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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 54 OF 2013

ICICI Lombard General Insurance
Company Limited, 4th Floor,
Penninsula Building, Opposite
Lawrence and Mayo Building Fort,
Mumbai – 400 001.

... Appellant
(Org. Opponent no.2)

Versus

1. Kumar Aftab Nasim Ansari
Age 10 years, Occupation – Education,
R/o. Hanuman Nagar, Shiye,
Tal-Karvir, District-Kolhapur,
Minor through natural Guardian
Father Shri Nasim Alihusen Ansari
Age 30 years, Occupation – Labour.

2. Shri Dy. General Manager
(Operations) Ghatge Patil,
Transports Limited, R/o. 517,
E-Ward, Pune Bangalore Road,
Kolhapur.

... Respondents
(Resp. No.1 Org.
Applicant & Resp. No.2
Org. Opponent no.1)

.....

Mr. Nikhil Mehta i/by KMC Legal Venture for Appellant.

Mr. A.M. Kulkarni along with Ms. Akansha Helaskar, Mr. Sarthak Diwan,
Mr. Akshay Kulkarni and Mr. Gaurav Sharma for the Respondent No.1.

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CORAM : R.D. DHANUKA, J.

RESERVED ON : 21st JANUARY, 2020

PRONOUNCED ON : 26th JUNE, 2020

JUDGMENT :

. By this First Appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.2) has impugned the judgment and award dated 10th June, 2011 delivered by the Motor Accident Claim Tribunal, Kolhapur (hereinafter referred to as “M.A.C.T., Kolhapur” for short) allowing the Claim Application bearing MACP No. 451 of 2009 filed by the respondent no.1 partly and directing the appellant and the original opponent no.1 to pay compensation of Rs.19,47,100/- jointly and severally within 45 days and in case of default to pay interest @ 8% p.a. from the date of filing petition till its realization. By consent of the appellant and the respondent no.1, this First Appeal is heard finally. Some of the relevant facts for the purpose of deciding this First Appeal are as under :-

2. It was the case of the respondent no.1 (original applicant) who was represented through natural guardian that on 13th March, 2009, the respondent no.1 was proceeding from Halondi to Shiye and was traveling in vehicle bearing Tata Magic No.MH09 BB 3176. When the respondent no.1 reached on Pune Bangalore road, within the village Shirol, Truck bearing registration No.MH 10A 9188 (hereinafter referred to as “the said offending vehicle” for short) was wrongly parked on the road without any indication. The said offending vehicle was obstructing traffic on the road. While taking turn by the said Tata Magic vehicle, the front portion of the said offending vehicle struck against the Tata Magic vehicle in which the respondent no.1

was traveling. The respondent no.1 was seriously injured. He was brought to Adhar Nursing Home, Kolhapur. The local Police also registered Crime bearing No.31/2009 against the driver of the said offending vehicle.

3. It was the case of the respondent no.1 that he was brilliant and courageous student in early childhood and had become paraplegic and has lost his future career due to the said accident. The respondent no.1 is the only son of his parents. He lost his educational career and sportsmanship, lost his marriage prospects and his career came to an end. He was not able to do any routine work. He required an assistance of two persons to help in every work. He became permanently disabled for whole of his life and had become crippled. The respondent no.1 made a claim for Rs.22,52,000/-. During the course of the argument, the respondent no.1 however restricted his claim to Rs.5,00,000/-.

4. In so far as the original opponent no.1 is concerned, matter proceeded *ex-parte*. The appellant filed its written statement and denied all the allegations made by the respondent no.1 in the said claim application. The appellant however admitted that the said offending vehicle was registered with R.T.O. and was covered under the insurance policy with the appellant. It was also urged by the appellant that the opponent no.1 had committed the breach of terms and conditions of the policy and therefore appellant was not liable to pay any compensation to the respondent no.1. It was also the case

of the appellant that the driver of the said offending vehicle was not holding valid driving licence. The owner of the said offending vehicle was not impleaded as a party respondent to the claim application. The claim application was thus bad for non joinder of necessary party.

5. The Tribunal framed four issues for determination. Though the respondent no.1 had made claim for compensation in the sum of Rs.22,50,000/-, the respondent no.1 restricted his claim for amount of Rs.5,00,000/- under Section 163-A of the Motor Vehicles Act, 1988. The father of the respondent no.1 filed his affidavit of evidence before the Tribunal and produced various documents. He was cross-examined by the appellant's advocate. The respondent no.1 also examined Dr. Shailendra Navare to prove that on 19th March, 2009, the respondent no.1 was admitted in Adhar Nursing Home, Kolhapur, to prove the nature of injury suffered by the respondent no.1 in the said accident and the amount incurred by the father of the respondent no.1 towards hospital bills etc.

