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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAC.APP. 190/2011**

JAGDISH & ANR. Appellants
Through: **Mr. O.P. Mannie, Advocate**

versus

MADHAV RAJ MISHRA & ANR. Respondents
Through: **Mr. K.L. Nandwani, Advocate for
the respondent No.3**

% **Date of Decision : April 19, 2011**

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed
to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

—
Yes
Yes

ORDER (Oral)

: REVA KHETRAPAL, J.

1. The short question which arises for decision in the present appeal is whether in a claim petition instituted under Section 163-A of the Motor Vehicles Act, 1988, while assessing compensation to a

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third party involved in a fatal accident, the structured formula referred to in Second Schedule must be strictly adhered to.

2. The brief facts which led to the filing of the claim petition in the instant case are that on 10.02.2008 at about 7.30 p.m., an accident took place at Dulhera near Bhatta involving motor cycle bearing No.DL-4S-BK-4956 driven by one Shri Pradeep Kumar, resulting in the death of Anil @ Sachin (hereinafter referred to as "the deceased"). An FIR bearing No.33/08 with Police Station Sadar, Bahadur Garh, Jhajhar, District Haryana was registered under Sections 279/336/429 IPC against the said Pradeep Kumar. The appellants are the unfortunate parents of the deceased who filed the claim petition under Section 163-A of the Act, as set out hereinabove.

3. The learned Tribunal by its judgment and award dated 18.09.2010 computed the annual income of the deceased at the rate of ₹ 40,000/- per annum and after deducting one-half towards the personal expenses of the deceased, applied a multiplier of 15 thereto on the basis of the age of the mother of the deceased, which the learned Tribunal gleaned from her election card Ex.PW-1/1 to be 38

years on the date of the death of the deceased. The learned Tribunal thus arrived at the figure of ₹ 3 lakhs towards compensation on account of loss of dependency of the appellants and awarded a compensation of ₹ 3,35,000/- including ₹ 5,000/- towards funeral expenses and ₹ 20,000/- for loss of love and affection and ₹ 10,000/- for the loss to the estate.

4. Aggrieved by the inadequate amount of compensation granted to them, the appellants have preferred the instant appeal, in which the appellants have assailed the order of the learned Tribunal on three counts:

- (i) No future increase in the income of the deceased was taken into consideration by the Tribunal while computing the compensation payable to the appellants.
- (ii) The claim petition having been filed under Section 163-A, which strictly provides for the standard deduction of $1/3^{\text{rd}}$, the learned Tribunal erred in deducting one-half towards the personal expenses of the deceased.
- (iii) The multiplier applied to the multiplicand of ₹ 40,000/-

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per annum should have been the multiplier of 16 in accordance with the Second Schedule, and not the multiplier of 15, which was adopted by the Tribunal for augmenting the multiplicand.

5. At the time of hearing, Mr. O.P. Mannie, the learned counsel for the appellants did not press the grievance of the appellants on the first count and confined his contentions to the second and third count only. On the second count, he contended that the learned Tribunal had erred in relying upon the judgment of the Hon'ble Supreme Court in *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121* and deducting 50% of the income of the deceased towards the personal and living expenses of the deceased. Mr. Mannie advocated strict adherence to the Second Schedule while assessing compensation in claim petitions instituted under Section 163-A of the Act.

6. Mr. Sameer Nandwani, the learned counsel for the Insurance Company, sought to rebut the aforesaid contentions urged by Mr. Mannie by placing reliance on the judgments of this Court (Hon'ble

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Mr. Justice V.B. Gupta) in *ICICI Lombard General Insurance Co. Ltd. vs. Mala Devi & Ors., IV (2008) ACC 525* and *Oriental Insurance Co. Ltd. vs. Om Prakash & Ors., I (2009) ACC 148*. In the first case, the notional income of the deceased had been taken by the Tribunal as per the Second Schedule of the Act and then the increase on the said income considered. But at the same time, the Tribunal had offset the increase in notional income, by deducting one-half deduction on account of personal expenses, instead of 1/3rd from the income of the deceased, which is the prescribed deduction in the Second Schedule. In the second case, the contention of the Insurance Company that the case being under Section 163-A of the Act, the Tribunal should have awarded the compensation as laid down in the Second Schedule was turned down by the Court as not justified on the ground that, though Section 163-A(3) of the Act provided that the Second Schedule of the Act is to be revised from time to time keeping in view the cost of living, but since the time of its insertion with effect from 14.11.1994, no revision had taken place even after the lapse of about more than 13 years.

