

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**FAO No.3221 of 2004 (O&M)
Date of Decision: October 07, 2016.**

Radha Devi and others

.....APPELLANT(s).

VERSUS

Parkash Sawami and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Dinesh Singh Rawat, Advocate
for the appellant (s).

None for respondent No.1.

Mr. R.S. Sharma, Advocate
for respondent No.2.

SURINDER GUPTA, J.

This is appeal against the award dated 12.05.2004 passed by Motor Accident Claims Tribunal, Hisar (later referred to as 'the Tribunal'), dismissing the petition filed under Section 163-A of the Act (later referred to as 'the Act') by the appellants-claimants seeking compensation for the death of Jagdish, husband of appellant-claimant No.1 and father of appellants-claimants No.2 to 5.

The case of the claimants, in brief, is that on 04.05.2002, the deceased was coming from Rohtak to Hisar driving car bearing registration No.DL-3CA-9918 (later referred to as 'the offending vehicle') which was owned by Parkash Sawami, respondent No.1. The deceased was driver on the offending vehicle on the monthly salary of ₹3,500/- per month. When he reached near Gopal Ghee Factory in the area of Hisar Cantt, the

offending vehicle hit the divider and turned turtle to its right, due to which the deceased and other occupants of the offending vehicle received serious injuries. One of the occupant Krishan Singh died at the spot and others were shifted to Jindal Hospital, Hisar. The deceased also died on 23.06.2002 due to the injuries suffered by him in the accident. It was alleged that the accident took place due to use of the offending vehicle and the claimants are entitled to claim compensation under Section 163-A of the Act.

Respondent No.1 did not contest the claim petition while insurer of the offending vehicle Oriental Insurance Company in its written statement, contested the claim petition with the averment that claim petition has been filed in collusion with respondent No.1. It was averred that deceased was neither driving the offending vehicle, nor received injuries in the alleged accident or was having a valid driving licence at the time of accident. It was also denied that any accident took place with the offending vehicle and that the deceased was employed as driver on the offending vehicle by its owner, who is real brother of the deceased. The police has registered criminal case for the offences punishable under Sections 279, 337, 304-A IPC against the deceased for causing the accident. Other averments in claim petition were also contested, controverted and denied.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the death of Jagdish took place due to the injuries received by him in the accident when the car bearing registration No.DL-3CE/1198 driven by the deceased struck against the road divider and turned turtle? OPP
- (2) If issue No.1 is proved, to what amount of compensation, if any, are the claimants entitled to

and from whom? OPP

- (3) Whether the insurance company is not entitled for the reasons set in the preliminary objections? OPR
- (4) Relief.

The Tribunal observed that after the accident, deceased was admitted in Jindal Hospital, Hisar, where he remained upto 07.05.2002 and then shifted to CMC Hospital, Hisar. He remained admitted there about one and half month and died on 23.06.2002. The claimants proved the bills of treatment of deceased as Ex.P3 to P44 and P48 to P123. Parkash, respondent No.1, while appearing as RW1 has proved that the deceased was driver on his car and has taken the car on 03.05.2002 when one Mohinder had borrowed the same. The accident took place when they were returning to Hisar. The Tribunal while dismissing the claim petition, observed in para 26 of the award as follows:-

“26. Although it is true that for petition under section 163-A of the M.V. Act, negligence is not to be proved but here it was to be proved that death has occurred due to the injuries suffered in the accident. Had it been so then post mortem report should have been produced on the file. But has not been produced. Rather PW1 Rahda has stated that no post mortem was got done. Why it was not done, it goes to show that there must not be any link of the death with the injuries suffered in the accident. Not only this as per the discharge certificate produced on the file Ex.P60 Jagdish has been discharged on 10.6.2002 from CMC. He died on 23.6.2002 as per the petitioners' case and in what circumstances he died no PMR conducted. So, it is not proved that the death of Jagdish has occurred due to the injuries suffered by him in the accident. When the car bearing No.DL-3CE-1198

driven by Jagdish struck against road divider and turned turtle. Hence, this issue is decided against the petitioners.”