6. The respondent no.1 also examined Dr. Deepak Shashtrabudhe, Orthopaedic Surgeon of Adhar Nursing Home to prove the nature of injury suffered by the respondent no.1 and to prove the permanent disability of the respondent no.1 due to the said accident. The respondent no.1 also produced copy of FIR, spot panchanama and various other documents before the Tribunal. The appellant did not examine any witness. The Tribunal after

considering the evidence produced by the appellant rendered a finding that it was proved that on 13th March, 2009 in motor vehicle accident, the respondent no.1 had suffered injuries and suffered permanent disability. The Tribunal also held that in the said accident, the said offending vehicle was involved. In so far as the quantification of compensation is concerned, the Tribunal awarded a sum of Rs.19,47,100/- holding the appellant and the original opponent no.1 jointly and severally liable to pay the said amount to the respondent no.1 with interest @ 8% p.a. from the date of filing of petition till its realization.

7. Mr. Mehta, learned counsel for the appellant invited my attention to the findings rendered by the Tribunal and would submit that admittedly the claim application filed by the respondent no.1 was under Section 163-A of the Motor Vehicles Act, 1988 filed through natural guardian restricting the claim for compensation of Rs.5,00,000/- from the appellant and the original opponent no.2.

8. It is submitted by the learned counsel for the appellant that since the respondent no.1 admittedly had filed claim application under Section 163-A of the Motor Vehicles Act, 1988 even if the findings of the Tribunal that the driver of the offending vehicle was responsible for rash and negligent driving in the said accident and the respondent no.1 had suffered injuries and suffered permanent disability, the Tribunal could not have awarded

compensation more than the amount prescribed in Second Schedule to be read with Section 163-A of the Motor Vehicles Act, 1988. In support of this submission, he invited my attention to paragraphs 16 and 17 of the impugned judgment and award and would submit that the Tribunal could not have considered the annual income of the respondent no.1 more than Rs.40,000/- p.a. and could not have awarded compensation towards medical expenses more than Rs.15,000/-. He submits that the Tribunal could not have awarded more than Rs.2,000/- towards funeral expenses prescribed in the said Second Schedule. However, the Tribunal has awarded Rs.23,25,000/-. He submits that though the Tribunal has applied the yearly income of Rs.40,000/- p.a. and had applied the multiplier of 18, the Tribunal has also allowed the sum of Rs.23,25,000/- by way of inevitable expenses and has derived at the total amount of compensation at Rs.38,94,200/-. The Tribunal has held that the contributory negligence of the driver of the offending vehicle and the respondent no.1 was equal. The Tribunal accordingly held that the appellant and the respondent no.1 would be liable to pay Rs.19,47,100 jointly and severally.

9. It is submitted by the learned counsel for the appellant that under Section 163-A of the Motor Vehicles Act, 1988, owner of the motor vehicle of the authorized insurer is liable to pay in 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 of the

victim as the case may be. He submits that under Section 163-A(2) of the Motor Vehicles Act, 1988, in any claim for compensation made under Section 163-A(1) of the Motor Vehicles Act, 1988, the claimant is not required to plead or establish that the death or permanent disablement in respect of which the claim had been made was due to any wrongful act or negligent or default of the owner of the vehicle or vehicles concerned, or of any other person.

10. It is submitted that the Tribunal thus could not have awarded compensation in favour of the respondent any amount over and above the amount prescribed in Second Schedule appended to the Motor Vehicles Act, 1988 and in any event the compensation what is payable under Section 166 of the Motor Vehicles Act, 1998. In support of this submission, learned counsel for the appellant placed reliance on the judgment of this Court in case of ***National Insurance Company Limited v/s. Chandrabhabha and Ors., 2016(4) ABR 750*** and in particular paragraph nos. 4 to 7. He also placed reliance on the judgment of this Court in case of ***Bajaj Allianz General Insurance Co. Ltd. v/s. Shobha Babanrao Khose and Ors.***, decided on 14th November, 2019 in First Appeal (Stamp) No. 14852 of 2016 by Nagpur Bench of this Court and in particular paragraphs 3, 12 to 14, 17, 18 and 21 to 24.

11. Mr. Kulkarni, learned counsel for the respondent no.1 on the other

hand submits that the Tribunal had rightly followed the judgment of Division Bench of this Court in case of ***New India Assurance Co. Ltd. and Anr. v/s. Shweta Dilip Mehta and Others, 2010 (1) ACC 318*** and had rightly considered the inevitable expenses in the sum of Rs.23,25,000/- and considered compensation of Rs.7,20,000/- towards loss of income. It is submitted by the learned counsel that the Motor Vehicles Act, 1988 is a beneficiary peace of legislation and not an adversary peace of legislation. He submits that the compensation referred in Second Schedule to be read with Section 163-A of the Motor Vehicles Act, 1988 provides only a guide and not a ready reckoner binding on the Tribunal even while considering an application under Section 163-A of the Motor Vehicles Act, 1988. By passage of time, the amount of compensation provided under Section 163-A of the Motor Vehicles Act, 1988 and Second Schedule had become redundant and meaningless.

