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HIGH COURT OF CHHATTISGARH BILASPUR

Misc. Appeal (C) No. 411 of 2014

The National Insurance Co. Ltd. through its Sr. Divisional Manager, D.O.- B1 Taha Complex Ring Road I, Priyadarshini Nagar, Bilaspur, Civil and Revenue District Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Krishnalal Chandel, S/o Daya Ram Chandel, aged about 65 years
2. Smt. Ful Bai, Wd/o Krishnalal Chandel, aged about 55 years
   Both the Respondents 1 and 2 are r/o village Kanimera, Tahsil and P.S. Chhuikhadan, Civil and Revenue District Rajnandgaon, Chhattisgarh
3. Smt. Kamla Bai, aged about 67 years, W/o Neelkanth Verma, r/o village Nandeli, Tahsil Dhamdha, Civil and Revenue District Durg, Chhattisgarh
4. Smt. Mithlabai, aged about 65 years, W/o Gautam Verma, r/o village Khaira, Tahsil and Civil and Revenue District Rajnandgaon, Chhattisgarh
5. Smt. Behula Bai, aged about 60 years, W/o Ashok Verma, r/o village Gandai, Tahsil Chhuikhadan, Civil and Revenue District Rajnandgaon, Chhattisgarh
6. Smt. Rukhmani Bai, aged about 55 years, W/o Ramkumar Verma, r/o village Raunda, Tahsil Dhamdha, Civil and Revenue District Durg, Chhattisgarh
7. Ramkishan since deceased and represented through Lrs.
   (i) Smt. Nirmala Chandel, Wd/o Late Shri Ramkishan, aged 60 years
   (ii) Rohit Chandel, S/o Late Shri Ramkishan, aged 41 years
   (iii) Pradeep Chandel, S/o Late Shri Ramkishan, aged 36 years
   Note- All the above Lrs, are R/o village Kanimera, P.O. Khurmudi, Tahsil Chhuikhadan, District Rajnandgaon, Chhattisgarh
8. Rishi Kumar, S/o Late Dayaram Lodhi, aged about 56 years
   Note- Respondents No.7 & 8 are r/o village Kanimera, Tahsil Chhuikhadan, Civil and Revenue District Rajnandgaon, Chhattisgarh

---- Respondents

For Appellant : Shri R.N. Pusty, Advocate
For Respondents : None

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

Judgment on Board

Per Parth Prateem Sahu, Judge

22.07.2020

1. Appellant/Insurance Company/non-applicant No.4 has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 30.09.2013 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.32 of 2003 whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.3,28,500/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that, on 13.07.2003 at about 5.30 am, Kailash Kumar was ploughing the agricultural field with Tractor bearing No.MP-24/F/1621 (hereinafter referred to as 'offending vehicle'). During the said work while he was crossing one agricultural field to another, the offending vehicle turned turtle, in which, Kailash Kumar (driver of offending vehicle) came under it and died. The accident was reported to the concerned Police Station,

based upon which, Crime No.140/2003 was registered under Section 304A of IPC.

3. Claimants who are parents of the deceased Kailash Kumar filed an application initially under Section 166 of the M.V. Act claiming compensation of Rs.16,42,000/- mentioning therein that deceased was earning Rs.2,500/- per month and Rs.30,000/- per annum, upon which, claimants were dependents.

4. Non-applicants No. 1 to 3, who are legal representatives of owner of offending vehicle submitted reply to claim application and pleaded that Late Dayaram was owner of the offending vehicle and they are legal representatives of Late Dayaram. They have admitted the pleadings made in paragraphs-4 to 7 of claim application and also stated that on the date of accident, deceased was possessing valid and effective driving licence to drive the vehicle, but they have denied the other pleadings on the ground of knowledge. They have further pleaded that offending vehicle was insured with non-applicant No.4 (Insurance Company), therefore, the liability, if any, to pay the amount of compensation would be upon non-applicant No.4.

5. Appellant/Insurance Company/non-applicant No.4 submitted reply to claim application pleading therein that deceased

was driver of offending vehicle, which met with an accident and the accident was solely on account of self negligence of the deceased, therefore, claimants are not entitled for any amount of compensation; adding that, on the date of accident deceased was not possessing valid and effective driving licence.