It is evident from the above observation that the Tribunal declined the claim petition filed by the appellants-claimants on the ground that they have not proved that the death of deceased was caused due to the injuries suffered in the accident. This opinion was formed as no post-mortem report was produced on file.

The first question which call for determination in this appeal is as to whether death of the deceased was caused due to the injuries suffered in the accident. Admittedly, no post-mortem examination was got conducted on the dead body of the deceased. Dr. Vijay Kumar, Neurosurgeon at Jindal Hospital and CMC, Hospital, Hisar had treated the deceased. While appearing as PW6, he deposed that the deceased had received multiple injuries including severe head injury, chest injury and spine injury. On CT Scan, it was evident that he had brain swelling and multiple clotting of blood in the brain. He had fracture of spine and remained admitted in ICU in Jindal Hospital. On 07.05.2002, he was referred to higher institute CMC Hospital, Hisar for further management of chest, head and spine injuries. He was put on ventilator and underwent chest tube drainage and tracheostomy. He proved the hospital bills of ₹4,600/- and ₹1,18,440/- excluding medicines' bills and investigation charges. On 10.06.2002, the deceased was discharged from the hospital and remained under his treatment upto 22.06.2002. The injuries suffered by the claimants were dangerous to life and the possibility that these injuries can cause death, cannot be ruled out. He denied that the patient had fully cured

when discharged from the hospital.

From the testimony of Dr. Vijay Kumar, Neurosurgeon, it is proved that the deceased had suffered severe injuries. The claimants have spent on his treatment by paying ₹1,23,000/- towards hospital charges besides bearing the bills of medicines and investigation. He has also stated that the injuries to claimant were dangerous and the possibility that these injuries can cause death, cannot be ruled out. After accident, the deceased had brain swelling, multiple clotting of blood in the brain. He underwent chest-tube drainage and tracheostomy, which indicate that the deceased was in critical condition due to injuries suffered by him in the accident. His family spent more than a lakh on hospital bill and also on investigations, medicine etc. He was a mere driver by profession, getting ₹3500/- per month as salary. The financial condition of family and their capacity to spend on his treatment can be well visualised. Even after discharge, he remained under treatment of Dr. Vijay Kumar PW6 till his death. It is proved that insurance company from report of its surveyor came to know that cause of death of deceased was injuries suffered by him in the accident.

On the record of the Tribunal, there is report of Y.K. Kapoor, Surveyor/Loss Assessor and Valuer of insurance company regarding damage to the offending vehicle. Perusal of this report leaves no doubt that the deceased died due to the injuries suffered in the accident. The Surveyor of the insurer has mentioned in his report as follows:-

“Shri Jagdish Sharma S/o Sh. Deep Chand,
brother of insured badly injured in the accident and was
hospitalised and died.

The police authority confirmed the FIR of the

case and also stated that they have closed down the case on dated 19.07.2002 as **Jagdish, driver of the car at the time of accident who was main accused in the case has died on dated 23.06.2002 due to accidental injuries while under treatment.**

Krishan Kumar S/o Mahavir R/o Hisar was travelling in the car at the time of accident died on the spot and **Jagdish S/o Deep Chand, driver of the car was badly injured and was hospitalised, died on dated 23.06.2002 due to accidental injuries while under treatment.”**

From the above report, which is addressed to Senior Division Manager, Division Office, Hisar, it is evident that even the Surveyor appointed by the insurance company had found that death of the deceased (Jagdish) was caused due to the injuries suffered by him in the accident. **Even the police after investigation also submitted final report (Ex.P127) in the Court of Addl. Chief Judicial Magistrate, Hisar wherein it was stated that the deceased (Jagdish) had died due to the injuries caused to him in the accident.**

Respondent No.1 Parkash while appearing as RW1 has stated that the deceased suffered serious and grievous injuries in the accident and remained admitted in CMC Hospital for one and half month and ultimately died due to the injuries received in the accident. This witness is not only the owner of the offending vehicle but also the brother of the deceased. He has stated that the deceased was employed as driver by him on his car and he was paying salary to him. His statement that deceased had died due to the injuries suffered by him in the accident is un rebutted. The only suggestion given to him in the cross-examination is that the deceased has not suffered

any injury in the accident.