12. It is submitted that the Tribunal while awarding 'just compensation' is thus empowered to grant compensation under section 166 though an application for compensation is made under Section 163-A of the Motor Vehicles Act, 1988. In his alternate submission, learned counsel submits that in any event the said Second Schedule which is strongly relied upon by the appellant does not apply to children. He submits that though the said Section 163-A of the Motor Vehicles Act, 1988 was inserted w.e.f. 14th November, 1994, there has not been any amendment to the amount of compensation

mentioned in Second Schedule of the provisions of the Motor Vehicles Act, 1988.

13. Learned counsel for the respondent no.1 submits that the Tribunal rightly placed reliance on the judgment of Supreme Court in case of **Yadava Kumar v/s. National Insurance Company Limited and another** reported in **III (2010) ACC 869 (SC)**, in case of **R.D. Hattangadi v/s. Pest Control (India) Pvt. Ltd. and others** reported in **1995 ACJ 366** and judgment of Division Bench of this Court in case of **New India Assurance Co. Ltd. and Anr. v/s. Shweta Dilip Mehta and Others** (supra) and would submit that it is the duty of the Tribunal to award 'just compensation' and thus Tribunal was not bound to apply Second Schedule while awarding compensation to the respondent no.1 which compensation prescribed therein was not at all 'just compensation'. The Court/Tribunal has to take liberal approach in the matter while considering an application for just compensation.

14. Learned counsel for the respondent no.1 invited my attention to the judgment of (a) Supreme Court in case of **Khenyei v/s. New India Assurance Co. Ltd. and Ors., II (2015) ACC 657 (SC)** and in particular paragraph 2, 17 and 18, (b) judgment of Supreme Court in case of **Yadava Kumar v/s. National Insurance Company Limited and Another** (supra) and in particular paragraphs 9 and 15 to 17, (c) judgment of Supreme Court in case of **Syed Basheer Ahamed and Others v/s. Mohd. Jameel and Another**, delivered on 6th January, 2009 in Civil Appeal No. 10 of 2009 and in

particular paragraphs 4 and 11, (d) judgment of Supreme Court in case of ***Kumari Kiran v/s. Sajjan Singh and Others, (2015) 1 SCC 539*** and in particular paragraphs 12 and 23, (e) judgment delivered by Division Bench of this Court in case of ***New India Assurance Co. Ltd. and Anr. v/s. Shweta Dilip Mehta and Others, 2010 (3) Mah.L.J. 145*** and in particular paragraphs 9, 11, 12, 14 to 17 and 20 to 26. Learned counsel for the respondent no.1 also placed reliance on some of the photographs to show the present physical condition of the respondent no.1.

15. Mr. Mehta, learned counsel for the appellant in rejoinder distinguished all the judgments referred to and relied upon by the learned counsel for the respondent no.1 on the ground that none of the judgments relied upon by the respondent no.1 had dealt with an application under Section 163-A of the Motor Vehicles Act, 1988. He submits that the compensation which can be awarded by the Tribunal under Section 166 of the Motor Vehicles Act, 1988 cannot be applied to an application under Section 163-A of the Motor Vehicles Act, 1988. He submits that the Second Schedule provides for multiplier also in case of victim below the age of 15 years. Learned counsel submits that the submission of the learned counsel for the respondent no.1 that Second Schedule is not applicable to children is thus contrary to the provisions of Second Schedule appended to the Motor Vehicles Act, 1988 which has to be read with Section 163-A of the Motor Vehicles Act, 1988.

16. It is submitted that the respondent no.1 cannot be allowed to take benefit of Section 163-A(2) of the Motor Vehicles Act, 1988 by not pleading or establishing that the permanent disablement of the respondent no.1 was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. He submits that the respondent no.1 filed application under Section 163-A of the Motor Vehicles Act, 1988 was thus entitled to receive compensation only in accordance with the compensation prescribed in Second Schedule which is to be read with Section 163-A of the Motor Vehicles Act, 1988. He submits that the respondent no.1 having filed application under Section 163-A of the Motor Vehicles Act, 1988 cannot seek compensation under Section 166 of the Motor Vehicles Act, 1988.

REASONS AND CONCLUSION

17. I shall first decide the issue whether the Tribunal could have awarded any amount towards compensation over and above the amount prescribed in Second Schedule appended to the Motor Vehicles Act, 1988 to be read with Section 163-A of the Motor Vehicles Act, 1988 while considering an application under Section 163-A of the Motor Vehicles Act, 1988 or not.

