IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 485 OF 2005

New India Assurance Co. Ltd.
Having its head and registered
office at New India Assurance
Building 87, M.G. Marg, Fort,
Mumbai, Branch office at Sangli
And Divisional Office at
Aurangabad. Appellant

Versus

1 Smt. Prabhavati @ Baby w/o Gangadhar
age 45 years, occ. household
r/o Suppa, Tq. Gangakhed

2 Savita d/o Gangadhar Khakare
aged 20 years, occ. education
minor under guardianship of
mother, applicant no. 1

3 Balu s/o Gangadhar Khakare
aged 27 years, occ. education
r/o Suppa, tq. Gangakhed
Dist. Parbhani

4 Somnath s/o Gangadhar Khakare
aged 24 yrs, occ.Education
r/o Suppa, Tq. Gangakhed
Dist. Parbhani

5 Mr. Shrikant s/o Shrinivas Bhogale
aged major, occ. owner of truck
MTL 6474 r/o Haripur, Tq. Miraj
Dist. Sangali Respondents

Mr. Mohit Deshmukh, advocate holding for Mr. S.L. Kulkarni, advocate for appellant.
Mr. H.V. Patil, advocate for respondents 1 to 4.

CORAM : M.S.SONAK, J.
DATE : 19h January, 2018.

ORAL JUDGMENT :

1 Heard learned Counsel for the parties.

2 Mr.Deshmukh, learned Counsel for the appellant-Insurance Company submits that in the present case, the claimants had pleaded that the deceased was drawing an income of Rs.90,000/- p.a.. If this be so, Mr.Deshmukh submits that claim under Section 163-A of the Motor Vehicles Act, 1963 ("said Act"), was *ex facie* not maintainable and was required to be dismissed on this preliminary ground alone. Mr.Deshmukh places reliance on the judgment in the case of **Deepal Girishbhai Soni & others Vs. United Insurance Co.Ltd., Baroda,** (2004) 5 SCC 385, in support of this proposition.

3 Mr.Deshmukh further submits that the ceiling provided under Section 163-A of the said Act is income of Rs.40,000/- p.a.. Since, in the present case, the Tribunal has taken income of the deceased as Rs.45,000/- p.a., Mr.Deshmukh submits that in the proceedings under Section 163A of the said Act, the income would never have been taken in excess of Rs.40,000/- p.a. Mr.Deshmukh submits that on aforesaid two grounds, this appeal requires to be allowed and the impugned judgment and award is liable to be set aside.

4 There is no doubt that for the purpose of Section 163-A, ceiling of income of Rs.40,000/- p.a., will have to be restricted. Realising this position, learned Counsel for respondents-claimants, on the basis of instructions from claimants, agrees to restrict the claim on the basis that income of the deceased was Rs.40,000/- p.a. He relies upon the decision of the learned Single Judge of this Court in **New India Assurance Co. Ltd. Vs. Ashabai Kalyan Kothi & others**, 2008 (6) BCR 89, to submit that a petition under Section 166 of the said Act can be converted to petition under Section 163-A. In this case, since, respondents-claimants

agree to bring down annual income of the deceased to Rs.40,000/- p.a., Mr.Deshmukh, learned Counsel for the appellant-Insurance Company states that the appellant will have no objection.

5 Since the respondents-claimants are bringing down the claim on the basis that annual income of the deceased was Rs.40,000/- p.a., there is no difficulty in modifying the impugned award by treating the claim petition to be lodged under Section 163-A of the said Act. Since, there is no dispute as regards age of the deceased and now that the income is restricted to Rs.40,000/- p.a., the compensation in terms of Section 163-A of the said Act will come to Rs.3,56,171/-. The impugned award is accordingly modified and the compensation amount is reduced from Rs.4,00,000/- to Rs.3,56,171/- (Rs. Three lakhs Fifty Six Thousand One hundred Seventy-one). Save and except this modification, there is no necessity to interfere with the impugned award.

6 Appeal is partly allowed in aforesaid terms. There shall be no order as to costs. Respondents-claimants shall be entitled to withdraw the amount deposited by the appellant in the Registry together with proportionate interest which may have accrued thereon.

M.S.SONAK
JUDGE

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