

9Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			AO No.23 of 2013 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Dheeraj Joshi, Advocate, holding brief of Mr. Abhishek Verma, Advocate, for the appellant. Mr. M.K. Goyal, Advocate, for the respondent. The brief facts of the case are, that an accident is said to have chanced on 15.02.2008, wherein, it was contended by the claimants, that Dilshad Hussain, when he went to the market for purchasing certain home articles on a cycle, he met with an accident, which was caused, because of the rash and negligent driving of the motorcycle bearing Registration No.UA06E 4150. As a consequence to it, he suffered certain injuries and he was taken to the District Hospital, Moradabad, but owing to the seriousness of the injuries, he met with the sad demise. The post-mortem was conducted, and an FIR was also got registered on 08.03.2008, and G.D. entries with regards to the said accident were also made in the records of the Police Department. It was contended by the claimant, that on the date of the accident, the deceased was of 20 years of age, and he was a weaver of carpets, and he used to earn about Rs.6,000/- per month. Consequently, they have raised a claim, that they may be awarded a sum of Rupees Twenty Five Lakh. The claim, thus, raised by the claimants was by invoking the provisions contained under section 166 to be read with section 140 of the Motor Vehicle Act. The respondents filed their written statement by way of Paper No.14kha, and had denied the factum of the accident being chanced due to the rash and negligent driving of the offending motor cycle. They further contended that since the factum of negligence of

			rash and negligent driving was not proved by evidence, which has been, adduced by the prosecution witnesses, the Insurance Company couldn't have been harnessed with the liability of payment of the compensation, hence it was prayed for in the claim petition before the learned Motor Accident Claims Tribunal. The Insurance Company also, in their written statement Paper No.20kha, had contended that the claimant had failed to prove, that on the date of the accident the rider of the motor cycle was having a valid licence or since the factum of the negligence was not established, the Insurance Company cannot be made liable to pay the compensation. Accordingly, the learned Motor Accident Claims Tribunal, had framed the issues, and after formulating the issues as extracted hereunder:- (1). क्या दिनांक 15-02-2008 को समय करीब 10 बजे प्रातः स्थान ग्राम जालपुर के पास थाना भगतपुर जिला मुरादाबाद में मोटरसाइकिल नं० यू.ए. 06ई-4150 के चालक द्वारा मोटरसाइकिल को तेजी व लापरवाही से चलाते हुए दिलशाद हुसैन की साइकिल में पीछे से टक्कर मार दी जिससे दिलशाद हुसैन की मृत्यु हो गई ? (2) क्या दुर्घटना के दिन व समय मोटरसाइकिल नं० यू.ए. 06 ई -4150 का बीमा वैध था? यदि हाँ तो प्रभाव ? (3). क्या दुर्घटना की दिनांक को मोटरसाइकिल नं० यू.ए. 06ई-4150 के चालक के पास वैध एवं प्रभावी ड्राइविंग लाईसेन्स था? (4). अनुतोष ?” The Motor Accident Claims Tribunal, considered the statement recorded by the PW 1 and PW 2, which would be relevant for deciding the instant case for the reason being, that there happens to be a massive contradiction in the statement pertaining to the factum as to whether they were the actual eyewitnesses to the accident or not? PW 1, who appeared in the witness box, though, he has contended that the accident has been caused because of the negligent driving of the motorcycle, but subsequently he also in his
--	--	--	--

			cross-examination has made a statement that he has not seen the accident, hence he cannot be taken to be an eyewitness of the accident. Similar was the stand taken by the PW 2, who too recorded the statement, that when he approached the spot after the accident has taken place, and the victim was taken to the hospital for his treatment. The learned Motor Accident Claims Tribunal while deciding the stand taken by the claimants, and the evidences as adduced by the PW 1 and PW 2, has come to the conclusion while observing while deciding issue no.4, that in the claim petition preferred under section 166 to be read with 140 of the Motor Vehicle Act, the factum of the offending vehicle having been driven with rash and negligently was a burden which was to be discharged by the prosecution of the claimants who were raising the claim and if the said factum is not established, the Insurance Company couldn't have been made liable to pay any compensation. Accordingly, while concluding the award on 29.09.2012, the Motor Accident Claims Tribunal had determined and fix the liability payable by the Insurance Company of Rs.50,000/- along with the interest payable on it @ 6%. The same has been put to challenge by the claimants in the instant appeal from order praying for an enhancement. When the appeal was admitted, the notices were issued to the respondent. Respondent no.2, is represented by Mr. M.K.Goyal, Advocate. The matter had been directed to proceed ex parte as against the respondent nos.1 and 3, who despite of service of the notice have not put in appearance. After having heard the learned counsels for the parties in fact if the provisions contained under section 163A of the Act, is taken into consideration, particularly, in the context when the provisions dealing with the aspect of determination of the compensation since being a beneficial legislation to provide subsistence to the bereaved family, it has had to be logically and
--	--	--	---

			liberally interpreted in the benefit of the claimant, who have been deprived of the bread-winner of the family. Hence, the claimants, who are otherwise the villagers and rustics, they are not diligent enough and they ought to have raised a claim by invoking the provisions contained under section 163A of the Act, for the grant of the compensation on the basis of the principle of structural formula on the basis of the principle of no fault liability. But still, this Court while exercising the powers under section 173 of the Motor Vehicle Act, which is a continuation of the proceedings drawn before the learned Motor Accident Claims Tribunal even for the time being it is presumed that the claim would not be falling under section 166 to be read with 140 of the Motor Vehicle Act, then too, the Motor Accident Claims Tribunal, should have taken a pragmatic view by bringing the claim to be within the ambit of the provisions contained under section 163A of the Act, by determining the compensation payable to the claimants on the basis of the structural formula, as provided in the 2nd Schedule of the Motor Vehicle Act. If the structural formula of the 2nd Schedule of the Act, is made applicable, in view of the aforesaid principles as already observed by this Court, that the claim raised by the defendant has to be rationally construed in order to provide subsistence to the family, a rigid formula is not to be adopted. Since admittedly the accident did chanced and the deceased has met with the said demise owing to the accident, this Court while exercising my powers under section 163A of the Motor Vehicle Act, determines the compensation to be made payable to the claimants on the basis of the structural formula provided under the 2nd Schedule, by determining the compensation to be made payable by applying the multiplier of 16, after making the appropriate deduction from the income, which was accruing to the deceased @ Rs.6,000/- per month. Accordingly, after applying the structural
--	--	--	---

			formula under section 163A of the Act, the Motor Accident Claims Tribunal, is directed to re-determined the compensation and enhanced the same accordingly under section 163A of the Act, by treating the upper limit annual income accruing to the deceased of Rs.40,000/-, by applying the formula under section 163A of the Act, at the relevant point of time was applicable, and after determining the same within a period of six weeks from today, the same would be remitted to the claimants. Accordingly, the appeal from order partly stands allowed. (Sharad Kumar Sharma, J.) 07.12.2023 NR
--	--	--	--

--	--	--	--