18. In the facts of this case, there is no dispute that the respondent no.1 had filed an application through his natural guardian under Section 163-A of

the Motor Vehicles Act, 1988 against the appellant and the original opponent no.1 in the sum of Rs.22,50,000/-. The respondent no.1 however had restricted his claim to Rs.5,00,000/- before the Tribunal.

19. The Tribunal however framed four issues for determination. In paragraph 6 of the impugned judgment and award, the Tribunal recorded that the respondent no.1 (original applicant) was claiming compensation of Rs.22,50,000/- but restricted his claim for an amount of Rs.5,00,000/- under Section 163-A of the Motor Vehicles Act, 1988. The Tribunal thereafter considered the oral and documentary evidence led by the respondent no.1. It is observed by the Tribunal that the respondent no.1 (original applicant) has not impleaded the owner, driver and insurer of Tata Magic vehicle bearing registration no. MH09 BB 3176 and filed claim under Section 163-A of the Motor Vehicles Act, 1988. In paragraph 7 of the impugned judgment and award, the Tribunal considered the documentary evidence and has rendered a finding that the said offending vehicle was responsible for causing the accident. The said offending vehicle was lying stationery near bridge on national highway which was one of the reasons for the said accident.

20. The Tribunal however in paragraph 8 of the impugned judgment and award recorded that the evidence of the witnesses examined by the respondent no.1 showed that father of the respondent no.1 had paid an amount of Rs.1,49,100/- towards hospital bills. He also suffered various

injuries and mental trauma. The Tribunal rendered a finding that the respondent no.1 had suffered 70% permanent disability and was not in a position to move or stand. The respondent no.1 suffered from paraplegia fracture of vertebra L-1, L-2, fracture of ribs, rupture of kidney.

21. In so far as quantum of compensation is concerned, the Tribunal placed reliance on the judgment of Supreme Court in case of ***Yadava Kumar*** (supra) and in case of ***R.D. Hattangadi*** (supra). In paragraph 15 of the said judgment, the Tribunal relied upon a judgment of Division Bench of this Court in case of ***New India Assurance Co. Ltd. and Anr. v/s. Shweta Dilip Mehta and Others*** (supra). In the said judgment, the Division Bench of this Court had enhanced the quantum of compensation in respect of the victim girl of 11 years suffering from paraplegia, from Rs.2,00,000/- to Rs.4,00,000/-, compensation towards loss of amenities of life, from Rs.1,00,000/- to Rs.3,00,000/-, inevitable expenses from Rs.10,00,000/- to Rs.23,25,000/- and compensation towards loss of future income Rs.18,00,000/- and awarded total compensation of Rs.49,48,848/-. In paragraph 16 of the impugned judgment and award, the Tribunal held that the respondent no.1 would be entitled to an amount of Rs.1,49,200/- which was paid by the father of the respondent no.1 towards hospital bills. The Tribunal also awarded a sum of Rs.3,00,000/- on account of loss of amenities of life.

22. In paragraphs 17 of the impugned judgment and award, however, the Tribunal took cognizance of the fact that the claim was filed by the respondent no.1 under Section 163-A of the Motor Vehicles Act, 1988 and under provisions of the Motor Vehicles Act, there was a restriction on considering the income of the claimant not exceeding Rs.40,000/- p.a. The Tribunal though relied upon the judgment of Division Bench of this Court, considering the income of the claimant at Rs.1,00,000/- p.a., the Tribunal restricted the yearly income of the respondent no.1 at Rs.40,000/- p.a., in view of the Second Schedule appended to the Motor Vehicles Act, 1988. The Tribunal applied multiplier of 18 to the said yearly income at Rs.40,000/- considered on the basis of maximum amount prescribed under Second Schedule to the Motor Vehicles Act, 1988. The Tribunal, however, after applying multiplier of 18 on the said amount at Rs.40,000/- p.a. and deriving the loss of income at Rs.7,20,000/-, added a sum of Rs.23,25,000/- as inevitable expenses by relying upon the judgment of Division Bench of this Court in case of ***New India Assurance Co. Ltd. and Anr. v/s. Shweta Dilip Mehta and Others*** (supra).

23. The Tribunal thereafter rendered a finding in paragraphs 23 that the blame or negligence of the owners and the drivers of both the vehicles appeared. The said accident had occurred during day time. The driver of the Tata Magic Vehicle would have seen the traffic from a distance, the spot panchanama did not indicate any wheel marks. It also did not indicate that

the driver applied the brakes to prevent the accident. The Tribunal accordingly apportioned the liability by holding the driver of Tata Magic vehicle in which the respondent no.1 was driving at 50% and held the driver of the offending vehicle responsible to the extent of 50%. The Tribunal accordingly reduced the loss of income derived at Rs.38,94,200/- to Rs.19,47,100/-.