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7. A glimpse at the legislative history of the law relating to compensation payable to motor accident victims is sufficient to show that the law as originally enacted required compensation to be paid only on proof that the accident was a result of the rash and negligent driving of a motor vehicle by the driver concerned. For the first time, Section 140, which was inserted in the statute book on the promulgation of the Motor Vehicles Act, 1988, provided for liability upon the owner of the vehicle to pay compensation on the principle of no fault. A further exception was carved out when Section 163-A was inserted by Act 54 of 1994, which came into force on 14.11.1994. The said provision clearly had been inserted to provide for a new pre-determined structured formula for payment of compensation to road accident victims on the basis of age/income of the deceased or the person suffering disablement. These provisions with regard to no-fault-liability were inserted having regard to the fact that road accidents in India had increased stupendously and it was found that compensation could not be paid to the victims in many a case where rash and negligent driving causing death or injury to the

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innocent victim could not be proved, but as laid down by a three Judge Bench decision of the Supreme Court in *Deepal Girishbhai Soni and Ors. vs. United India Insurance Co. Ltd., Baroda, (2004) 5 SCC 385*, the claimants were not enabled thereby to pursue their remedies both under Section 163-A and Section 166 of the Act and were required to opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act. The Supreme Court further observed in the said case that the proceedings under Section 163-A, being a social security provision, providing for a distinct scheme, only those whose annual income was up to ₹ 40,000/- could take the benefit thereof. All other claims were required to be determined in terms of Chapter XII of the Act. In paragraphs 39 and 40, the Hon'ble Supreme Court delineated the reasons for the insertion of Section 163-A in the Act as follows:

"39. Section 163-A was introduced in the Act by way of a social security scheme. It is a code by itself. It appears from the Objects and Reasons of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act several representations and suggestions were made from the State Governments, transport operators and members of the public in relation

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to certain provisions thereof. Taking note of the observations made by the various courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a Review Committee. The Review Committee in its report made the following recommendations:

“The 1988 Act provides for enhanced compensation for hit-and-run cases as well as for no-fault-liability cases. It also provides for payment of compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11,214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31-3-1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle-owner as well as the insurance company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different classes of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in

that scheme of structured compensation or of pursuing his claim through the normal channels.

General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for settlement of claims on 'fault liability' in respect of third-party liability under Chapter XI of the MV Act, 1988. They have suggested that the claimants should first file their claims with Motor Accidents Claims Tribunals and then the insurers may be allowed six months' time to confirm their prima facie liability subject to the defences available under the Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time."

40. The recommendations of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their views pursuant where to several sections were amended. Section 163-A was inserted in the Act to provide for payment of compensation in motor accident cases in accordance with the Second Schedule providing for the structured formula which may be amended by the Central Government from time to time."

8. In paragraphs 42, 46, 47, 48, 49 and 50 of the judgment in

Deepal Girishbhai Soni's case (supra), the contours of Section 163-

are further delineated by the Supreme Court as follows:

"42. Section 163-A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs.40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor

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vehicle.

46. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured-formula basis. Sub-section (1) of Section 163-A contains non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is 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. Sub-section (2) of Section 163-A is in pari materia with Sub-section (3) of Section 140 of the Act.

47. Section 163-A does not contain any provision identical to sub-section (5) of Section 140 which is also indicative of the fact that whereas in terms of the latter, the liability of the owner of the vehicle to give compensation or relief under any other law for the time being in force continues subject of course to the effect that the amount paid thereunder shall be reduced from the amount of compensation payable under the said section or Section 163-A.