6. Learned Claims Tribunal on appreciation of pleadings, evidence and material placed on record by the respective parties, dismissed the claim application filed under Section 166 of the M.V. Act to be not maintainable vide award dated 03.12.2004.

7. Dismissal of the claim application vide award dated 03.12.2004 made the claimants to approach this Court by way of filing **M.A. No.149 of 2005** and this Court while taking note of judgment passed in **Guruanna Vadi and another v. The General Manager, Karnataka State Road Transport Corporation and another** reported in **AIR 2001 Karnataka 275 (Full Bench)** allowed the appeal in part, and remitted back the case to learned Claims Tribunal with a direction that claimants be allowed to amend their claim application to be under Section 163A of the M.V. Act and to amend their pleadings as also to adduce further evidence, if any, and to

file documents or get the documents verified etc. and thereafter to decide the claim application afresh.

8. This order of remand with a direction to permit the claimants to amend the claim application under Section 163A of the M.V. Act was not put to challenge by the respondents therein including the appellant/Insurance Company. Accordingly, in view of directions given by this Court in remand order, learned Claims Tribunal allowed to amend the application under the provisions of Section 166 of the M.V. Act to Section 163-A of the M.V. Act, and proceeded to decide the same.

9. Learned Claims Tribunal on the basis of amended pleadings and additional evidence placed on record by respective parties, allowed the claim application in part and awarded a total sum of Rs.3,28,500/- as compensation to the claimants.

10. Shri R.N. Pusty, learned counsel for the appellant/Insurance Company submits that the claim application under Section 163A of the M.V. Act itself is not maintainable as the accident took place on account of negligence on the part of driver of offending vehicle himself and it is the driver of the offending vehicle, who died in the accident. He further argued that no amount of premium was paid by the owner of offending vehicle for covering the risk of driver or driver-cum-owner of

offending vehicle. It is contended that Full Bench of Madhya Pradesh High Court in case of **Ramlali Tiwari (Smt.) and Another v. Vrindavan Tiwari and Another** reported in **2009 (I) MPJR 329** held that once the application filed under Section 166 of the M.V. Act came to be dismissed on merits then in appeal, claimants were not entitled to seek conversion of the application from 166 to be under Section 163A of the M.V. Act. It is further contended that as the deceased was himself driving the offending vehicle, therefore, he will not come within the category of 'third party' and as such, his claim under Section 163A of the M.V. Act is not maintainable.

11. No one appeared on behalf of the respondents, though served.

12. We have heard learned counsel for the appellant/Insurance Company at length and perused the record carefully.

13. There is no dispute that deceased himself was driving the offending vehicle, which met with an accident, which is evident from the pleadings made in claim application at paragraph-23 wherein it is pleaded that while ploughing the agricultural field with offending vehicle and taking it to another field, offending vehicle turned turtle, in which, Kailash Kumar (driver of offending vehicle) died. This fact

was also stated in their evidence. After remand of the case, appellant/Insurance Company has amended their pleadings and taken a ground that as the claimants have already taken Rs.51,948/- as amount of compensation under Section 140 of the M.V. Act, claim application under Section 163A of the M.V. Act is barred. Further, they have taken a plea that no premium was paid for covering the risk of driver and driver-cum-owner of offending vehicle and that the deceased himself was driver of the vehicle, which does not come within the purview of third party. There is no involvement of any other motor vehicle, hence, the claim itself is not maintainable.

14. Learned Claims Tribunal while dealing with the ground raised by the Insurance Company that claim application filed under Section 166 of the M.V. Act is not permissible to be converted under Section 163A of the M.V. Act after dismissal of the application under Section 166 of the M.V. Act on merits and receiving the compensation under Section 140 of the M.V. Act, recorded that after dismissal of claim application under Section 166 of the M.V. Act, the High Court remanded the case with a direction granting permission to amend the application to be under Section 163A of the M.V. Act and no compensation has been awarded to the claimants under Section 163A of the M.V. Act. The reason

given by learned Claims Tribunal cannot be said to be erroneous for permitting the claimants to amend the provision of filing application from 166 to 163A of the M.V. Act and entertaining the application under Section 163A of the M.V. Act when it is a direction by a superior Court.