24. I shall first decide the issue whether the Tribunal could have awarded any compensation under Section 166 of the Motor Vehicles Act, 1988 to the respondent no.1 though application for compensation was admittedly made by the respondent no.1 under Section 163-A of the Motor Vehicles Act, 1988 by seeking compensation as prescribed in the Second Schedule appended to Motor Vehicles Act, 1988.

25. It is not in dispute that the claim application was filed by the respondent no.1 under Section 163-A of the Motor Vehicles Act before the Tribunal. Though the respondent no.1 (original claimant) had claimed compensation in the sum of Rs.22,50,000/- before the Tribunal, in the claim application, he restricted the claim to Rs.5,00,000/- before the Tribunal.

26. A perusal of the impugned judgment and award rendered by the Tribunal indicates that the respondent no.1 had examined his father, Dr.Shailendra Navare and also examined Dr. Deepak Shashtrabudhe, an

Orthopaedic Surgeon to prove his case. The appellant admittedly did not examine any witness. In the impugned judgment and award the Tribunal has rendered a finding that the responsibility for the accident would be on higher side in so far as driver of the vehicle Tata Magic in which the respondent no.1 was travelling is concerned. The Tribunal held that there was no evidence to show that when the truck was standing stationary on the road, any signals were displayed for caution to the road users. The Tribunal accordingly held that the blame and negligence by the owners and the drivers of both the vehicles appeared. The Tribunal accordingly apportioned the liability of the original opponent no.1 and original opponent no.2 (appellant) for payment of compensation to the respondent no.1. The Tribunal accordingly granted compensation only to the extent of Rs.19,47,100/- to the respondent no.1 being 50% of Rs.38,94,200/- by holding the owner of the Tata Magic vehicle negligent to the extent of 50%.

27. Supreme Court in case of ***Deepal Girishbhai Soni and Others v/s United Insurance Company Limited, AIR 2004 SCC 2107*** has held that Section 163-A was inserted in the Motor Vehicles Act, 1988 to provide for payment of compensation in motor accident cases in accordance with the Second Schedule on the basis of the Structured Formula which may be amended by the Central Government from time to time. 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. It is held that rights and obligations of the parties under Section 163-A of the Motor Vehicles Act are to be determined finally.

28. Supreme Court in the said judgment clearly held that having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims either under Section 163-A or under Section 166 of the Motor Vehicles Act does not arise. It is held that the remedy for payment of compensation both under Section 163-A and Section 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.

29. Supreme Court in case of ***Reshma Kumari and Others v/s. Madan Mohan and Anr., AIR 2013 SC (Supp) 474*** has dealt with the powers of the Tribunal under Section 163-A read with Schedule Second appended to the Motor Vehicles Act, 1988. It is held by the Supreme Court in the said judgment that the said Motor Vehicles Act gives choice to the claimant to seek compensation on structured formula basis as provided in Section 163-A or make an application for compensation arising out of an accident of the nature specified in Section 165(1) or under Section 166. The claimants have to elect one of the two remedies provided in Section 163-A and Section 166.

The remedy provided in Section 163-A is not a remedy in addition to the remedy provided in Section 166 but it provides for an alternative course to Section 166.

30. It is held that by incorporating Section 163-A in the 1988 Act, the Parliament has provided the remedy for payment of compensation notwithstanding anything contained in the 1988 Act or in any other law for the time being in force or instrument having the force of law that the owner of a motor vehicle or authorised insurer shall be liable to pay compensation on structured formula basis as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of motor vehicle. The peculiar feature of Section 163-A is that for a claim made thereunder, the claimants are not 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 or owners of the vehicle concerned.

31. It is held by the Supreme Court in the said judgment that the scheme of Section 163-A is a departure from the general principle of law of tort that the liability of the owner of vehicle to compensate the victim or his heirs in a motor accident arises only on the proof of negligence on the part of the driver. Section 163-A has done away with the requirement of the proof of negligence on the part of the driver of the vehicle where the victim of an

accident or his dependents elect to apply for compensation under Section 163-A. It is held that when an application for compensation is made under Section 163-A, the compensation is paid as indicated in the Second Schedule. However, in the said judgment, the Supreme Court also strongly observed that calculation of compensation and the amount worked out in the Second Schedule suffers from several defects.

32. The Supreme Court adverted to the judgment of three Judge Bench of the Supreme Court in case of ***Supe Dei (Smt) and others v/s National Insurance Company Limited and Another*** in Civil Appeal No. 2753 of 2002, decided on 16th April, 2002. The Supreme Court in the said judgment considered whether Second Schedule to the 1988 Act can be made applicable in deciding the application for compensation made under Section 166 or not. Supreme Court held that the Second Schedule under Section 163-A of the 1988 Act which gives the amount of compensation to be determined for the purpose of claim under that Section can be taken as a guide while determining the compensation under Section 166 of the 1988 Act. The Second Schedule in terms does not apply to a claim made under Section 166 of the 1988 Act. The amount of compensation would be as indicated in the Second Schedule. The claimant is not required to plead or establish that the death or permanent disablement was due to any wrongful act or negligence or default of the owner of the vehicle or any other person.

