

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.564 of 2014

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1. Munni Khatoon W/o Sheikh Nizam Permanent Resident of Village - Pawai, P.S. - Korha, Dist. - Katihar. At present residing at Village - Purabi Gharari, P.O. AND P.S. - Kharik, Dist. - Bhagalpur

.... Appellant/s

Versus

1. The National Insurance Co. Ltd., Regd. Office 3 Middle Tone Street, Post Box No. 9229 Kolkata - 700071
2. The Divisional Manager, The National Insurance Co. Ltd. Sumarit Mandal Complex, Jail Road, Tilkamanjhi, Bhagalpur
3. The National Insurance Co. Ltd. Arunachal Bhawan, Exhibition Road, Patna, At P.O. AND P.S. - Patna
4. The Administrator, The Bihar State Road Transport Corporation Ltd. Parivahan Bhawan, Birchand Patel Marg, Patna
5. Jivanshu Shekhar Singh S/o Parameshwari Singh At Gunni Kushha, P.S. - Shambhuganj, Dist. - Bhagalpur
6. Sheikh Nizam S/o Late Kalimuddin At Pawai, P.S. - Korha, Dist. - Katihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sarita Bajaj, Adv.

For the Respondent/s : Mr. Raj Kumar Vikram, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18-12-2015

Heard counsel for the appellant and the respondents.

In the present case, appellant has prayed for enhancement of compensation amount which has been awarded vide judgment and award dated 19th June 2014 and 7th July 2014 respectively in Claim Case No. 115 of 2009 submitting that the amount computed is on very lower side.

Short facts of the case is that the victim Heena Praveen, an unmarried non-earning Muslim Female, aged about 8-years died on account of accident which took place at 9:00A.M. at about 8 Kms east-south from Korha Police Station, opposite Manju Tailor on NH-31, Katihar on 19th March 2009 due to rash and negligent driving of bus bearing Regd.No. BR-10P/0339.

An application u/s 163A of the Motor Vehicles Act (for short, the 'Act') claiming Rs.2,79,500/- along with 12 per cent interest pendente lite was filed. On notice, all the O.Ps. appeared, took their respective plea and as no witness was examined, only on the basis of photo copy of documents, the court found that the victim died on account of accident. As it was a case u/s 163A of the Act, the court calculated the amount at Rs.74,500/- only.

Counsel for the appellant submits that though the victim was unmarried, the amount that has been fixed is on the lower side and it should have been on higher side.

In *Manju Devi v. Musafir Paswan and another* [2003(2) PLJR 120 (SC)] where a 13-year old boy was killed in the accident, the Hon'ble Supreme Court has granted substantial higher amount i.e. Rs.2,25,000/-. He has further placed reliance on the judgment reported in (2014)1 SCC 244 (*Krishna Gopal v. Lala*) where the Hon'ble Supreme Court calculated the amount at Rs.5,00,000/-.

Counsel for the Insurance Company has submitted that as the claim application was filed under Section 163A of the Act, as such judgments relied upon would not apply to the facts of the present case and the court below has rightly awarded the amount of compensation. He has further submitted that the claim application has been filed u/s 163A of the Act which relates to 'no fault liability' and the entire proceeding was conducted under that Section now relief cannot be granted on the strength of Section 166 of the Act and he has placed reliance on the judgment reported in 2009 ACJ 1924 (SC).

It appears that it is a fact that the proceeding continued u/s 163A of the Act and the learned Tribunal fixed the amount in the very lower side.

In (2013) 15 SCC 45 (*Puttamma v. K.L. Narayan Reddy*) while



dealing the judgment in Para-55, the Hon'ble Supreme Court has taken note of the letter dated 5th December 2012 of the Joint Secretary, Ministry of Road Transport and Highways, New Delhi where the bill was introduced to amend Section 163-A(3) of the Act by empowering the Central Government to revise the amount or the multiplier specified in the Second Schedule alternating every three years, the Bill also seeks to amend the Second Schedule so as to provide compensation for death of non-earning member a fixed compensation of Rs.1,00,000/- for children upto 5 years of age and Rs.1,50,000/- for member more than 5 years of age. It will be relevant to quote Para-55 and 58 of the judgment which are as follows:

“55. A Letter dated 5-12-2012 issued by the Joint Secretary, Ministry of Road Transport and Highways, New Delhi has been brought to our notice by Mr P.P. Malhotra. Giving reference to the present case therein, the officer has informed that the Motor Vehicles (Amendment) Bill, 2012, inter alia, to amend Section 163-A of the Motor Vehicles Act, 1988 was passed by the Rajya Sabha on 8-5-2012. The said Bill proposes to substitute Section 163-A(3) of the Act by empowering the Central Government to revise the amount or the multiplier specified in the Second Schedule after every three years and furthermore, the Bill also seeks to substitute the Second Schedule so as to provide that for death of non-earning persons, a fixed compensation of Rs 1,00,000 for



children up to 5 years of age and Rs 1,50,000 for persons more than 5 years of age. It is informed that though Section 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of Rs 1,00,000 (Rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs 1,50,000 (Rupees one lakh and fifty thousand) or the amount may be determined in terms of the Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act”.

58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific directions to the Central Government through the Secretary, Ministry of Road Transport and Highways to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of the Second Schedule as proposed or may be made by Parliament. Accordingly, we direct the Central Government to do so immediately. Till such

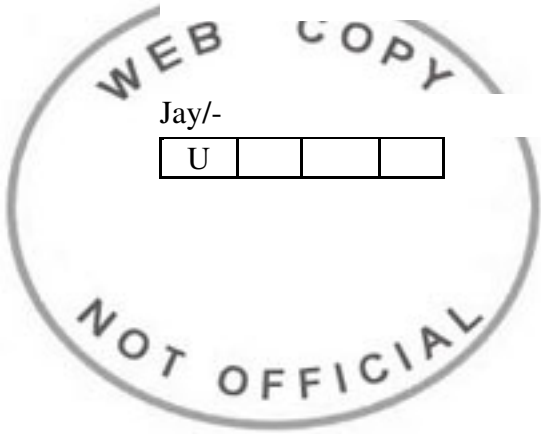
amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of Rs 1,00,000 (Rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs 1,50,000 (Rupees one lakh and fifty thousand) or the amount may be determined in terms of the Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act”.

This Court has also considered the issue in Misc. Appeal No. 311 of 2013 where the court has granted relief of Rs.5,00,000/- in case of death of a minor, placing reliance on Krishna Gopal (supra) which was a case filed u/s 166 of the Act. Admittedly, the amount is on the lower side. This Court feels that the amount that has been directed to be computed by the Hon’ble Supreme Court in case of a child within 5 years will be Rs.1,00,000/- and in case of a child of more than 5 years, it has been computed at Rs1,50,000/-.

In my considered view, as the case is u/s 163A of the Act, it will be governed by the table attached with the M.V.Act and the compensation should be at Rs1,70,000/-, including Rs.50,000/- for the other purposes, such as, funeral and for love and affairs. As such, the court below is directed to revise the compensation amount which will carry interest at the rate of 6 per cent from the

date of filing the application.

With the above observation/direction, this petition is allowed.



(Shivaji Pandey, J)