$-19

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

Decided on: 24th February, 2015

\+ **MAC.APP. 110/2014**

KUSUM & ANR. ..... Appellants

Through: Mr. B.P. Saxena, Adv.

versus

RELIANCE GEN INS CO LTD & ORS. ..... Respondents

Through: Mr. A.K. Soni, Adv. for R-1.

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

J U D G M E N T

G. P. MITTAL, J. **(ORAL)**

1. The appeal is for enhancement of compensation of Rs.2,97,837/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Akash, who died in a motor vehicular accident which occurred on 07.09.32010.

2. The only ground urged by the learned counsel for the Appellants is that since the Claim Petition was filed under Section 163-A of the Motor Vehicles Act, 1988 (the M.V.Act), the multiplier ought to have been taken as per Schedule-II, appended to the M.V. Act.

3. In *New India Assurance Company limited v. Pitamber & Ors., MAC APP.304/2009, decided on 23.01.2012,* I had the occasion to consider the question whether compensation in a petition under Section 163-A of the Motor Vehicles Act, 1988 (the M.V. Act) has to be awarded strictly in accordance with the Second Schedule appended to Section 163-A of the M.V. Act. I referred to the judgments of the Supreme Court in *Deepal Girishbhai Soni v. United India Insurance Company Limited, (2004) 5 SCC 385; Oriental Insurance Company Limited v. Meena Variyal (2007) 5 SCC 428* and *Minu B. Mehta v. Balkrishna Ramchandra Nayan & Anr., (1977) 2 SCC 441* and held that in a petition under Section 163-A of the M.V. Act, compensation has to be only in accordance with the Second Schedule. Para 23 of the report in *Pitamber & Ors. (supra)* is extracted hereunder:-

> *"23. In the later judgment of the Supreme Court in Oriental Insurance Company Limited v. Meena Variyal (2007) 5 SCC 428 while referring to Minu B. Mehta v. Balkrishna Ramchandra Nayan & Anr., (1977) 2 SCC 441, it was held that a person can apply to the Tribunal to claim compensation in terms of the Schedule without proving the negligence or default on the part of the*

driver/owner of the offending vehicle and in other cases, the Claimants had to approach the Court under Section 166 of the Act and were necessarily under obligation to prove the negligence. Para 27 of the report is extracted hereunder:-

"27. We think that the law laid down in Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr. (supra) was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A *of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under Sub-section (1) of Section* 163-A *of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section* 166 *of the Act or under Section* 163-A *of the Act. Once they approach the Tribunal under Section* 166 *of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section* 163-A *of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."*

4. Thus, there is no manner of doubt that in a petition under Section 163-A of the M.V. Act, income of the victim, multiplier, deduction and non-pecuniary damages have to be in accordance with Second Schedule to the M.V. Act.

5. Consequently, the multiplier ought to have been 17 instead of 11, as adopted by the Claims Tribunal.

6. The loss of dependency on multiplies of 17 comes to ₹4,53,333/- (40,000/- x 2/3 x 17).

7. In addition, the Appellants are entitled to a sum of ₹2,000/- towards loss of love and affection and ₹2,500/- towards funeral expenses.

8. The overall compensation thus, comes to ₹4,57,833/-.

9. The compensation is hence enhanced by ₹1,59,996/- which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.

10. Respondent no.1, Reliance General Insurance Company Limited is directed to deposit the enhanced compensation along

with proportionate interest within six weeks, failing which the Appellants shall be entitled to interest @ 12% per annum from the date of this judgment.

11. The compensation as awarded by this Court shall be released/held in fixed deposit in terms of the orders passed by the Claims Tribunal.

12. Pending applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 24, 2015
vk