**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**M.A (C) No. 607 of 2014**

*{Arising out of Award dated 31.01.2014 passed in Motor Accident Claims Case No. 187/2009 by the 3rd Additional Motor Accident Claims Tribunal, Raipur. }*

1. Mahadev Sahu S/o Late Bhagat Ram Sahu, Aged about 69 years.
2. Rambati Sahu W/o Shri Mahadev Sahu, Aged about 64 years.
3. Ku. Prachi Sahu D/o Yogeshwar @ Yada Ram, aged about 8 years.

Appellant No. 3, Minor Represented by her Grandfather Mahadev Sahu, Appellant No. 1.

All R/o Mangal Bazar, Kundrapara Gudiyari Raipur, Tehsil Raipur, Civil and Revenue District Raipur, Chhattisgarh.

**---- Appellants**

**Versus**

1. Yogeshwar @ Yadram Sahu S/o Shri Mahadev Sahu, Aged about 35 years, R/o Mangal Bazar, Kundrapara, Gudiyari, Raipur, Chhattisgarh.
2. Pradeep Pillai S/o Shri P.K.Pillai, Aged about 35 years, R/o J-752, Janta Colony, Gudiyari, Raipur, Chhattisgarh.
3. The Oriental Insurance Company Ltd. Through Divisional Manager, The Oriental Insurance Company C.B.O.-2, Madina Building, 1st Floor, Jail Road Kutchery Chowk, Raipur, Chhattisgarh.
4. Chief Divisional Manager, Railway, East Coast Railway, Sambalpur, Orissa.

**---- Respondents**

| | | |
|---|---|---|
| For Appellant/Claimants | : | Shri K.K.Dewangan, Advocate. |
| For Respondents No. 1 and 2 | : | None |
| For Respondent No. 3 | : | Shri Anumeh Shrivastava and Ms. Chitra Shrivastava, Advocates. |
| For Respondent No. 4/Railways | : | Shri Abhishek Sinha, Advocate. |

**M.A (C) No. 609 of 2014**

*{Arising out of Award dated 31.01.2014 passed in Motor Accident Claims Case No. 190/2009 by the 3rd Additional Motor Accident Claims Tribunal, Raipur. }*

1. Kundan Sahu S/o Mahadev Sahu, aged about 38 years.
2. Khileshwar Sahu @ Khilendra Sahu S/o Shri Kundan Sahu, Aged about 17 years.
3. Ku. Bhumika Sahu D/o Shri Kundan Sahu, aged about 16 years.

Appellant No. 2 and 3 Minor, Represented by their Kundan Sahu.

All R/o Mangal Bazar, Kundrapara, Gudiyari Raipur, Tehsil Raipur, Civil and Revenue District Raipur, Chhattisgarh.

**---- Appellants**

**Versus**

1. Yogeshwar @ Yadram Sahu S/o Shri Mahadev Sahu, Aged about 35 years, R/o Mangal Bazar, Kundrapara, Gudiyari, Raipur, Chhattisgarh.
2. Pradeep Pillai S/o Shri P.K.Pillai, Aged about 35 years, R/o J-752, Janta Colony, Gudiyari, Raipur, Chhattisgarh.
3. The Oriental Insurance Company Ltd. Through Divisional Manager, The Oriental Insurance Company C.B.O.-2, Madina Building, 1st Floor, Jail Road Kutchery Chowk, Raipur, Chhattisgarh.
4. Chief Divisional Manager, Railway, East Coast Railway, Sambalpur, Orissa.

**---- Respondents**

| | | |
|---|---|---|
| For Appellant/Claimants | : | Shri K.K.Dewangan, Advocate. |
| For Respondents No. 1 and 2 | : | None |
| For Respondent No. 3 | : | Shri Anumeh Shrivastava and Ms. Chitra Shrivastava, Advocates. |
| For Respondent No. 4/Railways | : | Shri Abhishek Sinha, Advocate. |

**Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**
**Hon'ble Shri Parth Prateem Sahu, Judge**

**Judgment on Board**

**Per P.R. Ramachandra Menon, Chief Justice**

**14.09.2020**

1. These appeals have been preferred at the instance of the Claimants who had approached the 3rd Motor Accident Claims Tribunal, Raipur (*for short, 'the Tribunal'*) seeking compensation in respect of the death of the person concerned in a road traffic accident. Grievance is against the dismissal of the claim petitions {except granting 'no-fault compensation' of Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988 (for short 'the

Act')} observing that the claim was not maintainable under Section 163A of the the Act in view of the higher annual income of more than Rs. 40,000/-.

