

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO.267 of 2001
(with Civil Application No.11034 of 2014)**

The New India Assurance Co.Ltd. having it's registered Office and Head Office at 87, M.G.Marg, Fort, Mumbai-1, and having Divisional Office at Aurangabad and Branch office at Jalgaon.

**...APPELLANT
(Ori.Respondent No.3 & 5)**

VERSUS

1. Smt. Vaishali w/o Somnath Dusad (Deleted)
2. Niket s/o Somnat Dusad, Age 10 years,
minor u/g of his grand mother
claimant No.5.
3. Yesh s/o Somnath Dusad (Deleted)
4. Anilkumar s/o Balaram Dusad,
Age 58 years, Occ: Business,
r/o Ajanta, Tq.Sillod,
Dist. Aurangabad.
5. Smt.Chandrakalabai w/o Anilkumar Dusad,
Age 50 years, Occ. Household,
r/o as above.
6. Sk.Mushtaq s/o Sk.Ahemad,
Age 30 years, Occ. Driver,
r/o Bharadi, Dist.Aurangabad.
- (7. Lalit Shobhraj Jain,
Age 40 years, Occ. Business,
r/o "Pitruchaya" building,
Nehru Chowk, Aurangabad.

8. Mukesh s/o Anilkumar Dusad, Age Major, Occ. Business, r/o Ajanta, Tq. Sillod, District Aurangabad.)

(Appeal is dismissed as against Respondent nos. 7 and 8, as per Court's order dated 23.02.2016 in CA No. 11034/2014)

**...RESPONDENTS
(Ori.Claimants)**

Mr. D.S.Kulkarni, Adv., h/f Mr. S.L.Kulkarni, Adv., for the appellant.

Mr. R.V.Gore, Adv./, for respondent no.2.

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CORAM: P.R.BORA, J.

DATE : March 29th, 2016.

ORAL JUDGMENT:

1. The appellant has filed the present appeal taking exception to the judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad, in MACP No.412/1996 on 11.4.2001.

2. The award passed by the Tribunal has been challenged mainly on the ground that the petition under Section 163A of the Motor Vehicles Act (hereinafter referred to as "M.V. Act"), filed by the respondents / claimants itself was not maintainable in view of the fact that income of the deceased as stated in the said petition was Rs.67,100/-.

3. The original claimants have filed the aforesaid Civil

Application with a prayer that the claimants be permitted to convert the original claim petition filed under the provisions of Section 163A of the M.V. Act into a petition under Section 166 of the said Act.

4. It is not in dispute that the petition was filed under Section 163A of the M.V. Act. The income of the deceased is admittedly stated to be Rs.67,100/- per annum in the said petition. It is thus evident that the petition filed under Section 163A was apparently not maintainable. Proceedings under Section 163A being a social security provision providing for a distinct scheme only those whose annual income is upto Rs.40,000/- can take benefit thereof; all other claims are required to be determined in terms of Chapter XII of the Act.

5. Realizing the aforesaid aspect, the original claimants seems have preferred the aforesaid Civil Application in the present appeal seeking permission to convert the original claim petition into a petition under Section 166 of the said Act. Learned Counsel appearing for the respondents / claimants submitted that such course is permissible and to buttress his said contention has relied upon the judgment of this Court in the case of **New India Assurance Co.Ltd. Vs. Ashabai Kalyan Kothi and ors. (2008(6) Bom.C.R. 89)**.

6. Learned Counsel for the appellant Insurance Company has fairly submitted that in view of the law laid down in the judgment relied upon by the learned Counsel for claimants, this Court may pass appropriate orders. Learned Counsel has, however, further submitted that in case the applicants are allowed to convert the claim petition under

Section 166 of the said Act, the Insurance Company shall not be saddled with the burden of interest of the intervening period i.e. from the date of original award till the date of conversion of the petition under Section 166 of the M.V. Act.

