

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.1896 OF 2017

1. Revati wd/o Shrimant Ghuge
Age 38 years, Occu: Household
 2. Shrikant s/o Shrimant Ghuge
Age 22 years, Occu: Education
 3. Bhagyashree d/o Shrimant Ghuge
Age 19 years Occu: Education
 4. Shriram s/o Shrimant Munde
Age 17 years Occu: Education
(Minor under guardian of
Appellant No.1)
 5. Narayan s/o Kondiba Ghuge
Age 64 years, Occu: Nil
 6. Janabai Narayan Ghuge
Age 61 years, Occu: Household
All R/o Bhutmugali
Tq. Nilanga, Dist. Latur
- ... Appellants**
(Org.Claimants)

VERSUS

1. The United India Insurance Co.
Through its Manager,
Branch Latur, Tq.& Dist. Latur
 2. Feroj s/o Jindasab Mujawar
Age 36 yeas, Occu: Owner
R/o Kasar Shirsi Tq. Nilanga
Dist. Latur
- ... Respondents.**

Shri Manoj D. Shinde, Advocate for claimants.
Shri S. S. Rathi, Advocate for respondent No.1

CORAM : **K. L. WADANE, J.**

DATE : **25th September, 2017**

ORAL JUDGMENT:

. Heard. With the consent of the parties, taken up for final hearing.

2. This is an appeal under section 173 of the Motor Vehicles Act, challenging judgment and order dated 28th April, 2015 passed by the learned Motor Accident Claim Tribunal, Nilanga in MACP No. 04/2010. The appellants are original claimants. The parties shall be referred to in their original capacity.

3. The appellants original claimants have filed application under section 163-A of the Motor Vehicles Act, 1988 claiming that on 11.10.2009, deceased Shrimant Ghuge alongwith Bapu Mundhe and Bibhishan Mundhe were coming to Wanjarwadi from Renapur on motorcycle bearing registration NO. MH-24/H/2874. Bapu Mundhe was driving the the motorcycle by the correct side of the road. At about 11.45 p.m. when they reached near Pati, a Car bearing registration No.MH-12-V-0047 came from behind and gave dash to the motorcycle. Due to the dash, Shrimant sustained multiple injuries and Bibhishan died on the spot. Shrimant was shifted to Agroya Hospital at Latur, however he succumbed to injuries on 21.10.2009. Respondent No.1 Insurance Company resisted the claim by filing its written statement int he

trial Court.

4. Considering rival pleadings of the parties, issues were framed at Exh.14 by the tribunal. To establish the claim, the claimant Ravati Ghuge i.e. widow of the deceased entered into the witness box and deposed in the line of contention in the claim petition. Respondent No. 1 is the Insurer and respondent No.2 is the owner of the car involved in the accident. Driver of the car was not made party to the petition.

5. Considering the evidence on record and after hearing both the sides, the learned tribunal has held that there was contributory negligence of both, motorcycle rider as well as car driver and considering the negligence of the car driver to the extent of 50%, has awarded compensation to the extent of 50%, which comes to Rs.84,000/- and in addition to that, an amount of Rs.15,000/- is granted for the purpose of funeral expenses. Accordingly the tribunal has granted total compensation of Rs.99,000/-.

6. Looking to the facts and circumstances of the case that the claim petition was filed under the provisions of Section 163-A of the Motor Vehicles Act, the Court is

not required to determine the negligence of the parties. The learned Tribunal has wrongly considered this aspect and has wrongly deducted compensation on account of negligence of the motorcycle driver. In the proceedings claiming compensation under Section 163-A of the Motor Vehicles Act, claimants are not required to plead and prove that the death was caused due to wrongful act or neglect or fault of driver of the vehicle or any other person. In such claim, if accident is proved to have 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.

7. 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."

8. 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.

9. 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.

10. In view of the legal position referred above, I am of the opinion that while considering application under Section 163-A of the Motor Vehicles Act, it was not necessary for the claimants to establish that the accident occurred due to negligence of the driver or some other person. The learned Tribunal has, under wrong impression, considered the aspect of negligence and has wrongly deducted the amount of compensation towards the negligence of the motorcycle driver.

11. In such circumstance the reasons recorded by the learned Tribunal appears to be incorrect and therefore matter needs to be remanded for its disposal in accordance with law. Hence following order:

O R D E R

- i. Judgment and award of the learned Motor Accident Claim Tribunal, Nilanga is quashed and set aside.
- ii. Parties are relegated to the learned Motor Accident Claim Tribunal, Nilanga. They are permitted to adduce fresh evidence, if they desire.

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

iv. Claimants as well as respondent No.1 are directed to appear before the learned Tribunal on 13th October, 2017.

12. First appeal is accordingly disposed of. No order as to costs.

(K. L. WADANE, J.)

JPC