33. Supreme Court in the said judgment adverted to the earlier judgment in case of ***Patricia Jean Mahajan, AIR 2002 SC 2007***. In the said judgment in case of ***Patricia Jean Mahajan*** (supra) the Supreme Court has held that Section 163-A was enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs.40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The said provision would not require the claimant to prove the negligence and would permit the claimant to seek compensation without protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle. Section 163-A which has an overriding effect which provides for special provisions as to the payment of compensation on structured formula basis. The said provisions contains non-obstante clause in terms whereof the owner of the motor vehicle or the authorised 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 of the victim as the case may be. It is held that the amount of compensation payable under the aforementioned

provisions is not to be altered or varied in any other proceedings.

34. Supreme Court in the said judgment held that having regard to the fact that Section 166 of the Motor Vehicles Act provides for a complete machinery for laying the claim on fault liability, question of giving an option to the claimant to pursue their claims both under Section 163-A and Section 166 does arise. It is clearly held that if the submission of the learned counsel is accepted, the same would lead to an incongruity. Supreme Court held that the Second Schedule to the Act specifies the amount of compensation to be awarded with reference to only income range of Rs.3,000/- to Rs.40,000/-. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes up to 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased.

35. It is held that where the application is under Section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where the compensation is not specified with reference to the annual income of the deceased or is more than Rs.40,000/- by applying the formula $(\frac{2}{3} \times AI \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under Section 163-A of the Motor Vehicles Act. Supreme Court however noticed

various discrepancies/errors in the multiplier scale given in the Second Schedule table in the said judgment and various other discrepancies. The principles laid down by the Supreme Court in case of **Deepal Girishbhai Soni and Others v/s United Insurance Company Limited** (supra) and in case of **Reshma Kumari and Others v/s. Madan Mohan and Anr.** (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

36. This Court in case of **Royal Sundaram Alliance Insurance Co. Ltd. v/s Chandrakala Ashok Kadam and Another, 2019 SCC OnLine Bom 4412** has adverted to the judgment delivered by a three Judge Bench of the Supreme Court in case of **United India Insurance Company Limited v/s Sunil Kumar and Another** (supra) in which it is held that grant of compensation under Section 163-A of the Motor Vehicles Act, 1988 is on the basis of Structured Formula and is in the nature of final award and adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of vehicle involved in the accident. It is held that to understand Section 163-A of the Act to permit insurer to raise defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with proceeding under Section 166 of the Act which would not only be self-contradictory but also defeats very legislative intention. Therefore, in a proceeding under Section 163-A of Act, it is not open for insurer to raise any defence of negligence on the part of the

victim.

37. This Court also adverted to the judgment of Supreme Court in case of ***Shivaji v/s Divisional Manager, United India Insurance Company Limited, 2018 SCC OnLine 877***. The Supreme Court in the said judgment in case of ***Shivaji*** (supra) held that the issue was no longer *res-integra* and was covered by a judgment delivered by a three judges bench of Supreme Court in case of ***United India Insurance Company Limited v/s Sunil Kumar and Another*** (supra). This Court accordingly held that taking into consideration the structured formula, which was required to be adhered to, in case of a petition filed under Section 163-A of the Motor Vehicles Act, 1988, the compensation arrived at by the learned Trial Court was correct. This Court accordingly did not interfere with the judgment and award granting compensation to the claimant following the structured formula prescribed in the Second Schedule appended to the Motor Vehicles Act, 1988. The judgment delivered by the learned Single Judge of this Court in case of ***Royal Sundaram Alliance Insurance Co. Ltd.*** (supra) also applies to the facts of this case and is binding on this Court.

38. In my view, the scheme of the Motor Vehicles Act providing for compensation on the basis of structured formula under Section 163-A read with Second Schedule and compensation under Section 166 of the Motor Vehicles Act is different. Though in the application under Section 166 for

compensation, the Tribunal can consider the compensation prescribed under Second Schedule as a guide, Tribunal cannot consider the compensation payable under Section 166 of the Motor Vehicles Act while considering an application under Section 163-A. The Tribunal can award the compensation in an application under Section 163-A only on the basis of structured formula prescribed under Second Schedule appended to the Motor Vehicles Act, 1988. The Tribunal cannot allow part of the compensation by granting part benefit under Second Schedule appended to the Motor Vehicles Act and partly by awarding compensation payable under Section 166 of the Motor Vehicles Act, 1988. The claimant once having applied for compensation under Section 163-A on the basis of structured formula prescribed under Second Schedule, cannot simultaneously seek compensation also under Section 166 of the Motor Vehicles Act, 1988.

