

1. Dnyaneshwari w/o Bibhishan Munde
Age 34 years, Occu: Household
 2. Balu s/o Bibhishan Munde
Age 18 years, Occu: Education
 3. Manjusha d/o Bibhishan Munde
Age 16 years (Minor)
 4. Shivkanya d/oBibhishan Munde
Age 13 years (minor)
 5. Shripati s/o Tukaram Munde
Age 59 years, Occu: Nil
 6. Satyabhama w/o Shripati Munde
Age 55 years,Occu: Nil
- ... Appellants**
(Org.Claimants)
- All R/o at present Bhumtmugali
Tq. Nilanga, Dist. Latur

1. The United India Insurance Co.
Through its Manager,
Branch Latur, Tq.& Dist. Latur
2. Feroz s/o Jindasab Mujawar ... **Respondents.**
Age 30 yeas, Occu: Owner
R/o Kasar Shirsi Tq. Nilanga
Dist. Latur

CORAM : A. M. BADAR, J.

1/10

ORAL JUDGMENT:

. Initially, none appeared for respondents despite service of notice. As such, this court was constrained to issue notice of final disposal vide order dated 19.08.2015. As such, in response to this, respondent No.1 is appearing through its learned counsel. None appears for respondent No.2 despite service of notice of final disposal. Hence, the matter is taken up for final hearing.

2. Heard. **Admit.**

3. This is an appeal under section 173 of the Motor Vehicles Act at the instance of original claimants, challenging judgment and order dated 31.01.2011 passed by the learned Motor Accident Claim Tribunal, Nilanga in MACP No. 03/2010. Present respondent No.1 was original respondent No.1 in the said claim petition. Similarly, respondent No.2 was original respondent No.2 in the said claim petition. For the sake of convenience, the parties shall be referred to in their original capacity.

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

i. Claim under section 163-A of the Motor Vehicles Act,

1988 was filed by present appellants/claimants on account of death of Bibhishan Munde in an accident arising out of use of motor vehicle. It is case of claimants that Bibhishan (since deceased) was traveling on motorcycle bearing registration NO. MH-24/H/2874 along-with Babu Shripati Munde and Shrimant Narayan Ghuge. While passing from Renapur to Wanjarwadi, a Motor Car bearing registration No.MH-12-V-0047 came from Latur side and dashed the motorcycle causing death of Bibhishan Munde.

ii.Claimants averred that deceased Bibhishan was earning income of Rs.3000/- per month by working as driver. The car was insured with respondent No.1 and owned by respondent No.2 at the time of accident in question. With this averments, under the special provisions as to payment of compensation on the basis of structured formula, claimants, being legal representatives of deceased Bibhishan Munde, prayed for compensation.

iii. Respondent No.1 Insurance Company resisted the claim by denying each and every adverse averment and contended that respondent No.2 committed breach of terms and conditions of policy, dis-entitling him

from indemnification by the Insurance company.

- iv. Respondent No.2 owner also denied each and every adverse averment and contended that motorcycle was driven in rash and negligent manner, causing accident in question, by suddenly coming in front of the Car, in an attempt to cross the road.
- v. On the basis of rival pleadings, issues were framed and parties went for trial.
- vi. In support of their claim, claimants adduced evidence of claimant No.1 Dnyaneshwari widow of Bibhishan. Reliance was also placed on police papers in respect of the accident. After hearing the parties, the learned Tribunal came to the conclusion that motorcyclist was negligent in driving and therefore contributed equally in happening of the accident. By assessing income of deceased Bibhishan at Rs.18,000/- per annum, 1/5th thereof came to be deducted on account personal and living expenses. Compensation to the tune of Rs.1.68 lakh was assessed. After deducting share of 50% of the motorcyclist in causing the accident, 50% compensation i.e.Rs.84,000/- came to be awarded.

Rs.15,000/- was awarded towards funeral charges, loss of love and affection, loss of consortium etc. Total compensation of Rs.99,000/- (Rs.84,000 + 15,000) came to be awarded to claimants by the learned Tribunal.

5. Shri Jadhav, learned counsel for the appellants submitted that there is no contributory negligence of the motorcyclist. Learned Tribunal failed to consider the income of deceased Bibhishan. Per contra, Shri Bodade, learned counsel appearing for the Insurance company submitted that claim was under section 163-A of the Motor Vehicles Act, 1988 and as such, the learned Tribunal correctly decided the same by awarding proper compensation to claimants.

