the accident, drawn salary of Rs.11,140/- per month, the relevant pay slip signed by Assistant Conservator of Forest, Ratlam under Ex.P-7, he being a public servant and he will not issue any false pay slip and the salary amount credited in the account of deceased bearing No.33136954073, he would further submit that the award passed by learned Tribunal is inadequate in nature and therefore, the same may be modified by suitably enhancing the compensation. Further, he would submit that the Tribunal has committed an error while passing the award and needs interference of this Court and prayed to enhance the compensation by modifying the award passed by the Tribunal.

[14] Learned counsel for the 2th respondent/New India Insurance Company Limited would submit that the Tribunal has assessed the income of the deceased and awarded compensation, the award passed by Tribunal in accordance with Apex Court Judgment and there was no infirmity in the award passed by the learned Tribunal. Further he would submit that there was a contributory negligence on the part of the deceased to cause the accident, however, the learned Tribunal has not given any finding with regard to contributory negligence and awarded compensation. Further submits that the learned Tribunal has not committed any illegality or irregularity and needs no interference and the appeal is liable to be dismissed.

[15] Now the points that arise for consideration in this appeal are:-

1. Whether the compensation awarded by the Tribunal is not in accordance with the principles of law and requires enhancement ?

2. Whether the compensation awarded by the Tribunal is just and reasonable or needs interference of this Court ?

POINT Nos. 1 & 2:

[16] A perusal of the impugned award would show that the Tribunal has framed the Issue No.1 as to whether the applicant No.1 caused the accident on 24/12/2013 by driving his own vehicle Mahindra Max (Jeep) No.M.P.05-DA-0324 at high speed and negligent manner and hit the motor cycle to which Tribunal after considering the evidence of P.W.1 and P.W.2 coupled with the documentary evidence, has categorically observed at Para No.18 of the Award that the driver of the non-applicant No.1 drove the offending vehicle Mahindra Max at high speed and accident was

caused by hitting the motor-cycle and deceased died on the spot, therefore, this Court is of the view that there is no reason to interfere with the finding of the learned Tribunal that the alleged accident occurred due to rash and negligent driving of non-applicant No.1 of the offending vehicle, due to which the deceased caused severe injuries and died at the spot.

[17] In the present case, it is an undisputed fact that the accident had taken place on 24/12/2013 when the deceased was the rider of the motor cycle and offending vehicle bearing No.M.P.05-DA-0324 came behind hit the motor cycle and deceased sustained severe injuries and died on the spot. The claimants / parents and the brother of the deceased are claiming compensation on the ground that deceased working as Untrained Forest Servant and drawn Rs.11,140/- per month by the date of death and he was unmarried and the learned Tribunal assessed his monthly income Rs.11,140/- as per the pay-slip (Ex.P-37) issued by Assistant Conservator of Forest, Ratlam.

[18] To grant compensation under various heads, now it is necessary to refer to the decision in Sarla Verma's case (supra), wherein, at Para-18, it was held as follows:-

> "18. Basically only three facts need to be established by the claimants for assessing compensation in the case of death: (a) age of the deceased; (b) income of the deceased; and the (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay."

[19] A perusal of Date of Birth certificate issued by Board of Secondary Education, Madhya Pradesh, Bhopal that the deceased (Harsh) Date of Birth shown 22/07/1987, therefore, the age of the deceased at the time of accident is 25 to 26 years and he was unmarried. Based on the said document, this Court has taken the age of the deceased as 26 years since the deceased was Forest Servant by the date of accident and between the age group of 25 to 26, the Tribunal committed error in applying the multiplier of '11' instead of '17' contrary to the guild-lines laid down in Sarla Verma's (Supra) wherein, the loss of dependency was thus, re-assessed at para 42 of the judgment, which reads as under:-

> "42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is **M-17 for 26 to 30 years,** M-16 for 31 to 35 years, M-

15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

[20] In the instant case, evidently, the deceased was survived by parents and brother, who are the appellants/claimants and unmarried by the date of his death. Therefore, the number of his dependents family members is 'three'. According to Sarla Verma's case (supra), 50% of the income of the deceased should be deducted towards his personal and living expenses. On this aspect, the observation of the Hon'ble Apex Court in Sarla Verma's case (supra), at paras-30, 31 and 32, is as under:-

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and onefifth (1/5th) where the number of dependant family members exceed six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third".

[21] In the instant case, the deceased was unmarried by the date of the accident and petitioners/claimants are the parents and brother of the deceased. As per the decision in Sarla Verma (supra), 50% of the income of the deceased has to be deducted towards his personal and living expenses. On an overall view of the principles laid down in the above judgments, this Court is of the considered opinion that if the monthly income of the deceased is taken as Rs. 11,140/- as per the salary certificate issued by Assistant Conservator of the Forest, Ratlam in Ex.-P-27 the annual income would be worked out Rs.1,33,680/- (Rs.11,140/- 12 = Rs.1,33,680/-) 50% of the said amount would be arrived at Rs.66,840/- (Rs.1,33,680 50% = Rs.66,840/-). After deducting the same towards his personal and living expenses, the annual income of the deceased would be arrived at Rs.66,840/- (Rs.1,33,680/- (-) Rs.66,840/- = Rs.66,840/-).

[22] As the deceased was found to be '25 - 26' years old at the time of the accident, the appropriate multiplier applicable would be '17' instead of '11' in view of the principles laid down in Sarla Verma's case (supra). Having applied the said principles and the multiplier, the loss of dependency would be worked out to Rs.11,36,280/- (Rs.66,840/- 17 = Rs.11,36,280/-). This Court finds that the Tribunal has committed an error while awarding compensation under loss of dependency. A reading of the Tribunal award, makes it clear that the approach of the learned Tribunal does not accord at all with current judicial opinion. Therefore, the claimants are entitled to a sum of Rs.11,36,280/- under the head 'Loss of Dependency', which would be substantive.

[23] In the instant case, the claimants are entitled to the compensation under conventional heads viz., loss of estate, loss of consortium and funeral expenses, in view of the principles laid down in National Insurance Company v. Pranay Sethi . (supra)

Funeral Expenses:

[24] Under this conventional head the Tribunal awarded a sum of Rs.25,000/-. The same is reduced from Rs25,000/- to Rs.15,000/- (as per the decision of the Constitution Bench in Pranay Sethi's case).

Loss of Estate:

[25] Under this conventional head, the learned Tribunal has not awarded any amount. The Claimants are entitled to be awarded a sum of Rs.15,000/-, as per the decision of the Constitution Bench in Pranay Sethi's case.

Loss of Consortium:

[26] The mother and father of the deceased (appellants/claimants No.1 and 2) are entitled to be award towards loss of consortium under the head 'filial consortium' as held by the Hon'ble Apex Court in **Magma General Insurance Company Ltd. v. Nanu Ram @ Chuhru Ram**, 2018 18 SCC 130 @ Rs.40,000/- each, as held in the

matter of Pranay Sethi (supra). Consequently, in addition, the appellants/claimants No.1 and 2 are entitled to the above amount towards 'filial consortium'.

[27] In Sarla Verma's case (supra) the Hon'ble Apex Court, while elaborating the concept of 'just compensation' observed as under:

> "Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."