39. In the facts of this case, though the respondent no.1 had specifically claimed compensation under Second Schedule having filed an application under Section 163-A of the Motor Vehicles Act, the Tribunal in the impugned judgment and award though while considering the quantum of compensation in paragraph 17 of the impugned judgment and award recorded that during the course of arguments, it was made clear that the respondent no.1 having filed a claim under Section 163-A of the Motor Vehicles Act, the restriction was on the income of the respondent no.1 exceeding Rs.40,000/- p.a. The Tribunal though considered the income of

the respondent no.1 as Rs.40,000/- p.a., the Tribunal erroneously made addition of Rs.23,25,000/- toward inevitable expenses by relying upon the judgment of a Division Bench of this Court in case of ***New India Assurance Company Limited v/s Shweta Dilip Mehta and Others, (2010) 1 ACC 318*** which compensation was allowed in the applicaton filed under Section 166 of the Act. The strong objection of the appellant is in respect of the compensation derived by the Tribunal in the sum of Rs.23,25,000/- toward inevitable expenses on the ground that the judgment of Division Bench of this Court in case of ***New India Assurance Company Limited v/s Shweta Dilip Mehta and Others*** (supra) that the compensation of Rs.23,25,000/- toward inevitable expenses was awarded under Section 166 of the Motor Vehicles Act, 1988 and not while considering the application under Section 163-A of the Motor Vehicles Act, 1988.

40. A perusal of the said judgment in case of ***New India Assurance Company Limited v/s Shweta Dilip Mehta and Others*** (supra) clearly indicates that the Tribunal had considered the claim for compensation under Section 166 of the Motor Vehicles Act, 1988 and not an application under Section 163-A of the Motor Vehicles Act, 1988. In paragraphs 13 and 14 of the said judgment, this Court accepted the compensation towards inevitable expenses in the sum of Rs.23,25,000/- awarded by the Tribunal in an application filed under Section 166 of the Act. In my view, the said judgment of Division Bench of this Court was not at all applicable to the facts of this

case. The reliance thus placed by the Tribunal on the said judgment is totally misplaced and contrary to the view already taken by the Supreme Court in the above referred judgments.

41. Insofar as reliance placed by the learned counsel for the respondent no.1 on the judgment of Supreme Court in case of ***Syed Basheer Ahamed and Others*** (supra) is concerned, a perusal of the said judgment clearly indicates that the appellant in the said matter had filed a claim petition under section 166 of the Motor Vehicles Act, 1988 for seeking compensation and not under section 163-A of the Motor Vehicles Act. In paragraph (11) of the said judgment, it is held by the Supreme Court that in the matter of computation of compensation, there is no uniform rule or formula for measuring the value of a human life. Though a special provision for assessment of compensation on structured formula basis for the purpose of a claim petition under section 163-A of the Motor Vehicles Act has been inserted in the Act with effect from 14th November, 1994, but no such formula has been laid down for determination of compensation in a claim petition under section 166 of the Act, though there is no bar in taking the said schedule as a guiding factor while determining the just compensation by applying multiplier method.

42. Supreme Court adverted to an earlier judgment in case of ***Managing Director, TNSTC Ltd. vs. K.I.Bindu & Ors., (2005) 8 SCC 473*** in which it

was observed that the second schedule to the Act may serve as a guide but cannot be used as an invariable ready reckoner. In my view, the said judgment would not assist the case of the respondent no.1 in view of the fact that the said judgment had dealt with the application filed by the claimant under section 166 of the Motor Vehicles Act, 1988 and not under section 163-A of the Act and is clearly distinguishable in the facts of this case.

43. Similarly in the judgment of Supreme Court in case of ***Kumari Kiran Through Her Father Harinarayan*** (supra) relied upon by the learned counsel for the respondent no.1, the Supreme Court has also dealt with an application for compensation under Section 166 of the Motor Vehicles Act, 1988 and not under section 163-A of the said Act. The said judgment is thus clearly distinguishable in the facts of this case and would not assist the case of the respondent no.1.

44. Insofar as judgment of Supreme Court in case of ***Khenyei v/s. New India Assurance Co. Ltd. and Ors.***, (supra) relied upon by the learned counsel for the respondent no.1 is concerned, it is held by the Supreme Court that the apportionment of compensation between two tortfeasors *vis a vis* the plaintiff/claimant is not permissible. It is held by the Supreme Court that liability of the joint tortfeasor is joint and several. It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of

other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award. He can recover at his option whole damages from any of them. There is no dispute about the proposition of the law laid down by the Supreme Court in case of ***Khenyei v/s. New India Assurance Co. Ltd. and Ors.***, (supra) relied upon by the learned counsel for the respondent no.1.