From the overwhelming evidence proved on record, it is proved that the deceased had suffered serious and grievous injuries in the accident. His death had taken place while he was at home and the family cremated him without seeking any post-mortem. This may be due to lack of advice to the family of the deceased and on account of police inaction in this regard. Even otherwise, there is no suggestion to any witness of the claimants that the deceased was suffering from any other disease and his death has taken place otherwise than due to the injuries suffered by him in the accident. Medical evidence on record proves that the injuries suffered by the deceased were very serious injuries i.e. head injury, chest injury and spine injury besides swelling and multiple clotting in the brain. The deceased was also put on ventilator. The family of the deceased had spent a lot on his treatment and if for sometime, before his death, they had taken the deceased for treatment as outdoor patient, it may be due to their financial strains. All these facts when taken cumulatively, prove that death of deceased on 23.06.2002 was due to the injuries suffered by him in the accident.

The next question which arise for consideration is as to whether the claimants are entitled to compensation under Section 163-A of the Act.

Learned counsel for the appellants-claimants has argued that the deceased was driver of the offending vehicle owned by respondent No.1 and it is proved on file that the deceased was his employee. While appearing as RW1, respondent No.1 Parkash has stated that his car was taken by his friend Mohinder for going to Rohtak. The accident took place, when they were coming back to Hisar from Rohtak at about 5.00 a.m. on 04.05.2012.

Radha wife of the deceased has stated that earlier her husband was residing in Assam and was carrying on business in a shop. After living there for 20 years prior to the accident, he came to Hisar and was working as driver on the car of respondent No.1, his brother. Respondent No.1 has also stated that the deceased was employed as driver by him.

From the above evidence, which has gone unrebutted, it is proved on record that the deceased at the time of accident, was employed as driver and was getting ₹3,500/- per month as salary. Though the total income of the deceased if calculated on the basis of monthly income, comes to ₹42,000/- per annum but it can be taken as ₹40,000/- per annum keeping in view the nature of job of the deceased.

From the evidence on record, it is proved that the accident was caused due to user of the motor vehicle. Section 163-A of the Act reads as follows:-

“163–A. Special provisions as to payment of compensation on structured formula basis. –

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be 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.

Explanation. – For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), 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 or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

Here a question arise as to whether the provisions of Section 163-A of the Act is governed by 'fault' liability principle or 'no fault' liability principle.

While interpreting provisions of Section 163-A of the Act in case of *Ningamma and another Vs. United India Insurance Company Limited (2009) 13 Supreme Court Cases 710*, Honble Apex Court observed in para 14 and 17 as follows:-

“14. Section 163-A of the MVA was inserted by Act 54 of 1994 by way of a social security scheme. It is needless to say that the said provision is a code by itself. The said provision has been inserted to provide for a new predetermined structured formula for payment of compensation to road accident victims on the basis of age/income of the deceased or the person suffering permanent disablement. In view of the language used in said section there could be no manner of doubt that the said provision has an overriding effect as it contains a non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay compensation in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

15.....

16.....

17. The aforesaid decisions make it quite clear that the Parliament by introducing Section 163-A in the MVA provided for payment of compensation on structured

formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under sub-section (1) of Section 163-A of the MVA. In order to prove a claim of this nature the claimant would 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.”

The question as to whether provisions of Section 163-A of the Act are based on 'fault' or 'no fault' liability did not come up for discussion before Apex Court in case of *Ningamma and another Vs. United India Insurance Company Limited (supra)*.

In case of *National Insurance Company Limited Vs. Sinitha and others 2012 Accident Claims Journal 1*. Apex Court on detailed discussion of the law on the point, observed that **“we have no hesitation, therefore, to conclude that Section 163-A of the Act is founded on 'fault' liability principle”**. While giving reasons in respect of its conclusion, Apex Court observed in para 14, 15 and 16 of the above judgments as follows:-

“14. There is also another reason, which supports the aforesaid conclusion. Section 140 of the Act falls in Chapter X of the the Act, 1988. Chapter X of the the Act, 1988 is titled as *"Liability Without Fault in Certain Cases"*. The title of the chapter in which Section 140 falls, leaves no room for any doubt, that the provisions under the chapter have a reference to liability "... without fault ...", i.e., are founded under the "no-fault" liability principle.