[28] On an overall re-appreciation of the pleadings, material on record and the law laid down by the Hon'ble Supreme Court in the afore-cited decisions, I am of the definite opinion that the claimants are entitled to enhancement of compensation as modified and recalculated above and given in the table below for easy reference.

S. No	**Head of Compensation**	**Amount awarded by the Tribunal**	**Enhanced Amount**
1.	Loss of Dependency	7,35,240/-	Rs.11,36,280/- (Rs.11,140/- x 12 =Rs.1,33,680/- - 50% =Rs.66,840 x 17 =11,36,280/-)
2.	Loss of Estate	--------	15,000/-
3	Funeral Expenses	25,000/-	15,000/- (Reduced)
4	Loss of Consortium Rs. 40,000 each to Claimants 1 and 2 (mother and father of the deceased)	--------	80,000/-
	Total	**7,60,240/-**	**12,46,280/-**

[29] In the case of Kavita Balothiya & Ors. v. Santosh Kumar & anr,2024 0 Supreme(SC) 630 Supreme Today Supreme Court recently held in para 5 as follows:- Our view, is fortified by the decision of this Court in the Case of Ramla and Others V s. National Insurance Company Limited and Others, 2019 2 SCC 192 wherein, it is held in para 5 as under:

> "5. Though the claimants had claimed a total compensation of Rs.25,00,000/- in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award "just

> compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced amount. The Courts are duty-bound to award just compensation. (See the Judgments of this Court in (a) **Nagappa v. Gurudayal Singh**, 2003 2 SCC 274 , (b) Magma General Insurance Co. Ltd. v. Nanu Ram, (c) **Ibrahim v. Raju**, 2011 10 SCC 634."

[30] As per the above decisions of the Hon'ble Supreme Court of India in the case of Nagappa (Supra), under the provisions of the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only upto the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Therefore, the claimants are entitled to get more compensation than claimed, but the Tribunal did not pass such award. There is no embargo to award compensation more than that claimed by the claimant. Rather, it is obligatory for the Tribunal and Court to award "just compensation", even if it is in the excess of the amount claimed. The Tribunals are expected to make an award by determining the amount of compensation which should appear to be just and proper. In the present case, the compensation as awarded by the Claims Tribunal against the background of the facts and circumstances of the case, is not just and reasonable and the claimants are entitled to more compensation than the amount awarded, though they might not have claimed the same at the time of filing of the claim petition.

[31] Therefore, in view of the foregoing discussion and following the principles laid down by the Hon'ble Apex Court in the Judgments supra, this Court is of the opinion that the award passed by the Tribunal warrants interference and thereby, enhanced the compensation from Rs.7,60,240/- to Rs.12,46,280/-.

[32] Resultantly, the appeal is **allowed** with costs and the compensation amount is enhanced from Rs.7,60,240/- to Rs.12,46,280/- along with interest @ 9% per annum from the date of filing of the claim petition till the date of payment, against the Non-applicant No.2/New India Insurance Company Limited/Insurer.

[33] Non-Applicant No.2/New India Insurance Company Limited/Insurer is directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.

[34] The appellants/claimants are directed to pay the requisite Court-fee in respect of the enhanced compensation amount awarded over and above the compensation claimed (As per the judgment of Hon'ble Apex Court in Ramla v. National Insurance Company Limited) (Supra).

[35] On such deposit, the claimants/appellants are permitted to withdraw the amount with accrued interest and costs as apportioned by the Tribunal, by filing proper application before the Tribunal.

[36] The impugned award of the learned Tribunal stands modified to the aforesaid extent and the terms and directions as above.

[37] The record be sent back to the Tribunal within three weeks from this day.

[38] As a sequel, interlocutory applications pending for consideration, if any, shall stand closed

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2024(2)GMAJ619

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A No 2207 of 2016 **dated 08/08/2024**

Reshmi Devi @ Reshama Devi

Versus

Commissioner of Police, Lal Bazar Street, Kolkata

COMPENSATION CLAIM

Motor Vehicles Act, 1988 Sec. 163A - Compensation Claim - Claimants, legal heirs of the deceased, sought compensation under Section 163A of the Motor Vehicles Act due to the death of the victim in a motor vehicle accident caused by reckless driving of a police vehicle - Victim, a cobbler, was hit while working near the Kolkata Police Training school - Opposite party denied allegations, questioning maintainability and jurisdiction, and claimed the victim was at fault - Tribunal found that the accident involved the offending vehicle and took a notional income of Rs. 15,000/- due to lack of income proof - Tribunal ruled in favor of the claimants, holding that the victim's death was due to the accident and the vehicle involved lacked insurance - Award of Rs. 5,00,000/- compensation with interest at 6% was made, and respondents were directed to deposit the balance amount. - Petition Allowed

Law Point: Under Section 163A of the Motor Vehicles Act, compensation can be claimed for accidents causing death or permanent disability, without proving negligence on the part of the vehicle's owner or driver.

મોટર વાહન અધિનિયમ, 1988 કલમ 163A - વળતર મેળવવા માટેનો દાવો - દાવો કરનારાઓ, મૃતકના કાનૂની વારસદારોએ મોટર વાહન અધિનિયમની કલમ 163A હેઠળ પોલીસ વાહનનાં અવિચારી ડ્રાઈવીંગને કારણે થયેલ મોટર વાહન અકસ્માતમાં ભોગ

બનનારનાં મૃત્યુ માટે વળતરની માગણી કરેલ - ભોગ બનનાર એક મોચી હતો - કોલકાતા પોલીસ ટ્રેનીંગ સ્કૂલની પાસે તે કામ કરતો હતો ત્યારે તેને ઠોકર મારવામાં આવી હતી - સામાવાળા પક્ષકારે તેના આરોપોને નકારી કાઢેલ - તથા દાવાને જાળવી રાખવા સામે તથા દાવાના અધિકારક્ષેત્ર સામે પણ પ્રશ્ન કરેલ અને એવો દાવો કરેલ કે ભોગ બનનારની ભૂલ હતી - ટ્રિબ્યુનલને જાણવા મળ્યું કે, અકસ્માતમાં વાંધાવાળો વાહન સામેલ હતો - અને આવકના પુરાવાના અભાવે રૂ. 15,000/- ની કાલ્પનિક આવક નક્કી કરવામાં આવેલ - ટ્રિબ્યુનલે દાવેદારોની તરફેણમાં ચુકાદો આપેલ, જેમાં એવું માનવામાં આવેલ કે, ભોગ બનનારનું મૃત્યુ અકસ્માતને કારણે જ થયેલ તથા તેમાં સંડોવાયેલ વાહનનો વિમો પણ ઉતરાવેલ ન હતો - રૂ. 5,00,000/- નાં વળતરનો 6% વ્યાજ સાથેનો હુકમ કરેલ, અને સામાવાળાઓને બાકીની રકમ જમા કરાવવાનો નિર્દેશ આપવામાં આવેલ - અરજી મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- મોટર વાહન અધિનિયમની કલમ 163A હેઠળ, વાહનનાં માલિક અથવા ડ્રાઈવરની બેદરકારી સાબિત કર્યા વગર, તેમાં થયેલ મૃત્યુ અથવા કાયમી અપંગતા માટેનાં કારણ સબબ અકસ્માતો માટે વળતરનો દાવો કરી શકાય છે.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 163A

