

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

Reserved on: 16th January, 2012

Pronounced on: 31st January, 2012

+ **MAC.APP. 969/2011**

UMA SOLANKI & ANR. Appellants
Through: Mr. Manish Maini, Adv.

versus

SURESH CHAND & ANR. Respondents
Through: Mr. K.L. Nandwani Adv. with
Mr. Sameer Nandwani, Adv.

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

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant impugns the award dated 15.04.2011 passed in a petition filed under Section 163-A of the Motor Vehicles Act by the Motor Vehicle Accident Claims Tribunal, whereby the Respondent No. 1 and 2 (Claimants before the Tribunal) were awarded a compensation of Rs. 5,08,500/- along with interest @ 7.5% for the death of Praveen Solanki (hereinafter referred to as the 'Deceased') who was 23 years old, and was a driver by profession.
2. On 26.10.2009 at about 5.45 A.M, the deceased was driving in a car through Ridge Road, opposite gate No.1, Budha Garden,

Chankyapuri, New Delhi, when he met with an accident with a truck bearing Reg. No. MP-06E-5682. The deceased suffered grievous injuries due to the accident which resulted in his death.

3. The contentions raised on behalf of the Appellants are:-
- (i) The Tribunal calculated the income of the deceased according to the minimum wages (i.e. Rs.52,524) and then wrongly reduced the same to Rs.40,000/- ;
 - (ii) The Tribunal did not consider the cost neutralization factor or future prospects;
 - (iii) The Tribunal did not grant any compensation under the head of 'loss of love and affection'
 - (iv) The interest granted should have been 18% instead of 7.5% as granted by the Tribunal.

CONTENTION (i), (ii) and (iii)

4. *In Oriental Insurance Company v. Hansrajbhaj V. Kodala*, (2001) 5 SCC 175; *Deepal Girishbhaj Soni v. United India Insurance Company Limited*, (2004) 5 SCC 385 and *Oriental Insurance Company Limited v. Meena Variyal* (2007) 5 SCC 428, it was held that a person filing a petition under Section 163-A of the Act can be awarded compensation only on the basis of the structured formula as given in Shedule II to the Act. *In Oriental Insurance Company v. Hansrajbhaj V. Kodala*, in para 15 it was held as under:

“15. In this context if we refer to the Review Committee's Report, the reason for enacting Section 163-A is to give earliest relief to the victims of the motor vehicle accidents. The Committee observed that determination of cases takes a long time and, therefore, under a system of structural compensation, the 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 a minor, loss of income on account of loss of limb etc. can be notified and the affected party can then have option of their accepting 'lump sum' compensation under the Scheme of structural compensation or of pursuing his claim through the normal channels. The Report of the Review Committee was considered by the State Governments and comments were notified. Thereafter, the Transport Development Council made suggestions for providing adequate compensation to victims of road accidents without going into long drawn procedure. As per the objects and reasons, it is a new pre-determined formula for payment of compensation to road accidents victims on the basis of age/income, which is more liberal and rational. On the basis of the said recommendation after considering the Report of the Transport Development Council, the Bill was introduced with 'a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational', i.e. Section 163-A. It is also apparent that compensation payable under Section 163-A is almost based on relevant criteria for determining the compensation such as annual income, age of the victim and multiplier to be applied. In addition to the figure which is arrived at on the basis of said criteria, the Schedule also provides that amount of compensation shall not be less than Rs.50,000/-. It provides for fixed amount of general damage in case of death such as (1) Rs.2000/- for funeral expenses (2) Rs.5000/- for loss of consortium, if beneficiary is the spouse (3) Rs.2400/- for loss of estate (4) for medical

expenses supported by the bills, voucher not exceeding Rs.15000/-. Similarly, for disability in a non-fatal accident Para 5 of the Schedule provides for determination of compensation on the basis of permanent disability. Para 6 provides for notional income for those who had no income prior to an accident at Rs.15000/- per annum. There is also provision for reduction of 1/3rd amount of compensation on the assumption that the victim would have incurred the said amount towards maintaining himself had he been alive. The purpose of this Section and the Second Schedule is to avoid long drawn litigation and delay in payment of compensation to the victims or his heirs who are in dire need of relief. If such affected claimant opts for accepting the lump-sum compensation based on structured formula, he would get relief at the earliest. It also gives vital advantage of not pleading or establishing any wrongful act or neglect or default of the owner of the offending vehicle or vehicles. This no-fault liability appears to have been introduced on the basis of the suggestion of the Law Commission to the effect that 'the expanding notions of social security and social justice envisage that liability to pay compensation must be "no-fault liability" and as observed by this Court in Ramanbhai's case (Supra), "in order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents." However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs.40,000/- which is the highest slab in the Second Schedule which indicates that the legislature wanted to give benefit of no-fault liability to a certain limit. This would clearly indicate that the Scheme is in alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay compensation without there being any long drawn litigation on an predetermined formula, which is known as 'structured formula' basis which itself is based on relevant criteria for determining compensation and the

procedure of paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever increasing motor vehicles accidents in a 'fast moving' society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on 'structured formula' basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles."

5. This Court in *New India Assurance Co. Ltd. v. Pitamber & Ors.* (MAC.APP. No.304/2009 decided on 23.01.2012) and *Pitamber & Ors. v. Nirdosh Kumar & Anr.* (MAC.APP. 345/2009 decided on 23.01.2012) while relying on earlier mentioned judgments of the Supreme Court has taken a view that there is a cap on the income of ₹40,000/- if one approaches a Court for compensation under Section 163-A of the Act.
6. Since the Appellant chose to approach the Court under Section 163-A of the Act and PW1 also deposed that the deceased was earning ₹40,000/- only, the Appellants cannot make any grievance that they should have been awarded compensation on the basis of minimum wages and that increase on account of cost neutralization factor or future prospects should have been

taken into account. This was not permissible under Section 163-A of the Act.

7. Award of compensation for the loss of love and affection is not permissible under Section 163-A. Only a sum of ₹9,500/- can be awarded under the non-pecuniary heads if one chooses to approach the Court under Section 163-A. The Tribunal's finding on this aspect, therefore, cannot be faulted.

CONTENTION (iv):

8. In *Abati Bezbaruah v. Dy. Director General, Geological Survey of India* (2003) 3 SCC 148, it was held by the Supreme Court that award of interest would normally depend upon the bank rate prevailing at the relevant time. Therefore, considering the said principle, I would not interfere in the interest rate of 7.5% PA as granted by the Tribunal.
9. The Appeal is without any merit, the same is accordingly dismissed. No costs.
10. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 31, 2012

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