2. The undisputed facts reveal that the deceased, namely Rashmi Sahu and Smt. Moksh Kumari Sahu were travelling alongwith other close relatives in a Maruti Van bearing Registration No. CG 04 B 5864 which was being driven by the 1st Respondent (close relative), owned by the 2nd Respondent and insured by the 3rd Respondent. At the place of occurrence, there was an open unmanned level cross, and allegedly because of the brake failure, the vehicle could not be stopped and almost crossed the level cross. It was in the meanwhile, that a Railway Engine came through the track and dashed against the rear side of the van causing fatal injuries leading to death of five passengers (including a child) on the spot and death of another child while undergoing treatment at the hospital.

3. The claim petition was filed before the Tribunal seeking compensation in terms of Section 163A of the Act. In the case forming the subject matter of MA(C) No. 607 of 2014, it was contended that the deceased was having a monthly income of Rs. 3500/-, whereas in the other case *i.e*. MA(C) No. 609 of 2014, the monthly income of the deceased was stated as Rs. 4000/-. Observing that the admitted monthly income being above Rs.40,000/- per annum, the claim petitions were held as not maintainable under Section 163A in view of the law declared by the Supreme Court in ***Deepal Girish Bhai Soni v. United India Insurance Company Ltd***.; {(2004) 5 SCC 385} and accordingly, they were dismissed which led to MA(C) No. 4 of 2011 (arising out of Claim Case No. 187 of 2009) and MA(C) No. 2 of 2011 (arising out of Claim Case No. 190 of 2009) before a Division Bench of this Court in the earlier round of litigation. Dismissal of the claim petition was also with reference to the fact that the 1st Claimant (in MAC No. 609 of 2014) had performed a re-marriage. A Bench of this Court observed that the Tribunal ignored the fact that there were three Claimants among whom, the 1st

Claimant was the husband of the deceased whereas, the other two were minor children. If the father had performed second marriage, the children would be more in need of the compensation, and as such, it could not have been a ground for the Tribunal to reject the claim. With regard to the dismissal of the claim petition because of the higher income, this Court observed that if the claim petition was not maintainable under Section 163A of the Act, it could have been treated as a claim under Section 166 or under Section 140 of the Act, after seeking option of the Claimants. It was accordingly that the impugned awards were set aside and the appeals were allowed in part remitting the matters back to the Tribunal for fresh consideration in the light of the observations.

4. The learned counsel for the Appellants submits that pursuant to the remand, the matter was considered by the Tribunal; but the claim has been granted only to an extent of Rs. 50,000 *i.e.* under Section 140 of the Act. The proceedings filed by the Appellants including by way of affidavit to the effect that the deceased was having annual income of less than Rs. 40,000/- was not considered, and hence the appeal. It is also the contention of the Appellants that the dismissal of the claim petition with reference to the alleged higher income of the deceased is not correct and that the claim petition ought to have been considered under Section 166 of the Act, if not maintainable under Section 163 A of the Act. It was in the said circumstances, that the matters were remanded by this Court. Reliance is also sought to be placed on a verdict passed by a Division Bench of the High Court of Himachal Pradesh in ***Oriental Insurance Company Ltd. v. Sh. Sihnu Ram & Others***; {(2018) 1 TAC 789 : 2016 SCC Online HP 2224}.

5. The learned counsel for the Respondent-Insurance Company points out that despite the remand ordered by this Court on the earlier occasion, no steps were taken by the Appellants/Claimants to amend the claim petition to be under Section 166 of the Act. The pleadings as they

existed before the remand, continued to be the same even after the remand. Pursuant to the direction by this Court while remanding the matter, the claim was considered by the Tribunal; but since the claims were not substantiated with reference to Section 166 of the Act (where the negligence had to be proved), the Tribunal granted compensation only to an extent of Rs. 50,000/- under Section 140 of the Act, *i.e.* no-fault liability, and hence, the said award passed by the Tribunal is not assailable under any circumstances.

6. There is not dispute to the fact that Section 163A of the Act envisages payment of compensation under a structured formula where the Claimant is neither required to plead or prove negligence on the part of the Driver, Owner or anybody else. As made clear by the Apex Court in ***Deepal Girish Bhai Soni*** (supra), it is applicable in respect of a particular class who do not have annual income of more than Rs. 40,000/-. The view expressed earlier by the Apex Court in ***Oriental Insurance Co. Ltd. Vs. Hansrajbhai v. Kodala and Others*** {(2001) 5 SCC 175} to the effect that income could be limited by putting a cap so as to make it within the purview of Section 163A of the Act was not approved while rendering the verdict in ***Deepal Girish Bhai Soni*** (supra).