6. Having heard the learned counsel appearing for the respective parties, I am of the view that impugned judgment and award cannot be sustained for more than one reason. It needs to mention here that the learned Tribunal was alive to the fact that the claim was under section 163-A of the Motor Vehicles Act, as seen from the opening para of its judgment and award. It hardly needs to mention that as far as claim under section 163-A is concerned, claimants in such proceedings are not

required to plead and prove that the death was caused due to wrongful act or neglect or fault of owner of the vehicle or any other person. In such claim, if accident is proved to have happened or occurred arising out of use of motor vehicle, claimants are entitled for compensation as per structured formula provided in Schedule II of the Motor Vehicle Act. This special provision is available to a distinct class of persons whose annual income does not exceed Rs.40,000/-. Provisions of this Section were considered by the Hon'ble Supreme Court in the matter of **Deepal Girishbhai Soni Vs. United India Insurance Co.**, reported in **2004 (5) SCC 385**. In paragraph 66 of its report, the Hon'ble supreme Court observed 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."

7. It is thus clear that section 163-A of the Act covers where even negligence is on the part of the victim. It is by way of an exception to section 166 of the Motor Vehicles Act, 1988 and concept of social justice has been duly taken care of under this provision.

8. Similar view is taken by this Court in the matter of **Latabai Bhagwan Kakade And Ors. vs Mohammed Ismail Mohd. Saab Bagwan** reported in **I (2002) ACC 407**, wherein it is held that negligence of victim cannot be considered while examining claim for compensation under section 163-A of the Motor Vehicles Act, 1988.

9. In the wake of this legal position, the learned Tribunal appears to have committed error of law since inception. Issue No.2 framed by the learned Tribunal is to the effect that whether claimants prove that the said accident occurred due to negligence of car driver bearing No.MH-12/V-0047. Then in the reasoning para, learned tribunal has observed that "... as a peculiar case, I would like to discuss whether car driver can really be held responsible for inviting the accident". Thereafter, the learned Tribunal made an exercise of finding fault of the motorcyclist causing accident. Such exercise is foreign to the claim under section 163-A of the Motor Vehicles Act.

10. In para 14, of its judgment, learned tribunal observed thus:

"It is not the case that motor-cyclist was cross the road from public way which meets to the main road, and the position is clear that the motor-cyclist was passing through main road, and he had abruptly taken turn towards right side, and thus, taking turn by motor cyclist cannot be expected to be taken care of by the car driver who was also passing in the same direction. So, at this stage, I would like to mention that though negligence of vehicle owners cannot be given much importance

as contemplated under section 163-A of the Motor Vehicles Act, 1988; still negligence of motor cyclist has to be taken into consideration. At the most, the motor cyclist can be considered responsible for contributory negligence in order to reduce liability of the car driver."

With this observation, in para 19 of its judgment, the learned Tribunal gave finding that liability of motorcyclist come to 50% and deducted 50% amount of compensation payable to claimants on account of contribution of motorcyclist in happening of the accident. This ought not have been done by the learned Tribunal as the claim was under section 163-A of the Motor Vehicles Act, 1988. Apart from this, the Tribunal has also ignored settled position of the Law that in case of of joint tortfeasor, the claimant can claim compensation from any one of them.

11. Be that as it may, even computation of compensation by the learned Tribunal is not in consonance with provisions of Schedule II of the Motor Vehicles Act, 1988. Rs.15,000/-is assessed and awarded for expenses towards funeral,loss of consortium, etc. when the structured formula does not provide for this much amount. Suffice to say that at any rate, the award cannot be

justified. It suffers from serious error of law, warranting remand of the matter to the learned Tribunal for deciding afresh as per provisions of Section 163-A of the Motor Vehicles Act, 1988. In the result, the appeal is allowed.

12. Judgment and award of the learned Motor Accident Claim Tribunal, Nilanga is quashed and set aside.

13. Parties are relegated to the learned Motor Accident Claim Tribunal, Nilanga. They are permitted to adduce fresh evidence, if any.

14. Learned Tribunal is requested to decide the claim petition within a period of six months from the date of communication of this order.

15. Claimants as well as respondent No.1 are directed to appear before the learned Tribunal on 6th January, 2016. The Tribunal to secure presence of Respondent No.2 by issuing notice of hearing.

16. No order as to costs.

17.. First appeal is accordingly disposed of.

(A. M. BADAR, J.)

JPC