Counsel:
Ashque Mondal, Wasim Ahmed, Md Mashud

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The present appeal has been preferred by the Appellants/Claimants against the Award passed on March 15, 2013 by Ld. Addl. District Judge, 3rd Court at Alipore, being M.A.C. Tribunal in M.A.C.C. No. 80 of 2012, **under Section 163A M.V. Act.**

[2] Facts:-

"Claimants/Petitioners are the legal heirs and dependent of victim deceased Brahmdev Das who used to work as a cobbler and used to earn Rs. 3,300/- P.M. As per case of the petitioners, on 14.02.2012 at about 12-35 hrs., the victim Brahmdev Das was mending shoes as cobbler by sitting at the western side end of Kolkata Police Training school Parade Ground and at the relevant point of time, the driver of the vehicle of the Kolkata Police lines bearing

registration No. W.B. 04B 8465 was driving the said police vehicle at a high speed and reckless manner and suddenly it took a turn towards the western side and knocked down the victim causing serious injuries. The victim was taken to S.S.K.M. Hospital where he expired soon after his admission. It is alleged that the sole cause of the said motor vehicle accident was the reckless driving of the police vehicle by its driver. It is alleged that as a result of the unfortunate death of victim, the petitioners have not only been suffering from financial loss but also seriously affected by mental pain and agony and they will have to suffer the same throughout their life. For all these reasons the petitioner/claimant side has prayed before this court for awarding compensation of Rs. 4,00,000/- (Rupees four lakh) with other benefit and interest."

[3] The O.P. contested this claim case by filing written statement, where they have denied all the material allegations which have been depicted in the claim petition. The specific case of the O.P. which emerged from the written statement in a nutshell is that this claim case is not maintainable in its present form and in the eye of the law and it has been filed by the petitioners by suppressing material facts in order to achieve wrongful gain. It is also pointed out by the O.P. that the tribunal did not have the jurisdiction to try this case and the petitioners are not the actual claimants. It was further stated that the victim was solely responsible for the accident and for that reason the opposite party is not responsible to pay any compensation.

[4] The Claimants examined **two witnesses** and proved relevant documents which were marked as exhibits.

[5] The opposite party did not examine any witness.

[6] The tribunal finally held as follows:-

[7] From the materials on record it is evident that:-

i) The present claim is under **Section 163A** of the Motor Vehicles Act and it has been proved that the victim died in an accident involving the offending vehicle.

ii) The income of the victim was claimed to be Rs. 3,300/- but without documents the Notional income of Rs. 15,000/- was considered.

iii) He has aged about **44 years.**

iv) Exhibit 8 shows that the offending vehicle did not have any insurance.

[8] (A) In Urmila Halder Vs. New India Assurance Co. Ltd. & Ors., in F.M.A. 446 of 2010, decided on 9th August,2018, the Calcutta High Court held:-

"9. Sub-section (1) of Section 163-A of the 1988 Act ordains that notwithstanding anything contained therein or in any other law for the time being in force, upon proof of death in an accident involving the use of a

motor vehicle, compensation is payable either by the owner of such vehicle or the authorized insurer thereof as indicated in the Second Schedule to the legal heirs of the victim. The Second Schedule appended to the 1988 Act, referring to Section 163-A thereof, provides the structured formula for determining compensation.

11. As it stands now, the Second Schedule after its amendment by the said notification prescribes lumpsum compensation in the following manner:

1. Fatal accidents - Rs. 5,00,000.00 is payable as compensation in case of death;

2. Accidents resulting in permanent disability - Rs. 5,00,000.00 x percentage of disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923), provided that the minimum compensation in case of permanent disability of any kind shall not be less than Rs. 50,000.00;

3. Accidents resulting in minor injury - A fixed compensation of Rs. 25,000.00.

14. With that in view, we invited such learned advocates to address us on the following issue: Whether, after the amendment brought about by the said notification, the new schedule would be applicable to pending claim applications under Section 163-A before the motor accident claim tribunals as well as the appeals arising out of awards delivered there under prior to May 22, 2018?

118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.

126. Turning to the facts in the appeal, we find that had this appeal been decided prior to May 22, 2018, the appellant would have been entitled to whatever sum were determined as payable in terms of the old schedule. Admittedly, Rs.5,00,000.00 was not payable to the appellant by the respondent no.1 any time prior to May 22, 2018 and, therefore, she was not entitled to such sum as on date she exercised her "right of action". Therefore, in each case where the claim is pending before the tribunal or if this Court has been approached in appeal as on May 22, 2018, we feel it to be the duty of the tribunal/Court to determine the amount of compensation payable to the claimant in terms of the structured formula and award interest at such rate it considers proper thereon from the date of filing of the claim application till May 21, 2018. To avoid any charge of arbitrariness, it would be safe to award

interest at the prevailing bank rate of interest on term deposits on the date the award is made. Thereafter, that is from May 22, 2018, interest on Rs.5,00,000.00 may be directed to be paid till realization as per the prevailing bank rate of interest on term deposits.

127. To determine what the appellant could have lawfully claimed as compensation based on the old schedule, we need to look into the evidence. The version of the appellant that the victim was earning Rs.2,000.00 per month could not be dislodged by the respondent no. 1 in cross-examination. The victim being self-employed in the unorganized sector, the tribunal put an onerous burden on the appellant to produce documentary evidence to prove her monthly income. Having regard to the decision in **Syed Sadiq v. United India Insurance Co. Ltd.**, 2014 2 SCC 735, we hold that it was not necessary for the appellant to prove the income of the victim by producing documentary evidence. The loss of dependency, thus, has to be worked out reckoning Rs.24,000.00 as the notional yearly income of the victim. Capitalizing it on a multiplier of 17, the resultant amount would be Rs.4,08,000.00. Deducting 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining herself had she been alive, and adding Rs.4.500.00 on account of loss of estate and funeral expenses, we arrive at the sum of Rs.2,76,500.00.

128. In the final analysis, we hold that the appellant shall be entitled to Rs.5,00,000.00 on account of compensation under Section 163-A of the 1988 Act read with the new schedule. However, since she has received Rs. 1,14,500.00 that was awarded by the tribunal, the respondent no.1 shall pay Rs.3,85,500.00 more to the appellant within 2 (two) months from date of service of a copy of this judgment and order on it. The appellant is further held entitled to interest as follows:

(i) @ 9% per annum on Rs.2,76,500.00 from the date of filing of the claim application, i.e., February 8, 2005 till May 21, 2018; and

(ii) @ 6% per annum on Rs. 5,00,000.00 from May 22, 2018 till such time payments of Rs. 3,85,500.00 and interest as in (i) above are effected in favour of the appellant."

(b) In appeal, the Supreme Court in The New India Assurance Co. Ltd. Vs. Urmila Halder, Civil Appeal No. ____ of 2024 (@ Special Leave Petition (Civil) No. 6260 of 2019), decided on 8th February, 2024, upheld the above judgment and held:-

"4. The short point for consideration before this Court is whether the amendment in Section 163-A of the Motor Vehicles Act, 1988, which came

into effect by a Gazette Notification on 22nd May, 2018, would relate to an accident which had occurred prior to the said date.