It would, however, be pertinent to mention, that Section 163A of the Act, does not find place in Chapter X of the Act. Section 163A falls in Chapter XI which has the title "Insurance of the Against Third Party Risks". The the Act, 1988 came into force with effect from 1.7.1989 (i.e., the date on which it was published in the Gazette of India Extraordinary Part II). Section 140 of the Act was included in the original enactment under chapter X. As against the aforesaid, Section 163A of the Act was inserted therein with effect from 14.11.1994 by way of an amendment. Had it been the intention of the legislature to provide for another provision (besides Section 140 of the Act), under the "no-fault" liability principle, it would have rationally added the same under Chapter X of the Act. Only because it was not meant to fall within the ambit of the title of Chapter X of the Act "Liability Without Fault in Certain Cases", it was purposefully and designedly not included thereunder.

15. The heading of Section 163A also needs a special mention. It reads, "Special Provisions as to Payment of Compensation on Structured Formula Basis". It is abundantly clear that Section 163A, introduced a different scheme for expeditious determination of accident claims. Expeditious determination would have reference to a provision wherein litigation was hitherto before (before the insertion of Section 163A of the Act) being long drawn. The only such situation (before the insertion of Section 163A of the Act) wherein the litigation was long drawn was under Chapter XII of the Act. Since the provisions under Chapter XII are structured under the "fault" liability principle, its alternative would also inferentially be founded under the same principle. Section 163A of the Act, catered to shortening the length of litigation, by introducing a scheme regulated by a pre-

structured formula to evaluate compensation. It provided for some short-cuts, as for instance, only proof of age and income, need to be established by the claimant to determine the compensation in case of death. There is also not much discretion in the determination of other damages, the limits whereof are also provided for. All in all, one cannot lose sight of the fact, that claims made under Section 163A 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 163A of the Act is founded under the "fault" liability principle.

16. At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that Section 163A of the Act has an overriding effect on all other provisions of the the Act, 1988. Stated in other words, none of the provisions of the the Act which is in conflict with Section 163A of the Act will negate the mandate contained therein (in Section 163A of the Act). Therefore, no matter what, Section 163A of the Act shall stand on its own, without being diluted by any provision. Furthermore, in the course of our determination including the inferences and conclusions drawn by us from the judgment of this Court in ***Oriental Insurance Company Limited vs. Hansrajhai V. Kodala*** 2001 ACJ 827(SC), as also, the statutory provisions dealt with by this Court in its aforesaid determination, we are of the view, that there is

no basis for inferring that Section 163A of the Act is founded under the "no-fault" liability principle. Additionally, we have concluded herein above, that on the conjoint reading of Sections 140 and 163A, the legislative intent is clear, namely, that a claim for compensation raised under Section 163A of the Act, need not be based on pleadings or proof at the hands of the claimants showing absence of "wrongful act", being "neglect" or "default". But that, is not sufficient to determine that the provision falls under the "fault" liability principle. To decide whether a provision is governed by the "fault" liability principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or insurance company) by pleading and proving "wrongful act", "neglect" or "default". From the preceding paragraphs (commencing from paragraph 12), **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 163A 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 163A 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."**

Following the ratio of law in the above referred judgment that the grant of compensation under Section 163-A of the Act is founded under the 'fault' liability principle, I examine the case of the appellants-claimants as set up in this claim petition and the observations of the Tribunal. In this accident, one Krishan Kumar died and the Tribunal has framed additional

1-A. Whether the death of Krishan Kumar took place due to the injuries received by him in the accident on 4.5.2002 by the rash and negligent driving of the car bearing No. DL-3CE/1198 driven by respondent No.1, if so, it what effect?OPP

The above issue was decided by the Tribunal as Issue No.1a while issue No.1 was taken as Issue No.1-A. While observing that the accident had taken place due to rash and negligent driving of the offending vehicle by Jagidsh, its driver, the Tribunal took into account the following facts:-

