

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

Reserved on: 23rd January, 2012
Pronounced on: 3rd February, 2012

+ **MAC.APP. 426/2011**

BANDANA & ORS. Appellants
Through: Mr. Manish Maini, Adv.

versus

RAJESH KUMAR & ORS. Respondents
Through: Ms. Suman Bagga, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appeal is for enhancement of compensation of ₹ 4,89,488/- for the death of Prem Chand Chaurasia, who was aged about 24 years at the time of the accident, which took place on 16.11.2008.
2. The Appellants preferred a Petition on the basis of the structured formula as given in the Second Schedule under Section 163-A of the Motor Vehicles Act (the Act). The deceased's income was claimed to be ₹40,000/- per annum. The Motor Accident Claims Tribunal, (the Claims Tribunal) accepted the said income as the minimum wages of an unskilled worker on the date of the accident were more than the amount of ₹40,000/-. The Claims Tribunal deducted one-third towards

the personal and living expenses and applied the multiplier of '18' as per the Second Schedule to arrive at the loss of dependency of ₹4,79,988/-. The Claims Tribunal further awarded notional sum of ₹ 9,500/- towards the non-pecuniary damages to arrive at the figure of ₹4,89,488/-. It held that the deceased himself contributed to the accident to the extent of 25% because he was walking after consuming alcohol on a public road at night time. The compensation was thus reduced to ₹ 3,67,116/-.

3. The learned counsel for the Appellants contend that the Tribunal committed an error in holding that the deceased contributed to the accident simply on the ground that there was mention of smell of alcohol in the deceased's MLC at the time of his admission in the hospital. Admittedly, there was no evidence that the deceased was under the influence of liquor, his gait was unsteady or that he was unable to move on a public road.
4. Section 163-A was incorporated in the Motor Vehicles Act, 1988 by virtue of an amendment w.e.f. 14.11.1994.
5. In *Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr.*, 1977 (2) SCC 441; the Supreme Court referred to a judgment of a Division Bench of the Madras High Court where it had been suggested that some compensation should be provided to the Claimants irrespective of proof of negligence to

a limited extent say ₹250/- to ₹300/- a month. (The judgment was delivered by the Madras High Court on 13.12.1976). The Supreme Court lamented that the proof of negligence is necessary before the owner or the Insurance Company could be held liable for the payment of compensation in a Motor Accident Claims case unless there is an amendment in the law.

6. Section 163-A of the Act provides for the claim of compensation on the basis of the structured formula in case of the death or permanent disablement in motor accident without proof of any wrongful act, neglect or default of the owner of the vehicle or vehicles or of any other person.
7. The Supreme Court in *National Insurance Company Limited v. Sinitha & Ors.*, 2011 (13) SCALE 84 distinguished between grant of compensation under Section 140 of the Act on the basis of no fault no liability and Section 163-A of the Act without an obligation to prove any negligence on the part of the driver of the vehicle who caused the accident. At the same time, the Supreme Court observed that the grant of compensation under Section 163-A of the Act can be defended by the driver/owner or the Insurer on proving that the accident was caused on account of wrongful act or neglect of the person claiming the compensation. In other words, the Supreme Court took the view that if the person claiming compensation under Section 163-A of the Act himself was the wrongdoer, he was not entitled to any compensation. Para 16 of the report in *Sinitha & Ors.*

(supra) is extracted hereunder for ready reference:-

“16. At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that Section 163A of the Act has an overriding effect on all other provisions of the Motor Vehicles Act, 1988. Stated in other words, none of the provisions of the Motor Vehicles Act which is in conflict with Section 163A of the Act will negate the mandate contained therein (in Section 163A of the Act). Therefore, no matter what, Section 163A of the Act shall stand on its own, without being diluted by any provision. Furthermore, in the course of our determination including the inferences and conclusions drawn by us from the judgment of this Court in Oriental Insurance Company Limited v. Hansrajbhai v. Kodala, (2001) 5 SCC 175, as also, the statutory provisions dealt with by this Court in its aforesaid determination, we are of the view, that there is no basis for inferring that Section 163A of the Act is founded under the "no-fault" liability principle. Additionally, we have concluded herein above, that on the conjoint reading of Sections 140 and 163A, the legislative intent is clear, namely, that a claim for compensation raised under Section 163A of the Act, need not be based on pleadings or proof at the hands of the claimants showing absence of "wrongful act", being "neglect" or "default". But that, is not sufficient to determine that the provision falls under the "fault" liability principle. To decide whether a provision is governed by the "fault" liability principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or insurance company) by pleading and proving "wrongful act", "neglect" or "default". From the preceding paragraphs (commencing from paragraph 12), we have no hesitation in concluding, that it is open to the owner or insurance company, as the case may be, to defeat a claim under Section 163A of the Act by pleading and establishing through cogent evidence a "fault"

ground ("wrongful act" or "neglect" or "default"). It is, therefore, doubtless, that Section 163A of the Act is founded under the "fault" liability principle. To this effect, we accept the contention advanced at the hands of the Learned Counsel for the Petitioner."

8. In this case, no evidence was led by the Respondents that the accident took place on account of the deceased's fault i.e. on account of any wrongful act, neglect or default of the deceased himself. Simply because there was a smell of liquor, no such inference can be drawn. The Claims Tribunal, therefore, erred in reducing the compensation awarded.
9. The compensation amount is restored to ₹4,89,488/- which shall carry interest @ 7.5 % per annum from the date of filing of the petition till the date of payment, as awarded by the Tribunal.
10. The enhanced amount of ₹ 1,22,372/- along with interest shall be deposited by the Respondent No.3 Insurance Company within 30 days in UCO Bank, Delhi High Court Branch, New Delhi which shall be held in fixed deposits for a period of three years in the name of the First Appellant and shall be utilized by her for her own benefit as well as for the benefit of the Second and the Third Appellants.
11. The Appeal is allowed in above terms. No costs.

(G.P. MITTAL)
JUDGE

FEBRUARY 03, 2012

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