10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-Insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs 5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks."

[9] In the present appeal, the claim was decided by the tribunal on 15th March, 2013, thus prior to 22nd May, 2018 and compensation of a sum of Rs. 1,59,500/- was granted in terms of the old schedule.

[10] Now, in terms of the guidelines of the Courts, in the judgments, Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra) and The New India Assurance Co. Ltd. Vs. Urmila Halder (Supra), the Appellants/Claimants are entitled to compensation of a total sum of Rs. 5,00,000/- under section 163A of the 1988 M.V. Act read with the new schedule.

[11] Admittedly, the **Appellants/Claimants** have already received the amount of compensation of **Rs. 1,59,500/-** in terms of order of the Learned Tribunal. Accordingly, the **Appellants/Claimants** are now entitled to the balance amount of compensation of **Rs. 3,40,500/-** together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

[12] Respondent/ The Commissioner of Police, Lal Bazar Street, Kolkata, is directed to deposit the balance amount along with the interest as indicated above, by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date. The **Respondent/ The Commissioner of Police, Lal Bazar Street, Kolkata,** shall also pay the interest upon the sum of Rs. 3,40,500/- at the rate of 6% till deposit if not already paid, within the period as specified above.

[13] Upon deposit of the aforesaid amount and the interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of the **Appellants/Claimants** (Wife and Children of the deceased) **in equal proportions,** upon satisfaction of their identity and payment of advalorem Court fees, if not already paid.

[14] The appeal being FMA 2207 of 2016 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

[15] All connected applications, if any, stand disposed of.

[16] There will be no order as to costs.

[17] Interim order, if any, stands vacated.

[18] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[19] Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities

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2024(2)GMAJ625

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A; F M A T No. 823 of 2023; 412 of 2016 **dated 07/08/2024**

Ruma Biswas

Versus

Oriental Insurance Company Ltd

FATAL MOTOR ACCIDENT

Motor Vehicles Act, 1988 Sec. 166 - Fatal Motor Accident - Claim filed under Section 166 of the Motor Vehicles Act - Deceased, aged 48, died in a motor accident while riding his motorcycle - Truck hit the deceased, resulting in death - Oriental Insurance contested the claim, arguing that the truck driver had no valid driving license - Tribunal found that the driver had a valid license - Tribunal awarded Rs. 7,81,414 as compensation after considering the deceased's annual income and applying a multiplier of 13 - Compensation was reduced by one-third for personal expenses - Claimants entitled to funeral expenses and loss of estate - Tribunal's decision challenged for not awarding sufficient compensation - Appeal found that the age of the deceased was 34 years, requiring a multiplier of 16 - Future prospects added at 40% of the income - Appeal disposed of, modifying the Tribunal's award to Rs. 18,09,088. - Appeal Allowed

Law Point: In calculating compensation under Section 166 of the Motor Vehicles Act, future prospects of self-employed individuals should be added to the annual income. Age and correct multiplier should be applied while deducting personal expenses appropriately.

મોટર વાહન અધિનિયમ, 1988 કલમ 166 - જીવલેણ મોટર અકસ્માત - મોટર વાહન અધિનિયમની કલમ 166 હેઠળ દાવો દાખલ કરવામાં આવેલ - મૃતકની વય 48 વર્ષની હતી, મોટર સાઈકલ ચલાવતી વખતે થયેલ અકસ્માતમાં તેનું મૃત્યુ થયેલ -

અકસ્માતમાં ટ્રકવાળાએ તેને ઠોકર મારેલ હતી, જેને પરિણામે મૃત્યુ નિપજેલ - ઓરિએન્ટલ ઈન્સ્યુરન્સ કંપની લિમી. ના એ દાવાનો વિરોધ કરેલ, જેમાં એવી દલીલ કરવામાં આવી કે, ટ્રક ટ્રાઈવર પાસે કોઈ માન્ય ડ્રાઈવીંગ લાયસન્સ ન હતું - ટ્રિબ્યુનલને એવું જાણવા મળેલ કે, ડ્રાઈવર પાસે માન્ય લાયસન્સ હતું - ટ્રિબ્યુનલે મૃતકની વાર્ષિક આવકને ધ્યાને લઈને 13 નો ગુણાંક લાગુ કરેલ અને રૂ. 7,81,414/- નો વળતર આપેલ - વ્યક્તિગત ખર્ચ માટે વળતરમાં એક તૃતીયાંશ (1/3) નો ઘટાડો કરવામાં આવેલ - દાવેદારો અંતિમ સંસ્કારનાં ખર્ચ તથા મિલકતની ખોટ માટે હકદાર હતાં, પરંતુ ટ્રિબ્યુનલે તેને પૂરતું વળતર ન આપતાં ચુકાદાને પડકારવામાં આવેલ - અપીલ થતાં જાણવા મળેલ કે, મૃતકની ઉંમર 34 વર્ષની હતી, જેમાં 16 ના ગુણાંક પરની ભાવિ સંભાવનાઓને ઉમેરવામાં આવતી હોય છે - આવકના 40% પર ભાવિ સંભાવનાઓનો ઉમેરો કરેલ - ટ્રિબ્યુનલનાં ચુકાદામાં ફેરફાર કરીને રૂ. 18,09,088/- નો વળતર આપી અપીલનો નિકાલ કરવામાં આવેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- મોટર વાહન અધિનિયમની કલમ **166** હેઠળ, વળતરની ગણતરી કરવામાં સ્વ-રોજગારવાળા વ્યક્તિઓની ભાવિ સંભાવનાઓમાં વાર્ષિક આવકને ઉમેરવી જોઈએ. વ્યક્તિગત ખર્ચને યોગ્ય રીતે બાદ કરતી વખતે વય અને સાચા ગુણાંકને લાગુ કરવો જોઈએ.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 166

Counsel:
Amit Ranjan Roy, Sucharita Paul

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The present claim appeal has been preferred by claimants/appellants against the Judgment and Award passed on 8th October, 2015 by the Member, Motor Accident Claims Tribunal, 1st Court, Hooghly, in M.A.C. Case No. 34 of 2010/408 of 2014, **under Section 166 of the Motor Vehicles Act, 1988.**

[2] Facts:-

"The death of Samir Biswas aged about 48 years in a motor vehicle accident took place on 12.01.2009 at about 9.45 a.m. On the relevant date at the material point of time Samir Biswas was proceeding in his motorcycle being

No. WB-16A/4921 along the G.T. Road towards Mogra and when he reached near Natunpole, G.T. Road near Adisaptagram, the driver of the truck being No. WB-41C/9328 dashed against him and at that time the driver was driving the truck in a very rash and negligent manner. By the impact of that accident, Samir Biswas fell down from the motorcycle and he sustained serious injuries and died on the spot. After the accident a criminal case was started against the accused driver and the case ended in a chargesheet being No. 13/09 dated 28.02.2009."