7. In the instant case, the specific pleading raised by the Claimants is that the deceased by name Smt. Rashmi Sahu was having a monthly income of Rs. 3,500/- and the deceased by name Smt. Moksh Kumari Sahu was having a monthly income of Rs.4000. In view of the said admission, the annual income was more than Rs. 40,000/- which could not have been clipped or reduced by the Claimants by putting an artificial cap, as observed by the Supreme Court. In the said circumstance, the Tribunal cannot be found fault with, for holding that the claims were not maintainable under Section 163A of the Act. But then, the question is whether the claim could have been rejected without considering the same under Section 166 of the Act ?

8. The Division Bench of the Himachal Pradesh High Court in ***Sh. Sihnu Ram & Others*** (supra) was considering two questions, pursuant to a reference made in this regard in the following terms:

> "(i) Whether the claim petition under Section 163-A of the Motor Vehicles Act (for short 'the Act') was maintainable since according to the claimants themselves, income of the deceased was Rs. 6000/- per month i.e. Rs. 72000/- per annum which is in excess of the upper limit of income i.e. Rs. 40,000/- provided under second schedule of the Act? and
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> (ii) Whether the claimants, after pleading an income more than what is prescribed in the second schedule, can abandon a part of their claim and restrict the same to Rs. 40,000/- per annum or less so as to bring inconformity with the schedule?"

After detailed discussion, the questions were answered in the following manner, as discernible from paragraphs 48, 49 and 50, which is to the following effect:

> "48. The protection provided under Section 163-A of the MV Act is to the victims whose income slab is up to Rs. 40,000/- per annum and that remedy is not available to the victims whose income slab is more than Rs. 40,000/- per annum. If the Claims Tribunal comes to the conclusion that the income slab of the victim is more than Rs. 40,000/-, the remedy under Section 163-A of the MV Act cannot be pressed into service, but, as discussed hereinabove, it can be treated as claim petition under Section 166 of the MV Act by providing opportunity to the claimants to prove rash and negligent element, which is sine qua non for determining the claim petition under Section 166 of the MV Act and opportunity is also required to be provided to the respondents to raise all defences available to them in terms of the mandate of the MV Act.
>
> 49. The claimants cannot be permitted to abandon a part of their claim and restrict the same to Rs.40,000/- per annum in order to avail the remedy under Section 163-A of the MV Act. That is not the aim, object and scope of the Legislation. If that would have been so, then there was no need to prescribe the income slab and in case the claimants are allowed to do so, it will amount to re-writing the provisions of Section 163-A of the MV Act.
>
> 50. Having said so, the claimants/victims cannot be permitted to abandon a part of their claim and restrict the same to Rs. 40,000/- per annum in order

> to maintain the claim petition under Section 163-A of the MV Act."

9. At the outset, it is to be noted that the Tribunal cannot be blamed for the lapses/laches on the part of the Claimants in raising specific pleading as to the negligence on the part of the Driver of the car and as to the eligibility to get compensation in respect of the passengers in the private car with reference to the nature of the Policy. Shri Abhishek Sinha, the learned counsel for the 4th Respondent/Railways submits that the accident was only because of the negligence on the part of the 1st Respondent-Driver of the car and that the claim raised against the 4th Respondent-Railways is not sustainable under any circumstance. It was very much necessary for the 1st Respondent- Driver to have stopped the car at the level cross and to check whether any train was coming, before crossing the railway track. The point to be considered is, if the documents brought on record reveal that the accident was solely because of the negligence on the part of the 1st Respondent-Driver of the car, who is the brother of the 1st Claimant-Kundan Sahu (in MAC No. 609 of 2014) and father of the 3rd Claimant-Ku. Prachi Sahu (in (MAC No. 607 of 2014) can any liability be mulcted upon the Respondents concerned, particularly the 2nd Respondent-Owner and the 3rd Respondent-Insurer. This is more so, in view of the contention raised by the 3rd Respondent-Insurer that the deceased were never "third parties", coming within the purview of Section 147 of the Act so as to have provided any statutory coverage under the policy.

10. The necessity to have insurance for a vehicle is stipulated under Section 146 of the Act and the extent of statutory coverage is mentioned under Section 147 of the Act. The passengers in a 'private car' do not come within the purview of the term 'third party' and as such, there cannot be any statutory coverage. But the position would be different, if the policy issued is a "Comprehensive/Package policy" unlike 'Act only policy'.

