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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Misc. Appeal No. 1455 of 2005**

1. Ramchand Sahu, aged about 45 years, S/o late Hirderam, R/o Gokulpur Ward/Rampur Ward Dhamtari (CG)
2. Smt. Kumari Bai, aged about 41 years, W/o Ramchand Sahu, R/o Gokulpur Ward/Rampur Ward Dhamtari (CG)

---- Appellants

**Versus**

1. Bhushan Sahu S/o Radheshyam Sahu, R/o Rampur Ward, Dhamtari, Tahsil & District Dhamtari (CG)
2. The United India Insurance Company Ltd. Krishna Complex, Kachahari Chowk, Raipur (CG)

---- Respondents

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|---------------------|---|--------------------------------|
| For Appellants      | : | Shri P. P. Sahu, Advocate      |
| For Respondent no.1 | : | Smt. Indira Tripathi, Advocate |
| For Respondent no.2 | : | Shri Dashrath Gupta, Advocate  |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order On Board**

**02/08/2017**

Present is an appeal preferred by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 17.08.2005 passed by the Additional Motor Accident Claims Tribunal, Dhamtari (CG) in Claim Case No. 131 of 2004. Vide the impugned award the Tribunal has in a proceeding under Section 166 of the MV Act rejected the claim application holding that the claimants are not entitled for any compensation.

2. The brief facts relevant for deciding the appeal are that the deceased Khuman Sahu, the son of the present appellants was working as a driver under respondent no.1 in a Maruti Van bearing registration No. CG05 9905. On 08.01.2003, while he was going from Dhamtari to Bailadila, enroute, met with an accident where the vehicle driven by him dashed against a tree, as a result

of which Khuman Sahu as well as another person Kailash died on the spot. The parents of the deceased had filed a claim case before the Claims Tribunal under Section 166 of the Motor Vehicles Act for compensation.

3. Considering the total facts and circumstances of the case, the learned Tribunal vide impugned award dated 17.08.2005 reached to the conclusion that since the deceased himself was driving the offending vehicle and that there was no other vehicle involved in the accident, it was presumed that the accident arose because of the negligent driving on the part of the deceased himself. It was also found by the Tribunal that the parents of the deceased at the time of accident were not very old, they were able to sustain themselves and they were not dependent upon the deceased as the deceased himself was a married person. For all these reasons, the application of the claimants was rejected.

4. It is this finding which is under challenge in the present case.

5. Counsel for the appellants submits that the rejection of the claim application is bad in law for the reason that the deceased was engaged as a paid driver and the insurance policy covered the risk of the driver also, therefore, fastening the liability upon the Insurance Company, the Court below ought to have allowed the claim application of the claimants. He further submits that if for any reason the Tribunal reached to the conclusion that the claim is not maintainable under Section 166 of MV Act, it ought to have considered the case of the claimants converting it to one under Section 163 A of the MV Act. According to the counsel for the appellants, for getting compensation under Section 163A of the MV Act, the rash and negligent driving on the part of the driver is not a relevant factor. For this reason, the Schedule which has been prepared for compensation under the provisions of Section 163A of MV Act, there is a limitation and reservation on the amount of compensation which could be awarded. According to the counsel for the appellants, Section 163A is similar to the provision under Section 140 of the MV Act where the issue of



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negligence is not to be ascertained. Thus, counsel for the appellants prayed for remitting the matter back to the Claims Tribunal for converting the case into one under Section 163A of MV Act and for consideration of the claim of the appellants for compensation under Section 163A of the MV Act.

6. Counsel for the respondent, however, opposed the appeal and submitted that a plain perusal of the finding of the Tribunal itself would reveal that the order passed by the Tribunal is a well reasoned and speaking order and the same does not warrant any interference.

7. Having heard the rival contentions put forth on either side and on perusal of the record some of the admitted facts as it stand are that;

- i) The accident arising on 08.01.2003,
- ii) Deceased Khuman Sahu, the son of the appellants was the driver of the Maruti Van owned by respondent no.1 Bhusan Sahu,
- iii) As a result of the accident Khuman Sahu died on the spot,
- iv) There was no other vehicle involved in the accident neither was there any other person responsible for the accident, and
- v) The accident arose when the Van which was being driven by the deceased hit a tree.

8. What is relevant to take note at this juncture is the fact that in a claim case under Section 166 of the MV Act, rash and negligent driving is an ingredient which is sine qua non of the section for establishing a claim. It was necessary for the claimants to have established the negligence on the part of the respondents, with which the respondents could have been saddled with the responsibility of payment of compensation. Though the claimants have made a statement that the accident arose because of the mechanical fault of the vehicle, the same has not been established or proved by producing sufficient cogent evidence. This requirement of proving the mechanical failure has been dealt by the Supreme Court in the case of AIR 1977 SC 1248 (Minu B. Mehta and

another Vs. Balkrishna Ramchandra Nayan and another). In the absence of sufficient proof by the claimants and no evidence led by the owner, it cannot be presumed that the accident arose because of the technical failure. This would lead to the automatic inference of the accident to have arisen because of the fault of the driver particularly when there is no other person to be blamed or involved in the accident.

9. Undisputedly the provisions of the Motor Vehicles Act particularly Sections 140, 163A and 166 of the MV Act dealing with compensation have all been enacted accepting it to be a beneficial legislation. Therefore, a more pragmatic and liberal approach was required to be taken by the Tribunal particularly when the claim case arises in a death case. What cannot be lost sight is the fact that the claimants, particularly in the State of Chhattisgarh that too in a remote area where the accident arose and also the place where the claimants hail from, may not that much aware of choosing the forum for grant of compensation.

