IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

954 FIRST APPEAL NO. 1387 OF 2015
WITH CIVIL APPLICATION NO.12225/2015 IN F.A.NO.1387/2015

National Insurance Co. Ltd. … **Appellant**
Through its Divisional Manager,
Aurangabad Divisional Office,
Hazari Chambers, Station Road,
Aurangabad.

VERSUS

1. Mrs. Ratnamala alias Varsha
 Vasantrao Deshmukh
 Age 32 years, Occu: House wife.

2. Miss Shreya d/o Vasantrao Deshmukh
 Minor, through natural guardian-
 Mother Respondent No.1.

3. Rukhminibai w/o Balajirao Deshmukh
 Age 57 years, Occu: Household

 Respondents 1 to 3 R/o Batala
 Tq. Bhokar, Dist. Nanded

5. Uttam Balajirao Deshmukh, … **Respondents**
 Age Major, Occu: Business, owner
 of Maruti Omni MH-26/L/2886
 R/o Venkateshwara Niwas, Sarafa
 Market, Bhokar, Dist. Nanded.

Shri A. B. Gatne, Advocate for appellant
Shri A. B. Shinde, Advocate for respondents 1 and 3
Shri V. K. Bobade, Advocate for respondent No.4

CORAM : A. M. BADAR, J.

DATE : 17th December, 2015

ORAL JUDGMENT:

. This is an appeal by original respondent No.2 Insurance Company challenging judgment and Award passed by the learned Motor Accident Claim Tribunal, Nanded in MACP No. 707 of 2008 on 02.03.2015 whereby, the Insurance Company along-with owner of the motor vehicle (Maruti Omni) are jointly as well as severally directed to pay compensation of Rs.5,70,000/- to respondents 1, 2, 3/original claimants. Respondent No.4 Uttam Deshmukh is owner of the motor vehicle involved in the accident. For the sake of convenience, the parties shall be referred to in their original capacity.

2. Brief facts, leading to the institution of the present appeal, can be summarized thus:

i. Claimants are widow, daughter and mother of deceased Vasant Balajirao Deshmukh. They lodged a claim under section 163-A of the Motor Vehicles Act, 1988 for compensation of Rs.5 lakhs on account of death of Vasant by contending that he was in employment of respondent No.1 Uttam Deshmukh on salary of Rs.3200/- per month as driver. According claimants, deceased Vasant was employed to drive motor vehicle Maturi Omni bearing registration No. MH-26L-2886 owned by respondent No.1. On 05.08.2008, deceased Vasant, while in employment of respondent No.1 Uttam was driving that motor vehicle. Respondent No.1

Uttam had directed deceased Vasant to take his friends to the place of funeral of son of Madhav Jadhav. After funeral, during the course of return journey to Bhokar, while deceased Vasant was driving the said motor vehicle, in the vicinity of village Pomnala, the accident had happened because of bad condition of the road. The motor vehicle driven by Vasant dashed against a Tree and Vasant died on the spot itself.

ii. According to claimants, the motor vehicle involved in the accident was insured with respondent No.2 Insurance Company and as such, under the structured formula in schedule II to the Motor Vehicles Act, 1988, they prayed for awarding compensation of Rs. five lakhs from respondents.

iii. Respondent No.1 Uttam Deshmukh opposed the claim petition by filing written statement at Exh.14. He admitted the fact that the deceased Vasant was driver on his motor vehicle bearing registration No.MH-26-L-2886 on monthly salary of Rs.3200/- per month. Respondent No.1 further contended that the said motor vehicle was insured with respondent No.2.

iv. Respondent No.2 Insurance Company opposed the claim by contending that deceased Vasant was not the driver on the motor vehicle owned by respondent No.1. The Insurance Company denied the fact that deceased Vasant was in employment of respondent No.1 Uttam as driver. According to the Insurance Company, deceased Vasant was driving the motor vehicle unauthorizedly and without holding valid and effective driving licence. According to Insurance Company, the motor vehicle was engaged on hire and reward basis for going to Bijur in Andharapadesh for attending funeral of son of Madhav Jadhav. That vehicle was insured as a private car. The F.I.R. reveals that one Mirza Khaisar Baig was driver on the said car but deceased Vasant unauthorizedly drove that car. With these averments, by denying each every adverse averments in claim petition, respondent No.2 Insurance company prayed for dismissal of claim petition.

v. After framing issues, the parties were put to the trial.

vi. In support of their claim, claimants examined Ratnamala/widow. In rebuttal, respondent No.2

Insurance Company examined its Administrative Officer Ritesh Sonar. After hearing the parties, the learned Tribunal, by the impugned judgment and award, had directed both the respondents to pay compensation of Rs.5,70,000/- to claimants with interest @ 9% per annum by holding that respondent No.2 Insurance company failed to prove that deceased was not holding valid and effective driving licence. It is further held that respondent No. 2 Insurance Company failed to prove breach of terms and conditions of the insurance policy.