[3] Oriental Insurance Company Ltd. contested the case, wherein all the material allegations with regard to the age and income of the deceased, the mode and manner of accident and also the insurance coverage of the vehicle were denied. It was contended that the claim of the petitioners was excessive, abnormal and without any legal and equitable basis and as such the claim application was liable to be dismissed with cost. The specific case of the defence is that the driver of the offending truck was not holding a valid and effective driving license at the time of accident. The owner of that truck had handed over the possession of that vehicle to the driver without any valid paper of authority and thereby violated the terms and conditions of the insurance policy for which the claimants are not entitled to compensation from the Insurance Company.

[4] The claimants examined **7 (seven) witnesses** and proved relevant documents which were marked as Exhibits.

[5] The O.P.W. 1/Owner has proved the **licence (valid)** in favour of Sujay Dhara.

[6] The learned Tribunal granted compensation as follows:-

"M.A.C. Case No. 34 of 2010

(New No. MACC 408/ 2014)

Dated:08.10.2015

Admittedly the deceased was 48 years of age for which multiplier 13 will be applicable. The deceased was a general order supplier and he was carrying on his day to day occupation on the basis of a valid trade license issued by the Hooghly-Chinsurah Municipality and from the IT returns of assessment years 2005—06, 2007-08 and 2008-09 the average income will come to Rs.89,067/-. The deceased was a married man and as such the amount of compensation so arrived at shall be reduced by one-third towards the personal expenses of the deceased. Hence, his annual income will come up to Rs.59,378/-. With this amount 13 multiplier will be considered for which the compensation will come to Rs.7,71,914/-.

Besides this, the claimants will be entitled to the funeral expenses to the extent of Rrs.2,000/-, loss of estate to the extent of Rs.2,500/- and loss of consortium to the extent of Rs.5,000/- totaling to Rs.9,500/-.

Then the total compensation amount will come to Rs.7,81,414/-. In addition to this amount, claimants are entitled to interest @ 8% per annum over the said amount of compensation from the date of filing of this case till actual realization. In my considered view this amount of compensation will be just, proper, adequate and equitable. Hence, the owner of the offending vehicle bearing Registration No. WB-41C/9328 involved in the accident is liable to pay the said amount of compensation to the petitioners. For the reasons aforesaid all the issues are decided in favour of the petitioners.

Sd/-
Member,
Motor Accident Claims Tribunal,
1st Court, Hooghly"

[7] Being aggrieved, this appeal has been preferred on the ground:-

That the award passed by the learned Tribunal is not in accordance with law.

[8] Considering the materials and evidence on record, it appears:-

i) That the driver of the offending vehicle had a valid licence **(Exhibit 9).** It appears that the licence was issued on 26.12.2004 and was valid (Non Transport) till 31.12.2024 and for (Transport) it was valid till 10.12.2015. The accident happened on 12.01.2009 and the offending vehicle is a truck (lorry). **Thus, the finding on this issue of the tribunal is erroneous.**

ii) **Exhibit 10,** collectively are the Income Tax returns filed by the deceased. The return for the year 2008-09 shows that the **actual income** of the deceased at the time of the accident was Rs.1,15,520/- per annum.

iii) The **date of birth** of the deceased as per **Exhibit 9** (driving licence) is **01.01.1975** and the accident took place on 12.01.2009. Thus, the age of the deceased was **34 years** and as such, **Multiplier of 16** will be applicable. (**Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr.**, 2009 6 SCC 121)

iv) **Future prospects at 40%** of income is to be added, as deceased was self employed (general order supplier). **(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.**, 2017 16 SCC 680)

v) Number of claimants being **3 (three), 1/3rd** of the victim's income is to be deducted towards personal expenses. **(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra))**

vi) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of the consortium and funeral expenses **(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

vii) The offending vehicle had valid insurance **(Exhibit 5)** to be paid fully by the insurance company (Valid Insurance) **(Exhibit 5)**.

[9] Thus, the "Just Compensation" in this case would be as follows:-

Annual Income	Rs. 1,15,520/-
Less: **1/3**rd towards personal and living expenses	Rs. 38,507/-
	Rs. 77,013/-
Add: Future prospects @ **40**% of the annual income of the deceased	**Rs. 30,805/-**
	Rs. 1,07,818/-
Multiplier x 16 (1,07,818 x 16)	**Rs. 17, 25, 088/-**
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	**Rs. 84,000/-**
Total amount:-	**Rs. 18, 09, 088/-**

[10] Admittedly, the Claimants have received the amount of compensation of **Rs. 7, 81, 414/-** together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **balance amount of compensation of Rs. 10, 27, 674/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

[11] Taking into consideration, the amount already received by the Claimants/Appellants, the Respondent No. 1/Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of consortium to the appellant/wife, upon satisfaction of their identity and payment of advalorem Court fees, if not already paid.

[12] The appeal being FMA 823 of 2023/FMAT 412 of 2016 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

[13] No order as to costs.

[14] All connected applications, if any, stand disposed of.

[15] Interim order, if any, stands vacated.

[16] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[17] Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking

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2024(2)GMAJ630

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A; F M A T No 2243 of 2013; 861 of 2013 **dated 06/08/2024**

Najina Bewa Sk

Versus

United India Insurance Company Ltd

FATAL ROAD ACCIDENT

Motor Vehicles Act, 1988 Sec. 149, Sec. 166, Sec. 147 - Fatal Road Accident - Claim filed under Section 166 of the Motor Vehicles Act - Victim was a pillion rider on a motorcycle when an oil tanker hit the motorcycle - Victim died on the spot - The claimants argued that the victim was 45 years old and earned Rs. 4000/- per month - The offending vehicle was insured with the respondent insurance company - The claimants sought Rs. 4,89,500/- as compensation - The insurer contested, claiming no negligence by the driver and that the victim's own negligence caused his death - Tribunal awarded Rs. 3,16,500/- as compensation, using a multiplier of 13, deducting one-third of the notional income of Rs. 3000/- for personal expenses - Funeral and other expenses were also considered - On appeal, the court modified the award and applied a multiplier of 14, taking future prospects into account - Final compensation amount revised to Rs. 6,44,000/- with interest - Appeal disposed of, modifying the tribunal's award. - Appeal Allowed

Law Point: In fatal accident claims under Section 166, the correct multiplier based on the age of the deceased and the inclusion of future prospects must be considered in determining just compensation.