It relied on the statement of Bishambar Dass PW2, eyewitness, who has stated that deceased was driving the offending vehicle in rash and negligent manner and hit the divider of the road, as a result of which, vehicle turned turtle on the right side causing damage to the car and his brother Krishan Kumar died. In the FIR Ex.P1, which was recorded on the statement of this witness. It was stated that the vehicle was being driven by the deceased in a rash and negligent manner, as a result of which it hit the divider and turned on the other side of the road. He has stated that the accident took place due to rash and negligent driving of the offending vehicle by Jagdish. In the claim petition, it was alleged that the offending vehicle struck with the divider and turned turtle to its right side resulting in injuries to deceased and other occupants of the car. In reply, respondent No.2, insurer of the offending vehicle has not taken the plea that the accident was caused due to the rash and negligent driving of the offending vehicle by the deceased. The entire stress of the insured in the written statement is on the fact that the deceased was not driving the offending vehicle and he was not employed by respondent No.1 as driver.

Here again, I revert to case of *National Insurance Company Limited Vs. Sinitha and others (supra)*, wherein insurance company had not pleaded or produced any evidence regarding the negligence of the deceased in the motor vehicle accident and the Apex Court applying the principle of 'fault' liability observed as follows:-

““It has already been concluded hereinabove, that in a claim raised under Section 163A of the Act, the claimants have neither to plead nor to establish negligence. We have also held, that negligence (as also, "wrongful act" and "default") can be established by the owner or the insurance company (as the case may be) to defeat a claim under Section 163A of the Act. It was therefore imperative for the petitioner-Insurance Company to have pleaded negligence, and to have established the same through cogent evidence. This procedure would have afforded an opportunity to the claimants to repudiate the same.....

Since no pleading or evidence has been brought to our notice (at the hands of the learned counsel for the petitioner), it is not possible for us to conclude, that the inverse onus which has been placed on the shoulders of the petitioner under Section 163A of the Act to establish negligence, has been discharged by it. We, therefore, find no merit in the first contention advanced at the hands of the learned counsel for the appellant”.

In this case, a claim petition filed by dependants of Krishan Kumar bearing petition No.337 of 2002/2004 (another victim in same accident) was clubbed with the claim petition filed by the petitioners-appellants vide order of the Tribunal dated 27.02.2003 and additional issue was framed as follows:-

“1a. Whether the death of Krishan Kumar took place due to the injuries received by him in the accident when the car bearing registration No. DL-3CE/1198 driven by Jagdish struck against the road divider and turned turtle?OPP”

The statement of petitioner Radha, wife of deceased, was recorded by the Tribunal on 04.08.2003 and by that time, there was no issue that the accident had taken place due to rash and negligent driving of the offending vehicle by the deceased. It was on 27.04.2004 i.e. when the case was finally ripe for disposal issue No.(1-a) was amended and a new issue No.1-A was framed as follows:-

1-A. Whether the death of Krishan Kumar took place due to the injuries received by him in the accident on 4.5.2002 by the rash and negligent driving of the car bearing No. DL-3CE/1198 driven by respondent No.1, if so, it what effect?OPP

This issue was framed in view of the pleadings in the claim petition filed by the dependants of Krishan Kumar. Firstly, after the framing of issue No.1-A, the claimants were not allowed to produce evidence by the Tribunal because onus to prove this issue was not on them. Secondly, in the absence of any plea that the accident had taken place due to the rashness and negligence on the part of the deceased, claimants were not required to produce any evidence in negative that accident was not caused due to negligence of deceased. Thirdly, the Tribunal did not consider this fact while denying the compensation to claimants that in view of the absence of any pleading that the claimants-appellants were not called upon to produce evidence to prove that the accident was not caused due to rashness and negligence of the deceased. Fourthly, even in the claim