7. In the case of **New India Assurance Co.Ltd. Vs. Ashabai Kalyan Kothi** (cited supra), the appellant Insurance Company had challenged the award passed by the Motor Accident Claims Tribunal under Section 163A of the M.V. Act on the ground that the petition itself was not maintainable under Section 163A of the said Act for the reason that the income of the deceased, as stated in the said petition, was admittedly more than Rs.40,000/- per annum. During the course of hearing of the said appeal, a prayer was made on behalf of the original claimants that in the event the High Court takes a view that the claim petition under Section 163A of the M.V. Act was not maintainable, the claimants may be allowed to convert the claim petition into a petition under Section 166 of the said Act. The prayer so made was accepted by the High Court and the claimants were allowed to convert the claim petition filed by them under Section 163 of the M.V. Act into a claim petition under Section 166 of the said Act. While accepting the request of the Original Claimant, the High Court has made following observations in paragraph No.15 of the judgment, which reads thus:

"15. The Tribunal as well as this Court always has a power to allow the conversion of a claim petition under section 163-A into a claim petition under section 166 of the said Act. The procedure is always a handmaid of justice. We are dealing with a beneficial legislation which provides for payment of compensation to the legal representatives of the victims of an accident involving a

motor vehicle. The power of the Tribunal or this Court to allow conversion of the claim petition is discretionary. While exercising the discretion of allowing conversion, no doubt, the conduct of the claimants will be relevant. In a given cases, such as the case before the Division Bench in the case of Rukhminibai (supra), the Court can refuse to exercise the discretion. In the present case, the conduct of the claimants is not such that the discretion should not be exercised in their favour. The claim petition was filed through an Advocate after setting out a specific case that income of the deceased was Rs. 4000/-p.m. The said stand was reiterated by the first respondent in the Affidavit in lieu of examination-in-chief. It cannot be said that the action of invoking section 163-A was deliberate. The claimants have obviously acted as per legal advice. In my view this is a case where the claim petition under section 163-A should be allowed to be converted into a petition under section 166 of the said Act."

8. In view of the observations as aforesaid made in the judgment cited supra, and the conclusion arrived at, I do not see any reason for not adopting the same course even in the instant matter. I am, therefore, inclined to allow the Civil Application (No.11034/2014) filed by the Original Claimants. It has to be stated that the M.A.C.P.No.412 of 1996 filed by the original claimants under Section 163A of the M.V. Act was not maintainable. The impugned award, therefore, cannot be sustained.

9. In so far as the contentions raised by the learned Counsel appearing for the appellant Insurance Company as regards to the award of interest in the event the petition is allowed to be converted into a petition under Section 166 of the Act is concerned, the Tribunal will certainly note that the original claimants had filed a petition which was not maintainable and subsequently, the said petition was allowed to be converted into a petition under Section 166 of the said Act.

While passing the final award, the Tribunal is bound to consider this factual aspect while exercising discretionary powers under Section 171 of the Act relating to the award of interest.

10. It is brought to my notice that the appellant Insurance Company has deposited the entire amount of the award together with interest accrued thereon; more particularly, the amount of Rs.9,24,565/- in this Court. It is further brought to my notice that out of the said amount the original claimants were permitted by this Court to withdraw the amount of Rs.1,25,000/- and accordingly the said amount has been withdrawn by the original claimants / applicants.

11. In the above circumstances, the following order is passed:

ORDER

a) The impugned judgment and award dated 11/4/2001 passed in M.A.C.P.No.412 of 1996 by the Motor Accident Claims Tribunal, Aurangabad, is quashed and set aside and the M.A.C.P. No.412/1996 is restored.

b) On an application being made by the claimants, the learned Member of the Tribunal will allow the claimants to make necessary amendment for converting the claim petition under Section 163A into a petition under Section 166 of the Motor Vehicles Act.

c) It would be open for the respondents in the claim petition to file written statement or supplementary written statement by adopting the earlier written statement which is already there on record.

- d) The claim petition shall be decided expeditiously. All the contentions of the parties, including various contentions raised by the appellant in this appeal, are kept open.
- e) The appeal and the Civil Application are allowed in above terms with no order as to costs.
- f) Out of the amount deposited by the Insurance Company in this Court, the Original Claimants have withdrawn the amount of Rs.1,25,000/-. It will be open for the appellant Insurance Company to withdraw the balance amount.
- g) The amount of Rs.1,25,000/- withdrawn by the original claimants shall be adjusted while making final award in the Motor Accident Claim Petition.
- h) Pending Civil Applications, if any, stand disposed of.
- i) The parties to appear before the Motor Accident Claims Tribunal, Aurangabad, on 11th April, 2016.
- j) R & P received from the Motor Accident Claims Tribunal, Aurangabad, may be returned to the Tribunal forthwith.

(P.R.BORA)
JUDGE

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