11. We have gone through the records which includes the policy issued by the 3rd Respondent marked as Exhibit D/1. Its heading clearly describes it as a "PACKAGE POLICY" (not Act only Policy). The schedule of premium collected is to the following effect:

**"Package Policy" for Zone B Private Car**

**xxx xxx xxx**

**xxx xxx xxx**

**SCHEDULE OF PREMIUM**

| | | | |
|---|---|---|---|
| (A) OWN DAMAGE | | (B) LIABILITY | |
| Basic OD | 2,735.10 | Basic Liability | 670.00 |
| Elec. Access. | 100.00 | (a) Total | 670.00 |
| (a) Total | 2835.10 | ADD..... | |
| ADD..... | | PA | 100.00 |
| (b) Total | 0.00 | Extra PA | 150.00 |
| LESS..... | | Legal Liability Driver | 25.00 |
| (c) Total | 0.00 | (b) Total | 275.00 |
| | | LESS..... | |
| | | (c) Total | 0.00 |
| | | Total of (B) | 945.00 |
| Total of (A) | 2,835.10 | PA Cover under Seection III for owner-Driver (CSI) : Rs. 200,000.00 | |
| | | Special Discount | Rs. 0.00 |
| | | Net Premium (Rs.) | Rs. 3,780.00 |
| | | Service Tax | Rs. 467.00 |
| | | Total Premium (Rs.) | Rs. 4,247.00 |

12. From the above, it is clear that the policy issued was not one to cover the statutory risk towards the third party alone, but was given as a "package policy" to meet such other risks as mentioned therein as well. Disputes had arisen all over the country as to whether passengers in private vehicle would be covered under the 'Package policy/Comprehensive policy', unlike an "Act only policy". Contentions were raised also with reference to the quantum of premium collected, the various endorsements under the Indian Motor Trariff and the purpose of issuing the product as a "Package Policy". Since several disputes were pending before the various Tribunals/Courts, it became necessary for the **Insurance Regulatory and Development Authority** which is a statutory body under the Insurance Regulatory and

Development Authority Act, 1999, that controls the insurance segment, to issue a clarification in the year 2009 to the effect that a "Package/Comprehensive Policy" will definitely include the risk of passengers in a private vehicle as well.

13. In the instant case, it is to be noted that the accident had occurred on 27.04.2008 *i.e.* prior to the issuance of the clarification by the IRDA. But the proceedings issued by the IRDA is only by way of a "clarification" and not by way of adding or introducing something new. What are the scope of the "Package/Comprehensive policy" was explained or clarified by the IRDA by issuing the Circulars in the year 2009. This being the position, the "Package policy" issued in respect of the Maruti car to cover the period from 00:00 hours on 29.12.2007 to the mid-night on 28.12.2008, which was valid on the date of accident, would *prima facie* cover the passengers as well.

14. Here, there is a contention for the Respondent/ Insurance Company that more number of persons, than the sitting capacity, were travelling in the vehicle at the relevant time and hence, there was a violation of the statutory/policy conditions. It is contended by the learned counsel for the Appellants/Claimants that many of the persons travelling in the vehicle were minor children and that there is no violation. Even otherwise, over crowding, if any, cannot be said as a fundamental breach, but a technical one and the way in which compensation has to be worked out and distributed has been explained by the Apex Court. Since the scope of the policy was never subjected to analysis and since there is a duty for the Tribunal/Court to award "just" compensation in terms of Section 168 of the Act, it has to be considered whether negligence on the part of the 1$^{st}$ Respondent-Driver can be inferred from the materials already brought on record and as to the quantum of compensation payable in respect of the deceased, once the claim is considered under Section 166 of the Act. In the said circumstance, we find it appropriate to cause the matter to be remitted to the Tribunal once again,

so that both the sides can be given an opportunity to amend their pleadings and to adduce evidence to support the case under Section 166 of the Act and also to consider the scope and extent of the liability under the policy.

15. Accordingly, the awards under challenge are set aside and the matters are remitted to the Tribunal for considering the above aspects with liberty to the parties to amend their pleadings and adduce evidence in support of the case, to be dealt with under Section 166 of the Act. Since the matters are quite old and have already suffered a remand, we direct the Tribunal to have them finalised as expeditiously as possible, at any rate, within 'four months' from the date of receipt of a copy of this judgment.

16. The appeals stand allowed to the above limited extent. No cost.

Sd/-
(P.R. Ramachandra Menon)
**CHIEF JUSTICE**

Sd/-
(Parth Prateem Sahu)
**JUDGE**

Amit