3. I have heard Shri Gatne, learned counsel appearing for the appellant Insurance Company. He vehemently argued that averments in F.I.R. itself show that deceased Vasant was not driver on the motor vehicle owned by respondent No.1 Employer employee relationship is not at all proved. The motor vehicle was insured under “Act only policy”. He further argued that though in a claim under Section 163-A of the Motor Vehicles Act, claimants are not required to plead or establish any wrongful act or neglect or default of the owner of the motor vehicle concerned or any other person, the other-side is not precluded from establishing any wrongful act or neglect or default of driver of the

vehicle in respect of whom, the claim is made for compensation under Section 163-A of the Motor Vehicles Act,1988.

4. By relying on the judgment of the Apex Court in the matter of **National Insurance Co. Ltd. Vs. Sinitha and others**, reported in **(2012) 2 Supreme Court Cases 356,** Shri Gatne, learned counsel for the appellant contended that it was open for the Insurance Company to defeat the claim made under Section 163-A of the Motor Vehicles Act by establishing the wrongful act, neglect and default on the part of deceased Vasant. He submitted that as the motor vehicle had dashed against tree and as no other motor vehicle was involved in the accident, the accident had happened only because of wrongful act, neglect and default on the part of deceased Vasant who was driving the said motor vehicle. Therefore, in the submission of Shri Gatne, learned counsel, claimants cannot be awarded compensation on account of death of a person because of whose fault, the accident in question happened.

5. By relying on the judgment of the Hon'ble Supreme Court in the matter of **Gottumukkala Appala Narsimha Raje and others Vs. National Insurance Company Ltd. And**

another reported in **(2007) 13 Supreme Court Cases 446** Shri Gatne, learned counsel, substantiated his contention that deceased Vasant was brother of respondent No.1 Uttam and cannot be said to be employee/driver of respondent No.1 Uttam. Shri Gatne, learned counsel, further relied on the judgment of the Apex Court in the matter of **Ningama and another Vs. United India Insurance Co. Ltd.**, reported in **2009 ACJ 2020** and contended that occupant of the motor vehicle cannot be considered as third party to the contract of insurance and therefore, the learned Tribunal ought not to have granted compensation to claimants as,the deceased Vasant was occupant of the motor vehicle.

6. As against this, Shri Shinde, learned counsel spearing for respondents/claimants submitted that as the claim was under section1 163-A of the Motor Vehicles Act, 1988, even the wrongful act, neglect or default of deceased Vasant while driving the motor vehicle cannot be considered and statutory compensation as prescribed by the structured formula in Schedule II to the Motor Vehicles Act needs to be awarded to claimants. By relying on judgment of the Hon'ble Supreme Court in the matter of **United India Insurance Company Ltd. Vs. Sunil Kumar and another** reported in **(2014) I Supreme Court cases 680,**

Shri Shinde, learned counsel for claimants submitted that judgment of **Sinitha and others** (supra) is now referred to larger bench of the Supreme Court as the same was rendered without considering the earlier judgment of the Supreme Court.

7. Shri Bobade, learned counsel appearing for respondent No.4/owner argued that Vasant was paid driver of respondent No.4 as established from the evidence on record. He further argued that the policy of insurance was a package policy, covering risk of occupants of the motor vehicle.

8. I have carefully perused the record and proceedings including oral as well as documentary evidence placed on record.

9. At the outset, let us examine whether deceased Vasant who was brother of respondent No.1 Uttam- owner of motor vehicle is proved to be a driver of respondent No.1 for driving motor vehicle bearing registration No. MH-26-L-2886 involved in the accident. In this regard, claimant Ratnamala has deposed that her deceased husband Vasant was driver by profession and he was employed by respondent No.1 Uttam as a driver to drive

motor vehicle bearing registration No. MH-23-L-2886. Claimant Ratnamala further deposed that respondent No.1 Uttam was paying monthly salary of Rs.3200/- to deceased Vasant apart from Bhatta of Rs.20 per day. Claimant Ratnamala was subjected to cross examination on this aspect by learned counsel appearing for respondent No.2 Insurance Company. Claimant Ratnamala denied the suggestion that her deceased husband Vasant was not employed as driver by respondent No.1 Uttam. She denied the suggestion that deceased Vasant was travelling in the motor vehicle as owner of the motor vehicle.