મોટર વાહન અધિનિયમ, 1988 કલમ 149, કલમ 166, કલમ 147 - જીવલેણ માર્ગ અકસ્માત - મોટર વાહન અધિનિયમની કલમ 166 હેઠળ દાવો દાખલ કરવામાં આવેલ - ભોગ બનનાર મોટર સાઈકલમાં પાછળ બેઠો હતો ત્યારે ઓઈલ ટેન્કરે તે મોટર સાઈકલને ટક્કર મારેલ - ભોગ બનનારનું ઘટના સ્થળે મૃત્યુ નિપજેલ - દાવેદારોએ

એવો દાવો કરેલ કે, જેમાં તેમની દલીલ એવી હતી કે ભોગ બનેલ 45 વર્ષની ઉંમરનો હતો તથા માસિક રૂ. 4000/- કમાતો હતો - ગુનો કરનાર (અકસ્માત સર્જનાર) વાહનનો સામાવાળી વિમા કંપની દ્વારા વિમો ઉતરાવેલ હતો - દાવેદારોએ રૂ. 4,89,500/- નો વળતર માગેલ - વિમા કંપનીએ તેમાં વાંધો ઉઠાવેલ અને દલીલ કરેલ કે, વાહનનાં ડ્રાઈવર દ્વારા કોઈ બેદરકારી કરેલ નથી, પણ પિડિતની પોતાની બેદરકારીને કારણે તેનું મૃત્યુ થયું તેવી દલીલ કરેલ - ટ્રિબ્યુનલે રૂ. 3,16,500/- વળતર તરીકે, 13 નાં ગુણાંકને આંકેલ, તથા માસિક રૂ. 3,000/- ની મૃતકની માસિક આવકની ગણતરી કરેલ જેમાં એક-તૃતીયાંશ (1/3) બાદ કરીને 3,000/- અંગત ખર્ચ - મૃતકની અંતિમક્રિયાને પણ ધ્યાને લેવામાં આવેલ - અપીલ થતાં, અદાલતે ચુકાદામાં સુધારો કરી તથા ભાવિ સંભાવનાઓને ધ્યાને લઈને 14 નો ગુણાંક લાગુ કરેલ - અંતિમ વળતરની રકમમાં સુધારો કરી તેને વ્યાજ સાથે રૂ. 6,44,000/- નો કરેલ - ટ્રિબ્યુનલનાં ચુકાદામાં સુધારો કરી અપીલનો નિકાલ કરવામાં આવેલ - અપીલ મંજૂર કરવામાં આવેલ.

કાયદાનો મુદ્દોઃ- જીવલેણ અકસ્માતનાં કલમ 166 હેઠળનાં દાવાઓમાં મૃતકની ઉંમરના આધારે સાચો ગુણાંક અને ભાવિ સંભાવનાઓનો સમાવેશ કરવાનું માત્ર વળતર નક્કી કરવા માટે ધ્યાને લેવું આવશ્યક છે.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 149, Sec. 166, Sec. 147

Counsel:
Biswarup Biswas, Parimal Kr Pahari

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The present claim appeal has been preferred by claimants/appellants against the judgment and award dated 28th day of May, 2013 passed by the learned Judge, Motor Accident Claims Tribunal and the Additional District Judge, 2nd Court, Nadia at Krishnanagar, Nadia (hereinafter called learned Tribunal Judge) in MAC Case No. 23 of 2010, **under Section 166 of the Motor Vehicles Act, 1988.**

[2] Facts:-

"The victim was coming back to his house riding a motor cycle sitting on the pillion. At about 11 a.m. at Bamundanga, a speeding Oil Tanker dashed the

Motor cycle causing injury to the victim as a result of which he died on the spot.

Police was informed about the accident and Nakashipara P.S. Case No. 574/09 was registered. According to the claimants, the victim was 45 years old, self employed man who used to earn Rs.4000/- per month. The offending vehicle was insured with O.P./Insurer. The claimants claim a sum of Rs.4,89,500/- towards compensation."

[3] O.P./Owner did not contest the case, whereas the O.P./Insurer contested the case by filing written statement, denying all material allegations therein. It is contended by them that the case as filed is bad for defect of parties, non compliance of provision of Sections 147 and 149 of the M.V. Act. The driver of the offending vehicle was not rash and negligent in driving the vehicle. On the other hand, the victim was negligent and his negligence brought his death and as such, the claim application was liable to be dismissed.

[4] The claimant no. 2 examined himself as P.W. 1 and proved relevant documents. The opposite parties did not adduce any evidence.

[5] The learned Tribunal finally held as follows:-

"MAC Case No. 23 of 2010

Dated: 28.05.2013

Now, come to the question of quantum of compensation.

When it has been established that the victim Nasiruddin Sk died of road traffic accident by motor vehicle in use, I am of the view that the claimants are entitled to compensation. As the victim was 47 years old at the time of the accident, I take „13" as multiplier. As the claimants failed to prove the income of the victim, I am inclined to take Rs.3000/- as notional income per month. Thus, the yearly income of the deceased comes around Rs.36,000/-. One-third of the said income is to be deducted towards the personal expenditure of the deceased. Thus, the multiplied amount comes to Rs.3,12,000/-. In addition to that amount, the claimants are entitled to a sum of Rs.2000/- towards funeral expenses and a further sum of Rs.2500/- towards loss of estate. Thus, the aggregated amount comes to Rs.3,16,500/- and each of the claimant nos. 2 and 3 are entitled to Rs.1,05,500/- and claimant no. 1 being the widow of the deceased is entitled to a further sum of Rs.5000/- towards loss of consortium, and thus she is entitled to Rs.1,10,500/-. As the offending vehicle was insured with the O.P./Insurer, the O.P./Insurer is to indemnify the owner and pay compensation 4% @ with interest till payment is made.

Sd/-
Member,

Motor Accident Claim Tribunal &
Addl. District Judge, 2nd Court, Nadia"

[6] Being aggrieved, the appellants preferred this appeal on the following ground:-

That the learned Tribunal did not take into consideration the actual income of the deceased and did not grant "Just Compensation? as per law.

[7] From the materials and evidence on record, the following facts are evident:-

i) The learned Tribunal held that the victim was **47 years old** at the time of accident, though the postmortem report **(Exbt-4)** shows **45 years.** As such **multiplier of 14** shall be applicable. (**Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr.**, 2009 6 SCC 121)

ii) The accident having occurred on **08.12.2011.** The income of the deceased is taken as **Rs.4000/-** per month.

iii) Future prospect shall be 25% of income. (National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., 2017 16 SCC 680)

iv) Number of claimants being **3, 1/3rd** shall be deducted as personal expenses of the deceased. **(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (Supra))**

v) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of consortium and funeral expenses **(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%)

[8] Thus, the "Just Compensation" in this case would be as follows:-

Monthly Income	Rs. 4,000/-
Annual Income	Rs. 48,000/-
(4,000 x 12)	
Less: 1/3rd towards personal and living expenses	Rs. 16,000/-
	Rs. 32,000/-
Add: Future prospects @ **25**% of the annual income of the deceased	**Rs. 8000/-**
	Rs. 40,000/-
Multiplier x 14 (40,000 x 14)	**Rs. 5, 60, 000/-**
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	**Rs. 84,000/-**
Total amount:-	**Rs. 6, 44, 000/-**

[9] Admittedly, the Claimants/Appellants have received the amount of compensation of **Rs.1,10,500/-** together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **balance amount of compensation of Rs. 5, 33, 500/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

[10] Taking into consideration, the amount already received by the Claimants/Appellants, the Respondent No. 1/Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of consortium to the Appellant/wife, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

[11] The appeal being FMA 2243 of 2013/FMAT 861 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

[12] No order as to costs.

[13] All connected applications, if any, stand disposed of.

[14] Interim order, if any, stands vacated.