15. The co-ordinate Bench of this Court vide its order dated 05.03.2011 passed in M.A. No.149 of 2005 has remitted back the matter and held thus :

> “10. In view of the above observations of the Full Bench of Karnataka High Court in Guruanna Vadi's case (supra), we allow I.A. No.1/10 and permit the appellants to amend their claim application made under Section 166 of the Act, 1988 to petition under Section 163-A of the Act, 1988. However, since the income factor is to be seen by the Claims Tribunal, we are of the opinion that the matter requires decision afresh by the Claims Tribunal.
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> 11. Accordingly, we allow the appeal in part, set aside the impugned award and remit the matter back to the Claims Tribunal with a direction that the claimants shall be allowed to amend their claim application u/s 163-A of the 1988. Further, the parties shall be allowed to amend the pleadings, adduce further evidence, if any, file the documents or get the documents verified etc., and thereafter, the Claims

> Tribunal shall decide the claim application afresh in light of the observations made herein above."

16. The aforementioned order passed by the co-ordinate Bench of this Court was not put to challenge by the appellant/Insurance Company before the Superior Court and it attained its finality. Learned Claims Tribunal in compliance of the direction issued by this Court has permitted the claimants to amend the claim application to Section 163A of the M.V. Act and thereafter passed impugned order. In view of above facts and circumstances of the case, submission of learned counsel for the appellant/Insurance Company that after accepting compensation under Section 140 of the M.V. Act, claimants cannot be permitted to amend and convert the claim application/proceeding from Section 166 to Section 163A of the M.V. Act is not sustainable.

17. We are not considering the first ground raised by learned counsel for the appellant/Insurance Company as we are not exercising the review jurisdiction, but considering the order passed by the Tribunal in compliance of the remand order to be in accordance with law or not.

18. In view of above, first ground raised by the appellant/Insurance Company with regard to conversion of

claim application from Section 166 to Section 163A of the M.V. Act is repelled.

19. Appellant/Insurance Company apart from the aforementioned grounds as raised in ground No.B, has taken the ground of self-negligence of deceased himself, hence, the application under Section 163A of the M.V. Act to be not maintainable being the deceased was not a third party.

20. To appreciate the submission made by learned counsel for the appellant/Insurance Company, we find it appropriate to extract Section 163A of the M.V. Act for easy reference :

> “**163A. 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 or 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.
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> *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 (8 of 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.]”

21. From bare perusal of the aforementioned provision, it nowhere talks about its applicability to third party only, but it is specifically mentioned that in case of death or permanent disability 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 word 'victim' has been used in this case and in sub-section (2), it is mentioned that there is no requirement plead or establish the negligence due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. In the case at hand, deceased while working as driver, met with an accident and died.

22. The Hon'ble Supreme Court in case of **United India Insurance Company Limited v. Sunil Kumar and Another** reported in **(2019) 12 SCC 398** considered the issue with regard to maintainability of claim application under Section 163A of the M.V. Act by the claimants. In the aforementioned judgment, Hon'ble Supreme Court has considered its earlier judgments i.e. **National Insurance Company Limited v. Sinitha and Others** reported in **(2012) 2 SCC 356**, **Oriental Insurance Company Limited v. Hansrajbhai v. Kodala** reported in **(2001) 5 SCC 175**, **Deepal Girishbhai Soni v. United India Insurance Company Limited** reported in **(2004) 5 SCC 385** and held thus :

> "8. From the above discussion, it is clear that grant of compensation under Section 163A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions

> of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability were taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act on a par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.
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> 9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim."

23. From the above, it is apparent that claim application under Section 163A of the M.V. Act filed by the driver will be maintainable without pleading and proving the negligence on the part of owner or any other person. The Hon'ble Supreme Court in paragraph-9 of **Sunil Kumar** (supra) clearly held that it is not open for the Insurer to raise any defence of negligence on the part of the victim. Hence, the

appellant/Insurance Company cannot raise a plea of negligence of the deceased. The second ground raised by the appellant/Insurance Company is also repelled.