10. The standard of proof required for proving the fact in a welfare legislation like provision of section 163-A of the Motor Vehicles Act, 1988 is by preponderance of probability. In the case in hand, as per contention of respondent No.2 Insurance Company, one Khaisar was the paid driver employed by respondent No.1 Uttam to drive the motor vehicle involved in the accident. In order to substantiate this contention, reliance is sought to be placed on F.I.R. Exh.25. The Insurance Company has also contended that the motor vehicle was used for hire and reward and it was given on hire to one Madhav Jadhav for attending funeral of his son. Recital in the F.I.R. Shows that Vasant Deshmukh, Vasant Patil,

driver Khaisar, Ammu, Sachin Shriram, Raju Adkine were travelling in the said motor vehicle. Recitals of the F.I.R. further shows that in the vicinity of Pomnala, driver Vasant Deshmukh drove the motor vehicle in high speed, lost the control over it and the car dashed against a tree. With the aid of this F.I.R, the Insurance Company is attempting to wash off the evidence of claimant Ratnamala to the effect that deceased Vasant was paid driver of respondent No.1 Uttam.

11. At this point, it needs to be noted that evidence of Ratnamala is substantive evidence coming on record which is showing that the deceased was paid driver on the motor vehicle involved in the accident. The F.I.R. can be used for the purpose of corroboration. Even a careful look to the F.I.R. shows that Vasant Deshmukh is addressed as driver in it. Therefore, merely because the F.I.R. is showing that after dinner Vasant Deshmukh sat on the driving seat does not mean that deceased Vasant was not paid driver of the said vehicle. If that was so, then there was no need for Vasant to be in that vehicle for attending funeral of son of Madhav Jadhav. As evidence of Ratnamala on the aspect of employer employee relation between deceased Vasant and his brother respondent No.1 Uttam remain unshattered, the

same needs to be accepted.

12. In the matter of **Gottumukkala Appala Narsimha Raje and others** (referred supra), in a claim under Workmen's Compensation Act, the Hon'ble Supreme Court came to the conclusion that stand taken by claimants therein that husband was workman of wife is far fetched. Para 22 and 23 of the said ruling reads thus:

> 22. In our considered opinion, it is wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract. We have no doubt in our mind that for the purpose of proceeding under the 1923 Act, only the appellants have concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a "workman" under her appears to be a far-fetched one.
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> 23. Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide."

This case proceeded on its own facts. However in the case in hand, there is specific evidence of Ratnamala/claimant to the effect that her deceased husband was working as paid driver of respondent No.2.

13. Having held that evidence on record establishes employment of deceased Vasant with respondent No.1 Uttam as paid driver on the motor vehicle owned by him, now let us examine whether default, wrongful act or neglect in driving motor vehicle can be considered as an excuse for not paying compensation to claimants under structured formula as per provisions of section 163-A of the Motor Vehicles Act, 1988. In the matter of **Sinitha and others** (referred supra) this aspect was considered by the Hon'ble Supreme Court and paragraphs 27, 30, 33 of the said ruling need reproduction. They read thus:-

> "**27.** Thus, in our view, it is open to a concerned party (owner or insurer) to defeat a claim raised under Section 163-A of the Act, by pleading and establishing anyone of the three "faults", namely, "wrongful act", "neglect" or "default". But for the above reason, we find no plausible logic in the wisdom of the legislature, for providing an additional negative bar precluding the defence from defeating a claim for compensation in Section 140 of the Act, and in avoiding to include a

similar negative bar in Section 163-A of the Act. The object for incorporating sub-section (2) in Section 163-A of the Act is, that the burden of pleading and establishing proof of "wrongful act", "neglect" or "default" would not rest on the shoulders of the claimant. The absence of a provision similar to sub-section (4) of section 140 of the Act from Section 163-A of the Act, is for shifting the onus of proof on the grounds of "wrongful act", "neglect" or "default" onto the shoulders of the defence (owner or the insurance company). A claim which can be defeated on the basis of any of the aforesaid considerations, regulated under the "fault" liability principle. We have no hesitation therefore to conclude, that Section 163-A of the Act is founded on the "fault" liability principle.