[15] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[16] Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities

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2024(2)GMAJ634

IN THE HIGH COURT AT CALCUTTA

[Before Shampa Dutt (Paul)]

F M A; F M A T No 2951 of 2016; 1195 of 2015 **dated 02/08/2024**

Shriram General Insurance Company Limited

Versus

Dwijen Roy

FATAL ACCIDENT COMPENSATION

Motor Vehicles Act, 1988 Sec. 163A - Fatal Accident Compensation - Claim filed under Section 163A of the Motor Vehicles Act - Victim was hit by a truck resulting in her death - The truck was driven recklessly - The petitioners (husband and daughters of the deceased) claimed Rs. 4,00,000 as compensation - Tribunal awarded Rs. 4,09,000 considering the victim's notional income of Rs. 3,000 per month - The

Insurance Company contested the award, claiming the truck did not have a valid route permit - The Tribunal dismissed this contention as unproven - On appeal, the court awarded Rs. 5,00,000 in line with the new schedule under Section 163A, with 6% interest - The balance of Rs. 91,000 to be deposited by the Insurance Company. - Appeal Allowed

Law Point: In fatal accident cases under Section 163A, compensation is determined on a structured formula basis, and new schedules must be applied if beneficial to claimants.

મોટર વાહન અધિનિયમ, **1988** કલમ **163A** - જીવલેણ અકસ્માત વળતર - મોટર વાહન અધિનિયમની કલમ **163A** હેઠળ દાવો દાખલ કરવામાં આવેલ - ભોગ બનનારને ટ્રક દ્વારા ઠોકર મારવામાં આવી હતી જેનાં પરિણામે તેણીનું મૃત્યુ થયેલ હતું - ટ્રક ગફલતભરી રીતે હંકારવામાં આવેલ હતું - અરજદારો, (મૃતકનાં પતિ અને દીકરીઓ) એ રૂ. **4,00,000/-** વળતર પેટે માગેલ - ટ્રિબ્યુનલે ભોગ બનનારની નોશનલ આવકને ધ્યાનમાં લઈને જેમાં દર મહિને રૂ. **3,000/-** ની આવક ગણતાં, રૂ. **4,09,000/-** મંજૂર કરેલ - વિમા કંપનીએ ટ્રિબ્યુનલનાં ચુકાદાનો વિરોધ કરતાં રજૂઆત કરેલ કે, ટ્રક પાસે માન્ય રૂટ પરમીટ ન હતી - ટ્રિબ્યુનલે એવી દલીલને સાબિત ન થયેલ ગણી રદ્દ કરેલ - તેમાં અપીલ કરવામાં આવતા, અદાલતે નવી અનુસૂચિને ધ્યાનમાં લઈ **6%** વ્યાજ સાથે કલમ **163A** હેઠળ રૂ. **5,00,000** મંજૂર કરેલ - બાકી રહેતી રકમ રૂ. **91,000/-** વીમા કંપની દ્વારા જમા કરવામાં આવી - અપીલ મંજૂર કરવામાં આવી.

કાયદાનો મુદ્દોઃ- કલમ **163A** હેઠળનાં જીવલેણ અકસ્માતના કેસોમાં વળતરને માળખાગત ફોર્મ્યુલાના આધારે નક્કી કરવામાં આવે છે, અને જો દાવેદારો માટે તે લાભદાયક હોય તો નવી સૂચિ લાગુ કરવી જોઈએ.

Acts Referred:
Motor Vehicles Act, 1988 Sec. 163A

Counsel:
Rajesh Singh, Ayantika Roy

JUDGEMENT

Shampa Dutt (Paul), J.- [1] The Insurance Company has preferred the present appeal against the award dated 17th day of April, 2015 passed by Learned Judge, Motor Accident Claims Tribunal, Fast Track Court, District Cooch Behar, in M.A.C.

Case No. 18 of 2011 (Dwijen Roy & Ors. Vs- Janab Ali Mia & Anr.), **under Section 163A of the Motor Vehicles Act, 1988.**

[2] The FACTS:-

"On 09.08.2010 at about 14.30 hours deceased Basanti Roy and another lady named Sarodini Roy were returning their respective home from Central Bank of India, Pundibari Branch, after completion of their banking work along the left flank of the metal road on foot. While they reached near Pundibari Netaji Bhaban then all on a sudden, one Truck bearing no. WB-69/3748 dashed said Basanti Roy and Sarodini Roy from their back side and ran over said Basanti Roy. The truck was coming at a very high speed and in a very rash and negligent manner. As a result said Basanti Roy sustained grave multiple bleeding injuries on her person including head and said Sarodini Roy sustained grave multiple injuries on her person. Thereafter they were taken to Pundibari Block Primary Health Centre, Dist. Cooch Behar by the local people of that locality and during their admission, there on examination Basanti Roy was declared =Dead' by the attending Doctor and said Sarodini Roy was referred to Cooch Behar MJN Hospital for better treatment and management. Victim Basanti Roy was by profession a worker of one Swa-Nirbhar Ghosthi and she was an earning member of her family and used to maintain her family by earning Rs. 3,000/- per month. The petitioners being husband and daughters (legal heirs) have filed this case for compensation of Rs. 4,00,000/- (Four Lakhs) only from the OPs for causing loss and damages suffered by them owing to the death of deceased Basanti Roy by use of the vehicles bearing no. WB-69/3748.?

[3] Both the opposite parties appeared after receipt of notice in this case and filed their written statements but only the O.P. No. 2/Insurance Company contested this case.

[4] The O.P. No.2/Shriram General Insurance Co. Ltd. has contested this claim case in absence of the registered owner of the Truck being No. WB 69/3748 taking permission of the tribunal to contest the case and by submitting its written statement, denying all the material allegation of the claim.

[5] The claimants examined two witnesses and relevant documents were marked **Exhibit 1 to 7.** The opposite party/Insurance Company/Appellant herein did not adduce any evidence.

[6] The Learned Tribunal finally held as follows:-

"M.A.C.C. No. 18 of 2011

Dated:-17.04.2015

In view of the Second Schedule of the M.V. Act the compensation amount would be of Rs 5,76,000/- after excluding One-Third of this amount, as in view of Second Schedule it would have incurred by the deceased for her own expenses. In addition to that the petitioners are entitled funeral expenses and loss of consortium. They are not entitled to get any compensation as loss of estate as there is loss of Estate.

Accordingly, the compensation amount would be (Rs. 5,76,000/- - 1,92,000/-) = Rs. 3,84,000/- + Rs. 5,000/- (As Funeral Expenses)+ Rs. 20,000/- (As loss of Consortium). Then it net total Rs. 4,09,000/-.

Sd/-
Motor Accident Claim Tribunal
Additional District Judge,
Fast Track Court, Cooch Behar"

[7] The Insurance Company being aggrieved has preferred the appeal on the ground that **the offending vehicle did not have a route permit.**

[8] Considering the materials and evidence on record, it is evident that:-

i) There being no documents of Income (victim being a housewife), the income of the deceased be fixed at Rs. 3000/- per month considering that the accident occurred on 09.08.2010. (**Kirti & Anr. Etc. Vs Oriental Insurance Company Ltd.**, 2021 AIR(SC) 353)

ii) Age of the victim was 30 years, thus **multiplier of 17** would be applicable. (**Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr.**, 2009 6 SCC 121)

iii) The offending vehicle had valid license (Exhibit 6).

iv) The contention of the Insurance Company/Appellant is that the offending vehicle did not have the respective route permit.