48. By reason of the Section 163-A, therefore, the compensation is required to be determined on the basis of a structured formula whereas in terms of Section 140 only a fixed amount is to be given. A provision of law providing for compensation is presumed to be final in nature unless a contra-indication

therefor is found to be in the statute either expressly or by necessary implication. While granting compensation, the Tribunal is required to adjudicate upon the disputed question as regards age and income of the deceased or the victim, as the case may be. Unlike Section 140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding under Section 163-A of the Act.

49. Decisions rendered by this Court are galore where computation as regard the amount of compensation has been related to multiplier method involving ascertainment of loss of dependency and capitalizing the same by appropriate multiplier. (See **G.M., Kerala SRTC v. Susamma Thomas**). The structured formula provided for in the Second Schedule also provides for similar concept as regard determination of the amount of compensation.

50. Apart from the fact that compensation is to be paid by applying multiplier method under the Second Schedule other relevant factors, namely, reduction of one-third in consideration of the expenses which the victim would have incurred towards maintaining himself, general damages in case of death as also in the case of injuries and disabilities as also the disability in non-fatal accidents, a notional income for compensation to those who had no income prior to accident are provided for, are required to be considered which is also a clear pointer to the fact that thereby Parliament intended to

provide for a final amount of compensation and not an interim one."

9. Referring to the judgment of the Supreme Court in ***Deepal Girishbhai Soni's*** case (*supra*), a learned Single Judge of this Court (Hon'ble Mr. Justice Pradeep Nandrajog) in the case of ***United India Insurance Co. Ltd. vs. Kaushalya Devi & Ors., 2008 ACJ 1267***, negated the plea of the claimants/respondents that assessment of compensation in excess of the annual income of ₹ 40,000/-, as stipulated in the Second Schedule to the Motor Vehicles Act, 1988, was permissible where compensation was assessed under Section 163-A of the Motor Vehicles Act, and held that 1/3rd of the income was liable to be deducted as the personal expenses of the deceased. The following pertinent observations were made in paragraphs 8 and 9 of the said decision:

"8. It may be that the M.V. Act 1988 is a beneficial legislation and, thus, deserves liberal construction with a view to implement the legislative intent but Courts cannot travel beyond the enacted provisions and extend the scope of the statute on the pretext of exceeding the statutory benefits to those who are not covered thereby or exceeding the limits of compensation.

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9. *It is thus obvious that the IIInd schedule referred to in Section 163-A of the M.V. Act 1988 provides for a structured formula which has to be applied while assessing compensation to a third party involved in a fatal accident/injury. A multiplier system is introduced, pursuant where to and in furtherance whereof the compensation has to be calculated having regard to the age of the victim or the dependants as also the annual income of the deceased/injured."*

10. In the case of *Smt. Sarla Verma (supra)*, relied upon by the learned Tribunal no doubt, the Hon'ble Supreme Court held that where the deceased was a bachelor and the claimants were the parents, the deduction followed a different principle and that in regard to bachelors, normally, 50% was deducted as personal and living expenses, because it was assumed that a bachelor would tend to spend more on himself. Even otherwise, there was also the possibility of his getting married in a short time, in which event the contribution to the parents and siblings was likely to be cut drastically. Further, subject to the evidence to the contrary, the father was likely to have his own income and brothers and sisters would not be considered as dependants, because they would either be independent and earning, or

married, or be dependant on the father. Thus, it would be appropriate to deduct 50% towards the personal and living expenses of the bachelor and treat 50% as his contribution to the family.

11. It cannot, however, be lost sight of that in the *Sarla Verma's case (supra)*, the Supreme Court was laying down the guiding principles to be followed by all Courts and Tribunals in claim petitions under Section 166 of the Act and was not dealing with the principles to be followed while deciding claim petitions under Section 163-A of the Act. Significantly, the Court itself observed that the principles relating to determination of liability and quantum of compensation are different for claims made under Section 163-A of the Motor Vehicles Act than claims under Section 166 of the said Act. It was clarified that Section 163-A of the Second Schedule in terms does not apply to determination of compensation in applications under Section 166. On the aspect of deduction for personal and living expenses, the Court specifically ruled that deduction on account of personal living expenses cannot be at a fixed $1/3^{\text{rd}}$ in all cases unless the calculation is under Section 163-A read with the Second Schedule

to the Act. Accordingly, in my view, the learned Tribunal ought to have adhered to the Second Schedule and the reliance placed by it upon the case of *Smt. Sarla Verma (supra)* in the given context was entirely misplaced.