30. All in all, one cannot lose sight of the fact, that claims made under Section 163-A can result in substantial compensation. When taken together the liability may be huge. It is difficult to accept, that the legislature would fasten such a prodigious liability under the "no-fault" liability principle without reference to the "fault" grounds. When compensation is high, it is legitimate that the insurance company is not fastened with liability when the offending vehicle suffered a "fault" ("wrongful act", "neglect", or "defect") under a valid Act only policy. Even

the instant process of reasoning, leads to the inference, that Section 163-A of the Act is founded under the "fault" liability principle.

33. From the preceding paragraphs (commencing from paragraph 22), 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 163-A 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 163-A 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.

14. It is thus clear from this judgment that the Hon'ble Supreme Court has held that section 163-A of the Motor Vehicle Act, 1988 is founded on the “fault liability” principle and the object of the legislature in doing so was to permit the defence to defeat a claim for compensation raised under Section 163-A of the Motor Vehicles Act by pleading and establishing wrongful act, neglect of default. At this juncture, it is apposite to note one more judgment of the Hon'ble Supreme Court, in the case of **Deepal Girishbhai Soni Vs. United India**

Insurance Co., reported in **2004 (5) SCC 385.** This aspect was under consideration of three Judges Bench of the Hon'ble Supreme Court. In paragraph 66 of the said judgment it is held thus:

> *"We may notice that Section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, "under the provision of the Act", "provisions of this Act", "under any other provisions of this Act" or "any other law or otherwise". In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non-obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of*

an exception to Section 166 and the concept of social justice has been duly taken care of."

Thus, the Supreme Court, in this judgment, has categorically held that Section 163-A of the Motor Vehicles Act, 1988 covers the case, where even negligence is on the part of victim. As held by the Supreme Court, the social justice has been taken care of by enacting provisions of Section 163-A of the Motor Vehicles Act.

15. Shri Shinde, learned counsel appearing for respondents/claimants, as such, has placed reliance on **United India Insurance Company Ltd. Vs. Sunil Kumar and another** (supra), wherein, the Hon'ble Supreme Court has referred to the Judgment of **Deepal Girishbhai Soni** (Supra) and has held that-

> "10 The three Judge Bench in Deepal Girishbhai Soni also held that Section 163-A has an overriding effect and provides for special provisions as to payment of compensation on structured formula basis. Sub- section (1) of Section 163-A contains a non-obstante clause, in terms whereof the owner of the motor vehicle or the authorized 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. The Court also held that the scheme of the provisions of Section 163-A and Section 166 are distinct and separate in nature. In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non-obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of. The above-mentioned Three-Judge Bench judgment was not placed before the learned Judges who decided the Sinitha's case (supra)."

In the matter of **Sunil Kumar and another** (supra) the Division Bench of the Supreme Court expressed disagreement with the reasoning in the matter of **Sinitha's** case (supra) and consequently, reference is made to a larger bench.

16. The Division Bench of this Court has also

considered Section 163-A of the Motor Vehicles Act, 1988 in the matter of **Latabai Bhagwan Kakade And Ors. Vs Mohammed Ismail Mohd. Saab Bagwan** reported in **I (2002) ACC 407**, and it is held thus:

> "19. In the case of Ramdevsingh V. Chudasma v. Hansrajbhai V. Kodala , a Division Bench of Gujarat High Court has categorically held that under Section 163-A the owner or insurance company cannot plead and prove negligence or default of the victim. The Division Bench observed:
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> "From the above differences in sections 163-A and 166 of the Motor Vehicles Act, the intention of the legislature becomes clear. Provision for compensation is a benevolent object of the legislature. To achieve that benevolent object, which had a number of hurdles to be crossed, the legislature has introduced Section 163-A in the Act. The fact remains that by the use of motor vehicle when the accident takes place the victim is either injured or may be fatal. If a breadwinner of the family is taken away or if he is made crippled, the family of the dependents are required to be continued to be maintained from the next day and thereafter. If the accident is fatal one and breadwinner in the family is the victim how the members of the family/dependents will get their bread? Does a solace satisfy the

hunger or need of the person? Making necessary provision in the legislation like Section 166 has proved to be solace only as long drawn litigation takes place. To avoid the same and to provide instant and immediate relief as it appears from the Statement of Objects and Reasons and the report of the Committee, Section 163-A is introduced by the legislature to provide for immediate relief regardless of fault. This deviation from the common law is only with a view to adopt or reach the human need of the society. If we read that the owner of the vehicle or the insurance company is entitled to defend the claim by advancing proof of wrongful act or neglect or default of the victim as it is not specifically prohibited in Sub-section (2), then again, we are falling in the trap which the legislature has tried to avoid or get rid thereof of Section 166 of the Act. Introduction of no fault is as a part of social justice. For the purpose of achieving social justice, legislature has departed from usual common law. An additional benevolent provision is added in a beneficial legislation for award of compensation..."