petition filed by the dependants of Krishan Kumar, the appellants-claimants were not impleaded as party, as such, any observation made on issue in that case are not binding on them. Fifthly, the appellants-claimants were never asked by the Tribunal to produce any evidence after framing of additional issue on 27.04.2004 to rebut the evidence produced by claimants in MACT No.335 of 2002/2004. Sixthly, Bishambar Dass witness of claimants in MACT No.335 of 2002/2004 appeared as PW2 and stated that accident was caused by deceased due to his rash and negligent driving of the deceased. Perusal of his statement show that no opportunity was provided by the Tribunal to the appellants-claimants to cross examine him. It appears to have been so done by the Tribunal keeping in view that claimants were not party in the claim petition filed by the dependants of Krishan Kumar and Bishambar Dass had appeared as witness of dependants of Krishan Kumar. Though the Tribunal has decided both the claim petitions together and recorded the finding while deciding issue No.1a that the accident was caused due to rash and negligent driving of the deceased, the same being not inter-party and in the absence of any pleading to this effect in the written statement filed by the respondent-insurance company is not binding on the appellants.

From the above discussion, I am of the considered opinion that compensation to the claimants cannot be denied in this case as there is no 'fault' liability plea by respondent. Being beyond pleading, the respondent-insurer did not raise this argument before the Tribunal.

The next point for consideration is as to whether the claimants are entitled to compensation, if so to what extent.

Death of Jagdish had taken place in this case due to the use of the offending vehicle. Perusal of the insurance policy shows that the owner of the offending vehicle had paid the premium for the paid driver. Claimants being dependants of the deceased who was a paid driver, are entitled to compensation from the owner of the vehicle.

While appearing as PW1, Radha, claimant No.1 has stated that her husband was 42 years of age at the time of accident. Vijay Kumar, Neurosurgeon has given the age of the deceased as 35 years. In the claim petition and the medical record, the age of the deceased was mentioned as 40 years. However, the wife is the best person to tell about the age of the deceased, as such, his age is taken as 42 years. Taking the income of the deceased as ₹40,000/- per annum, multiplier attracted in this case as per Second Schedule appended to the the Act is 15 while as per the observations in case of *Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121*, the multiplier attracted in this case is 14. I take the multiplier as per the law settled in case of *Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (supra)*. Towards funeral expenses, the claimants are allowed a compensation of ₹5,000/- and towards loss of consortium ₹10,000/-. Though the claimants have proved on record expenses of more than ₹1 lac but keeping in view the Second Schedule, they are allowed medical expenses of ₹30,000/-. The deceased had remained under treatment and thereafter died. He had suffered grievous injuries, as such, for pain and sufferings, the claimants are allowed compensation of ₹10,000/-. Towards personal expenses of deceased, keeping in view that he left behind 5 dependants, deduction as per norms

settled in *Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (supra)*, is to be made as 1/4th. Compensation under conventional heads has been provided more than prescribed in second schedule as it was introduced more than two decades ago and has not been amended despite money value going down and repeated directions to this effect by the Apex Court.

In view of above discussion, compensation to which the claimants are entitled, is computed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased	₹40000 per annum
(ii)	1/4 th of (i) deducted as personal expenses of the deceased	(₹40000-₹10000)= ₹30000 per annum
(iii)	Compensation after multiplier of 14 is applied	(₹30000X14)= ₹420000
(iv)	Loss of consortium	₹10000
(v)	Medical expenses	₹30000
(vi)	Funeral and transportation expenses	₹5000
<i>Total</i>		₹4,65,000

The appeal has merits and is accepted. The appellants-claimants are allowed compensation of ₹4,65,000/- for the death of Jagdish, under Section 163-A of the Act. The compensation amount will carry interest @ 7.5% per annum from the date of filing of the petition till actual realization. The amount of compensation shall be apportioned between the claimants as follows:-

- (i) Claimant No.1-wife : 40%
- (ii) Claimants No.2 to 5-children : 15% each

In view of the findings recorded by the Tribunal in para 42 of the award, respondent No.3-insurance company will deposit the shares of

appellants-claimants in their bank accounts or pay the same through demand drafts. In case of demise of any of above claimant(s), his/her share of compensation shall be apportioned equally amongst other surviving claimants. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed ₹10,000/-.

October 07, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No