12. Adverting to the second contention of the learned counsel for the appellants with regard to the appropriate multiplier to be adopted in the instant case, Mr. Nandwani, the learned counsel for the Insurance Company was not able to refute the contention of the counsel for the appellants, as indeed he could not have, that the multiplier as per the Second Schedule should have been adopted by the Tribunal, being the multiplier of 16. Section 163-A begins with a *non-obstante* clause and provides for payment of compensation, as enacted in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. In the Second Schedule, there is a table fixing the mode of calculation of compensation for third party accident claims arising out of fatal accidents. The first column gives the age-group of victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate

the quantum of compensation in thousands payable to the heirs of the deceased victims. According to this table, the multiplier varies from 5 to 18 depending on the age-group to which the victim belongs. In paragraph 19 of the judgment in *Smt. Sarla Verma (supra)*, the multipliers indicated in the cases of *Kerala State Road Transport Corporation vs. Susamma Thomas AIR 1994 SC 1631*, *UP State Road Transport Corporation vs. Trilok Chandra (1996) 4 SCC 362* and *New India Assurance Co. Ltd. vs. Charlie AIR 2005 SC 2157* for claimants under Section 166 of the Motor Vehicles Act were given in juxtaposition with the multiplier mentioned in the Second Schedule for claimants under Section 163-A of the Motor Vehicles Act. Not satisfied with this, in paragraph 20 of its judgment, the Supreme Court further clarified that it was concerned with cases falling under Section 166 and not under Section 163-A of the Motor Vehicles Act, thereby making it abundantly clear that in cases under Section 163-A of the Motor Vehicles Act the multiplier set out in the Second Schedule must be strictly adhered to. For the sake of ready reference, the table in paragraph 19 is reproduced hereunder:

Age of the deceased	Multiplier scale as envisaged in Susamma Thomas	Multiplier scale as adopted by Trilok Chandra	Multiplier scale in Trilok Chandra as clarified in Charlie	Multiplier specified in second column in the Table in II Schedule to MV Act	Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)
(1)	(2)	(3)	(4)	(5)	(6)
Upto 15 yrs.	-	-		15	20
15 to 20 yrs.	16	18	18	16	19
21 to 25 yrs.	15	17	18	17	18
26 to 30 yrs.	14	16	17	18	17
31 to 35 yrs.	13	15	16	17	16
36 to 40 yrs.	12	14	15	16	15
41 to 45 yrs.	11	13	14	15	14
46 to 50 yrs.	10	12	13	13	12
51 to 55 yrs.	9	11	11	11	10
56 to 60 yrs.	8	10	09	8	8
61 to 65 yrs.	6	08	07	5	6
Above 65 yrs.	5	05	05	5	5

13. A bare glance at the said table is sufficient to show that the appropriate multiplier for the age-group of persons between 36 to 40 years of age is the multiplier of 16 and not the multiplier of 15 as applied by the Tribunal. The age of the mother of the deceased at the time of the accident was admittedly 38 years and accordingly the multiplier of 16 must be applied to augment the multiplicand of ₹ 40,000/- in the instant case. Thus calculated, the loss of dependency of the appellants, after deducting 1/3rd towards the personal expenses and maintenance of the deceased, works out to ₹ 4,26,666.66 (i.e. ₹

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40,000/- x $\frac{2}{3}$ x 16), which may be rounded off to ₹ 4,27,000/-.

Adding the non-pecuniary damages awarded by the Tribunal, the total amount of compensation payable to the appellants thus works out to ₹ 4,62,000/-.

14. The award is accordingly modified to the extent that the respondent No.3 – Insurance Company is held liable to pay an enhanced amount of ₹ 1,27,000/- within 30 days from today along with interest to be calculated @ 7.5% per annum from the date of the institution of the petition till the date of its realisation.

The appeal stands disposed of accordingly.


REVA KHETRAPAL
(JUDGE)

April 19, 2011
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