xxx xxx xxx "The question of negligence is not required to be gone into. There be negligence or not but the involvement of the vehicle makes them liable. In substance, it can be said that the scope of Section 163-A is that as soon as the accident occurs, it is signing of the blank cheque by the owner of the vehicle drawn on the insurer of the vehicle endorsed in favour of the claimants to be filled in by the Tribunal bearing in mind the structure provided in the Second Schedule of the Motor Vehicles Act. On receiving the necessary information, the Tribunal shall decide the multiplier and come to the conclusion about the income and a figure will be filled in the cheque, meaning thereby, award may be passed. This discharges the social responsibility of the State. When it was before the legislature to add or not Section 163-A it has been made clear from the object that an adequate compensation to the victim of road accidents without going into long drawn procedures be provided. Hence, in the object, they have used the word adequate, while in the Act in Section 168 the word 'just' is provided. The word 'adequate' was used by the legislature in its 'Statement of Objects and Reasons' but did not transgress further in the section incorporated by the legislature. Instead of either just or adequate compensation be provided, legislature predetermined the same and placed in the statute book the Second Schedule for the same. As we have discussed earlier, 'predetermined' means decided in advance. Therefore, the question of it being 'just' or 'adequate' does not remain open or at large for the Tribunal to decide and has given an example at that stage. The legislature has behaved in a specific manner and based on experience and catena of decisions of High Courts and Apex Court has introduced a Schedule providing for a predetermined compensation. For an application under Section 163-A, forum is provided under Section 165 of the Act but procedure is not prescribed as it is one prescribed under Section 168 when an application under Section 166 is filed. This suggests that a summary procedure is contemplated for award on the basis of predetermined compensation provided in Schedule. Central Government has made it open vide Sub-section (3) of Section 163-A to amend the same to keep pace with the varying cost of living in the country. On a proper reading of Section 163-A, an application made thereunder is required to be decided on affidavits and the documents annexed thereto. There will be no scope for any long drawn trial as there would be no issues which need to lead evidence by either of the parties. Vide Sub-section (2) of Section 163-A the question of negligence will not be an issue for deciding the said application. So far as the question of income is concerned, the same can be decided on affidavits supported by documents if there are any. Income would be personal knowledge of the claimants having necessary evidence to support the same. So far as the question of age is concerned, it will be also within the special knowledge of the claimants and the same can be supported by them by documentary evidence be it by opinion of doctor who performs the post-mortem. So far as the injuries are concerned there will be necessary medical evidence to support the same. Such material evidence may be supported by affidavit of the doctor. Therefore, in our opinion, in view of the provisions of Section 163-A there is no scope for any trial and recording of evidence is intended to be dispensed with and can be dispensed with if the requirements of Section 163-A are satisfied.

20. In Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala, after a detailed examination of the scheme of Section 163-A the Apex Court observed as under:

Lastly, for interpretation and construction of Section 163-A, we would refer to its heading and language. The heading is 'Special provisions as to payment of compensation on structured formula basis'. At the outset, we would make it clear that for interpretation of the words of section the language of the heading cannot be used to control the operation of the section, but at the same time being part of the statute it prima facie furnishes some clue as to the meaning and purpose of section [Re: K.P. Varghese v. I.T.O. (1982) 1 SCR 629 at 647]. In case of ambiguity or doubt heading can be referred to as an aid in construing the provision. This heading indicates that the legislature has envisaged special provision for

> paying compensation on structural formula basis instead of paying the compensation by long drawn litigation after establishing fault liability. Section also begins with non obstante clause 'notwithstanding anything contained in this Act or any law for the time being in force'. This would mean that it is not subject to any adjudication of right to claim compensation as provided under the Act. The owner of the motor vehicle or the authorised insurer would be liable to pay compensation due to accident arising out of the use of motor vehicle.
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> In view of the foregoing discussion and in the light of the above observations of the Supreme Court we have no hesitation in rejecting the contention that it would be open for the insurance companies or owners of the vehicles even under Section 163-A to prove negligence or contributory negligence on the part of the victim.