[9] The Supreme Court in Amrit Paul Singh & Anr. vs Tata AIG General Insurance Co. Ltd. & Ors.,in Civil Appeal No. 2253 of 2018 **(arising out of SLP (Civil) NO. 7692 of 2017), decided on May 17, 2018,** held:-

"23. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a

permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in **Swaran Singh** [**National Insurance Co. Ltd. v. Swaran Singh**, 2004 3 SCC 297: 2004 SCC (Cri) 733] and **Lakhmi Chand** [**Lakhmi Chand v. Reliance General Insurance**, 2016 3 SCC 100: (2016) 2 SCC (Civ) 45] in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in **Swaran Singh** [**National Insurance Co. Ltd. v. Swaran Singh**, 2004 3 SCC 297: 2004 SCC (Cri) 733] and other cases pertaining to pay and recover principle.?

[10] The accident in this case is not denied. But the case of the appellant that the offending vehicle did not have a route permit, has not been proved before the tribunal.

[11] Section 163A M.V. Act lays down:-

"163A. Special provisions as to payment of compensation on structured formula basis. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation. For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923). (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.?

[12] (A) In Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.,in F.M.A. 446 of 2010, **decided on 9th August, 2018,** the Calcutta High Court held:-

"9. Sub-section (1) of Section 163-A of the 1988 Act ordains that notwithstanding anything contained therein or in any other law for the time being in force, upon proof of death in an accident involving the use of a motor vehicle, compensation is payable either by the owner of such vehicle or the authorized insurer thereof as indicated in the Second Schedule to the legal heirs of the victim. The Second Schedule appended to the 1988 Act, referring to Section 163-A thereof, provides the structured formula for determining compensation.

11. As it stands now, the Second Schedule after its amendment by the said notification prescribes lumpsum compensation in the following manner:

1. Fatal accidents - Rs. 5,00,000.00 is payable as compensation in case of death;

2. Accidents resulting in permanent disability - Rs. 5,00,000.00 x percentage of disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923), provided that the minimum compensation in case of permanent disability of any kind shall not be less than Rs. 50,000.00;

3. Accidents resulting in minor injury - A fixed compensation of Rs. 25,000.00.

14. With that in view, we invited such learned advocates to address us on the following issue: Whether, after the amendment brought about by the said notification, the new schedule would be applicable to pending claim applications under Section 163-A before the motor accident claim tribunals as well as the appeals arising out of awards delivered there under prior to May 22, 2018?

118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.

126. Turning to the facts in the appeal, we find that had this appeal been decided prior to May 22, 2018, the appellant would have been entitled to whatever sum were determined as payable in terms of the old schedule. Admittedly, Rs.5,00,000.00 was not payable to the appellant by the respondent no.1 any time prior to May 22, 2018 and, therefore, she was not entitled to such sum as on date she exercised her "right of action". Therefore,

in each case where the claim is pending before the tribunal or if this Court has been approached in appeal as on May 22, 2018, we feel it to be the duty of the tribunal/Court to determine the amount of compensation payable to the claimant in terms of the structured formula and award interest at such rate it considers proper thereon from the date of filing of the claim application till May 21, 2018. To avoid any charge of arbitrariness, it would be safe to award interest at the prevailing bank rate of interest on term deposits on the date the award is made. Thereafter, that is from May 22, 2018, interest on Rs.5,00,000.00 may be directed to be paid till realization as per the prevailing bank rate of interest on term deposits.

127. To determine what the appellant could have lawfully claimed as compensation based on the old schedule, we need to look into the evidence. The version of the appellant that the victim was earning Rs.2,000.00 per month could not be dislodged by the respondent no. 1 in cross-examination. The victim being self-employed in the unorganized sector, the tribunal put an onerous burden on the appellant to produce documentary evidence to prove her monthly income. Having regard to the decision in **Syed Sadiq v. United India Insurance Co. Ltd.**, 2014 2 SCC 735, we hold that it was not necessary for the appellant to prove the income of the victim by producing documentary evidence. The loss of dependency, thus, has to be worked out reckoning Rs.24,000.00 as the notional yearly income of the victim. Capitalizing it on a multiplier of 17, the resultant amount would be Rs.4,08,000.00. Deducting 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining herself had she been alive, and adding Rs.4.500.00 on account of loss of estate and funeral expenses, we arrive at the sum of Rs.2,76,500.00.

128. In the final analysis, we hold that the appellant shall be entitled to Rs.5,00,000.00 on account of compensation under Section 163-A of the 1988 Act read with the new schedule. However, since she has received Rs. 1,14,500.00 that was awarded by the tribunal, the respondent no.1 shall pay Rs.3,85,500.00 more to the appellant within 2 (two) months from date of service of a copy of this judgment and order on it. The appellant is further held entitled to interest as follows: (i) @ 9% per annum on Rs.2,76,500.00 from the date of filing of the claim application, i.e., February 8, 2005 till May 21, 2018; and

(ii) @ 6% per annum on Rs. 5,00,000.00 from May 22, 2018 till such time payments of Rs. 3,85,500.00 and interest as in (i) above are effected in favour of the appellant.?

(b) In appeal, the Supreme Court in The New India Assurance Co. Ltd. Vs. Urmila Halder, Civil Appeal No. ____ of 2024 (@ Special Leave Petition

(Civil) No. 6260 of 2019), decided on 8th February, 2024, upheld the above judgment and held:-

"4. The short point for consideration before this Court is whether the amendment in Section 163-A of the Motor Vehicles Act, 1988, which came into effect by a Gazette Notification on 22nd May, 2018, would relate to an accident which had occurred prior to the said date.

10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-Insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs 5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks.?

[13] In the present appeal, the claim was decided by the tribunal on **17th April 2015**, thus prior to 22nd May, 2018 and compensation of a sum of **Rs. 4,09,000/-** was granted in terms of the old schedule.

[14] Now, in terms of the guidelines of the Courts, in the judgments, Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra) and The New India Assurance Co. Ltd. Vs. Urmila Halder (Supra), the Respondents/Claimants are entitled to compensation of a total sum of Rs. 5,00,000/- under Section 163A of the 1988 M.V. Act read with the new schedule.

[15] Admittedly, the **Appellant/Insurance Company** has deposited the amount of compensation of Rs. 4,09,000/- in terms of order of the Learned Tribunal. Accordingly, the **Respondents/Claimants** are now entitled to the total amount of compensation of Rs. 5,00,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit, on the total compensation amount.

[16] Taking into consideration, the amount already deposited by the Appellant/ Insurance Company, the Insurance Company shall deposit the balance amount of Rs. 91,000/- along with the interest on the total compensation amount with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the Claimants/Respondents (husband and three daughters of the deceased) in equal proportion, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

[17] The impugned judgment and award of the learned Tribunal is modified to the above extent.

[18] The appeal being FMA 2951 of 2016/FMAT 1195 of 2015 stands disposed of and as prayed for by the Appellant, without prejudice to the rights of the appellant.

[19] All connected applications, if any, stand disposed of.

[20] There will be no order as to costs.

[21] Interim order, if any, stands vacated.

[22] Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

[23] Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities

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