24. The other ground raised by learned counsel for the appellant/Insurance Company is with regard to non-payment of premium for covering the risk of driver or driver-cum-owner is concerned, appellant/Insurance Company has not taken any specific ground in its memo of appeal challenging the finding recorded by learned Claims Tribunal. The policy is with regard to 'Farmer's Package Policy' and 'Package Policy' is having wide coverage. Learned counsel for the appellant/Insurance Company has not raised any argument with regard to finding of learned Claims Tribunal in paragraph-23 of the impugned award.

25. Under the provisions of Section 147 of the M.V. Act, there is statutory coverage of the person engaged in driving the vehicle. For the driver of vehicle no separate policy is required. Section 147(1) of the M.V. Act is reproduced below for ready reference :

> **"147. Requirements of policies and limits of liability.-**(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death

of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.”

26. In view of statutory provision under the M.V. Act for coverage of the driver under the policy and the policy to be a 'package policy', submission of learned counsel for the appellant/Insurance Company that there is no coverage of the risk of deceased-driver is not sustainable and is hereby repelled.

27. So far as the ground with regard to quantum of award is concerned, appellant/Insurance Company has contended that multiplier of 18 is wrongly applied by learned Claims Tribunal when the deceased was a bachelor and claimants are parents. The law in this regard it well settled by the Hon'ble Supreme Court in case of **Sube Singh and Others v. Shyam Singh (dead) and Others** reported in **2018 (3) SCJ 269** wherein the Hon'ble Supreme Court has held thus :

“4. On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for

> compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of **Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Anr., (2015) 2 SCC 180** held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more *res integra*. In the case of **Munna Lal Jain and Anr. v. Vipin Kumar Sharma and Ors., (2015) 6 SCC 347** decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependents."

28. In view of above pronouncement by Hon'ble Supreme Court and the fact that age of deceased on the date of accident was 23 years, the submission of learned counsel for the appellant/Insurance Company with regard to application of wrong multiplier is having some force. The application is decided to be an application under Section 163A of the M.V. Act. Amount of compensation in an application under Section 163A is to be awarded strictly in accordance with the Second Schedule. Under Second Schedule, the multiplier for age group of 20 to 25 is prescribed as 17 and not 18, hence the multiplier to be applied is 17.

29. Appellant/Insurance Company in its memo of appeal has raised general ground with regard to the finding recorded by learned Claims Tribunal is contrary to the evidence available on record, but has not specifically pleaded in grounds as to which finding of learned Claims Tribunal is perverse being contrary to the pleadings and evidence. Likewise, with regard to quantum of award, it has only been pleaded that award passed by learned Claims Tribunal is on the higher side. The witness examined by claimants remained unshaken. Appellant/Insurance Company has not produced any evidence before the Claims Tribunal in this regard. In the above facts, the income taken by the Claims Tribunal of Rs.3000/- per month for a person working as 'Driver', in the opinion of this Court, cannot be said to be on higher side.

30. We have held in preceding paragraphs that the multiplier is applied on higher side. But at the same time it is to be seen that weather the compensation awarded is just and proper or on higher side than for what the claimants are entitled for. The Claims Tribunal after taking income as Rs.36,000/- per annum deducted 50% towards personal and living expenses, holding the deceased to be unmarried. The claim application is filed under Section 163A of the M.V. Act, hence the computation of compensation to be done as per Second Schedule only. We cannot add anything more than what is

provided in the schedule. Under it, the deduction is mentioned as 1/3rd only. There is no mention of application of separate deduction for married person and for unmarried person. As the Claims Tribunal has deducted Rs.9,000/- more towards personal and living expenses of deceased i.e. (1/2 instead 1/3), we are not inclined to apply the multiplier of 17. There is no appeal for enhancement or else re-computation of the award could have been done.

31. For the foregoing reasons, we do not find any tenable ground to interfere with the impugned award. The appeal being devoid of substance, is liable to be and is hereby dismissed.

Sd/- Sd/-

(P. R. Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

Yogesh