17. The Division Bench of this Court, as such, has rejected the contention that it would be open for the Insurance Company or owner of vehicles even under Section 163-A to prove negligence or contributory negligence on the part of victim. As such, it cannot be said that as the accident had happened because of fault or negligence on the part of deceased Vasant in driving motor vehicle,

claimants cannot be awarded compensation.

18. Shri Gatne, learned counsel appearing for the Insurance Company has placed reliance on the judgment of the Supreme Court in the case of **Ningama and another** (supra) in order to point out that deceased was not party to the contract of Insurance. However, it is proved on record that deceased was a paid driver of respondent No.2 and as such, his risk was covered as per section 147 of the Motor Vehicles Act. Deceased Vasant was driving motor vehicle at the time of accident in the capacity of employee of owner. As such, judgment in the matter of **Ningama and another** (supra) cannot be made applicable to this case.

19. On behalf of appellant Insurance Company, it was contended that the motor vehicle was used for hire and reward. It was given on hire to Madhav Jadhav. Such suggestions put to claimant Ratnamala are categorically denied by her. There is no evidence in order to come conclusion that the motor vehicle was used for hire and reward.

20. In order to demonstrate that deceased Vasant was not a paid driver on the motor vehicle, the insurance

company attempted to rely on certified copies of evidence of witnesses in some other claim petitions. Attempt is also made by relying these certified copies to show that the deceased himself was negligent in driving the motor vehicle. However, certified copies of deposition in some other claim petition cannot be relied on to jettison the trustworthy evidence of claimant Ratnamala.

21. In view of foregoing observations, it needs to be held that the learned Tribunal has correctly held that the deceased was paid driver of respondent No.1 Uttam and he died in the course of his employment as driver on the motor vehicle owned by respondent No.1. The claim under section 163-A of the Motor Vehicles Act, as such, is perfectly maintainable as fault of the deceased in driving motor vehicle cannot be inquired into and the same is of no consequence while awarding compensation to claimants.

22. Now, let us examine whether the learned Tribunal has rightly awarded compensation as per structured formula. The Tribunal has considered notional income of at Rs.3000/- per month. Then by rightly deducting 1/3rd income towards personal expenses considering number of dependents, assessed monthly dependency at Rs.2000/-

(Rs.24000/- p.a.) and by applying multiplier of 17, considering age of deceased at the time of accident as 28 years, granted compensation Rs.4,08,000/- on account of loss of dependency. The learned Tribunal is perfectly justified in assessing loss of dependency. This finding needs no interfere.

23. Now, it is seen that in para 13 of its Judgment the learned Tribunal, with the reason that claimant No.1 is widow, has awarded compensation of Rs. one lakh to her towards consortium. Similarly Rs.25,000/ each came to be awarded to claimant No.2- Minor daughter and claimant No. 3- mother towards loss of love and affection. Similarly an amount of Rs.12,000/- came to be awarded towards funeral expenses. This award is not in consonance with the provisions of Second Schedule to the Motor Vehicles Act, 1988. As per provisions of Second Schedule, funeral expenses can be granted up to the extent of Rs.2,000/- and loss of consortium can be Rs.5,000/-. No amount can be awarded towards loss of love and affection. Hence, by setting aside the award of Rs. One lakh towards loss of consortium and award of Rs.25,000/- each towards loss of love and affection to claimants 2 and 3 and that of Rs.12,000/- towards funeral expenses, claimants needs to be awarded Rs.2,000/-

towards funeral expenses, and Rs.5,000/- towards loss of consortium. As such claimants are entitled for total compensation of Rs. 4,15,000/- (Rs.408000+5000+2000). Rest of the award is in consonance with the structured formula found in second schedule and as such, needs no interference.

24. In the light of foregoing discussion, I proceed to pass the following order:

i. The appeal is partly allowed with no order as to costs.

ii. The impugned judgment and award is modified as under:-

(a) Respondents 1 and 2 are jointly as well as severally directed to pay compensation of Rs.4,15,000/- (Rupees four lakhs fifteen thousand only) to claimants.

(b) Rest of the award including the interest is confirmed.

(c) Order of Apportionment and disbursement of compensation made by learned tribunal is confirmed.

(d) The amount if any deposited in this Court be transmitted to the Motor Accident Claim Tribunal, Nanded for apportionment and disbursement as per the Award.

iii. First appeal is accordingly disposed of. Pending Civil applications as such stand disposed of.

(A. M. BADAR, J.)

JPC