10. One thing is very clear that the provision of Section 163A of MV Act was never intended to provide relief to those who suffer in a road accident because of the negligence of another person making use of a motor vehicle but was intended in respect of those persons who suffer in a road accident on account of their own rash, negligent or imprudent act resulting in the death or injury. The claim under Section 163A MV Act is therefore not required to prove that the driver and the owner of the vehicle was at fault.

11. At this juncture, it would be relevant to quote the judgment of the Division Bench of the High Court of Karnataka in the case of **Appaji (since deceased) and another Vs. M. Krishna** and another reported in **2004 ACJ 1289** where in paragraph-16 it has been held as under:

- "16. It is evident from the above that Section 163-A was never intended to provide relief to those who suffered in a road accident not because of the negligence of another person making use of a motor vehicle, but only on account of their own rash, negligent or



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imprudent act resulting in death or personal injury to them. The recommendations of the Law Commission were concerned more with the victims of hit-and-run accident cases where the particulars of offenders could not be ascertained. It also expressed concern about the security of victims, of road accidents and recommended dispensing with proof of fault on the part of the owner or driver of the vehicle. The recommendations, it is clear, were made from the point of view of victims of accidents on the roads more than those who were responsible for the same. The Review Committee too had viewed the situation from the point of view of such victims and expressed concern about the time it took for disposal of ordinary cases before the Tribunals. The objects and reasons underlying the introduction of the provision also envisaged adequate compensation to victims of road accidents without going into what was described as long-drawn procedure. The decision of the Apex Court in Kodala's case, , elucidated the purpose underlying the introduction of Section 163-A in the light of recommendations of the Law Commission and the Review Committee. There is nothing in any one of the above to suggest that Section 163-A was intended to be available even in a situation where the accident in question had caused death or physical injury to none except the person who was rash and negligent in using the motor vehicle. The universal concern was for the safety and the social security of an innocent user of the road and not for a person who had because of his own imprudence, rashness or negligence met with an accident and suffered an injury or death."

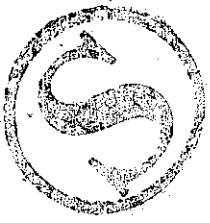
In the said judgment, in paragraph-22 the Division Bench of Karnataka High Court further went on to hold as under:

"22. Two decisions relied upon by the appellants may at this stage be noticed. In *Kokla Devi v. Chet Ram*, 2002 ACJ 650 (HP), a Division Bench of the High Court of Himachal Pradesh held that Section 163-A had brought about a drastic change in the concept of tortious liability prevailing prior to it. The court was of the view that the 'non obstante' clause in Section 163-A permitted even the tortfeasor to claim compensation on the principle of no fault liability. With respect to the Hon'ble Judges who delivered the said decision we find it difficult to subscribe to that view. Section 163-A of the Act no doubt brings about a significant change in the legal position as regards the obligation to prove fault is concerned, but the change is not so drastic so as to make even a tortfeasor entitled to claim compensation for his own act of rashness, negligence or imprudence. The 'non obstante' clause in Section 163-A simply dispenses with proof of fault by the claimants against the driver or the owner of the vehicle involved in the accident. The claimant under Section 163-A therefore need not prove that the driver or the owner of the vehicle was at fault in the sense that the accident had occurred on account of any negligence or rashness on his part."

12. We may also note the decision of the Supreme Court in the case of **United India Insurance Company Limited Vs. Sunil Kumar and another**

reported in 2014 AAC 212 (SC) where in paragraph-5 the apex Court has held as under:

"5. We find difficult to accept the reasoning expressed by the Two-Judge Bench in Sinitha's case (supra). In our view, the principle laid down in Hansrajhai V. Kodala's case (supra) has not been properly appreciated or applied by the Bench. In fact, another Division Bench of this Court vide its order dated 19.4.2002 had doubted the correctness of the judgment in Hansrajhai V. Kodala's case (supra) and referred the matter to a Three- Judge Bench to examine the question whether claimant could pursue the remedies simultaneously under Section 166 and 163-A of the Act. The Three- Judge Bench of this Court in Deepal Girishbhai Soni & Ors. v. United India Insurance Co. Ltd., Baroda [(2004) 5 SCC 385] made a detailed analysis of the scope of Sections 166 and 163-A and held that the remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other, as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. The Court also extensively examined the scope of Section 163-A and held that Section 163-A was introduced in the Act by way of a social security scheme and is a Code by itself. The Court also held that Section 140 of the Act deals with interim compensation but by inserting Section 163-A, the Parliament intended to provide for making of an award consisting of a pre-determined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The Court noticed that Section 163-A was inserted making a deviation from the common law liability under the Law of Torts and also in derogation of the provisions of the Fatal Accidents Act. The Three-Judge Bench 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)."



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Further in paragraph-8 while concluding the said judgment it has been held as under:

8. We are, therefore, of the view that liability to make compensation under Section 163-A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry under Section 163-A. Section 163-A does not make any provision for apportionment of the liability. If the owner of the vehicle or the insurance company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or claimant, naturally it would defeat the very object and purpose of Section 163-A of the Act. Legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or permanent disablement occurred during the course of the user of the vehicle and the vehicle is insured, the insurance company or the owner, as the case may be, shall be liable to pay the compensation, which is a statutory obligation."

13. In view of the aforesaid factual matrix, this Court is of the opinion that ends of justice would meet if the matter is remitted back to the Claims Tribunal with a permission to the appellants to move an application praying for converting the claim application into one under Section 163A of the MV Act and for deciding the same by passing an order afresh. It is ordered accordingly.

14. Registry is directed to send back to records forthwith to the concerned Court below.

Sd-  
**P. Sam Koshy**  
Judge