45. In my view, since the respondent no.1 had filed an application for compensation under section 163-A of the Motor Vehicles Act, 1988, there was no question of the respondent no.1 proving any negligence or default against any of the tortfeasors. A perusal of the impugned judgment and award passed by the Tribunal clearly indicates that the Tribunal has rendered a perverse finding that the compensation amount of Rs.38,94,200/- was required to be apportioned equally between the owner of the offending vehicle and the owner of the Tata Magic vehicle in which the respondent no.1 was travelling. In my view, the impugned judgment and award deciding the negligence at the first instance on the part of the driver of the offending vehicle as well as Tata Magic vehicle itself is contrary to the section 163 of the Motor Vehicles Act and shows total perversity. There is thus no question of apportionment of any liability in the ratio of 50 : 50 or in any other ratio between the owner of the offending vehicle and the owner of the Tata Magic vehicle.

46. The impugned judgment and award in this respect is contrary to the law laid down by the Supreme Court in catena of judgments referred to aforesaid and also section 163-A of the Motor Vehicles Act. The judgment and award of the Tribunal thereby rendering the findings on the issue of negligence for the purpose of deciding the extent of contributory negligence and thereafter dividing the compensation at two parts is *ex-facie* perverse.

47. In case of ***Yadava Kumari vs. Divisional Manager, National Insurance Company Limited and another, (2010) 10 SCC 341*** relied upon by the learned counsel for the respondent no.1, the Supreme Court has held that the multiplier method is to be applied in cases of injuries also under Second Schedule under section 163-A of the Motor Vehicles Act which gives the structured formula for the calculation of compensation in accident cases. Supreme Court has held that in matters of determination of compensation, both the Tribunal and the Court are statutorily charged with a responsibility of fixing a 'just compensation'. It is held that the determination of a just compensation cannot be equated to a bonanza. At the same time the concept of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. There is no dispute about the proposition of law laid down by the Supreme Court in the said judgment. It is not in dispute that in this case, the Tribunal has applied the multiplier while determining the compensation in favour of

the respondent no.1.

48. Learned Single Judge of this court in case of **National Insurance Company Limited v/s. Chandraprabha and Ors.**, (supra) has held that the claim petition having been filed under section 163-A of the Motor Vehicles Act would be governed by the structured formula of compensation provided in the second schedule of the Motor Vehicles Act. This court in the said judgment adverted to the judgment of the Supreme Court in case of **Sarla Varma** (supra) and held that under section 166 of the Motor Vehicles Act, the claimant is entitled to just compensation. Supreme Court also made it clear in paragraph (20) of the said judgment in case of **Sarla Varma** (supra) that it was not dealing with the case under section 163-A of the Motor Vehicles Act, which indicates that the ratio laid down in the said decision is applicable only to the cases under Section 166 of the Motor Vehicles Act. Unless there is an amendment to the provisions of section, namely Section 163-A of the M.V. Act, it would not be permissible for the Tribunal to award the amount over and above one which is prescribed under the head of non pecuniary damages.

49. This court accordingly held that the Tribunal had committed an error in granting funeral expenses of Rs.25,000/- and Rs.10,000/- on account of love and affection which are not in conformity with the provision of second schedule. In my view, the said judgment of this court squarely applies to the

facts of this case. I am respectfully bound by the said judgment. The Tribunal thus could not have awarded a sum of Rs.23,25,000/- towards inevitable expenses in the impugned judgment and award contrary to Section 163-A read with Second Schedule. In my view, this part of the award allowing compensation towards inevitable expenses in the sum of Rs.23,25,000/- is contrary to the principles of law laid down by this court in case of **National Insurance Company Limited v/s. Chandraprabha and Ors.**, (supra) and above referred judgments and thus deserves to be set aside.

50. This court in case of **Bajaj Allianz General Insurance Co. Ltd. v/s. Shobha Babanrao Khose and Ors.**, (supra) held that perusal of section 163A of the Motor Vehicles Act would clearly show that annual income is specified, which starts from Rs.3,000/- and goes up to Rs.40,000/-. Various factors like age of the victim, applicable multiplier and such other factors are specified in the said Schedule. The said provisions along with Schedule II would show that indicators for calculating compensation payable are specified and such specifications are only for annual income upto Rs.40,000/-. There can be no doubt about the fact that the claim petition under Section 163-A is distinguishable from the claim petition made under Section 166 of the said Act. It is held that one of the distinguishable features is that in a claim under Section 163-A of the said Act, the claimants need not plead or prove that the death or permanent disablement had occurred due to any wrongful act or negligence on the part of the owner of the vehicle

involved in the accident. This court in the said judgment recommended that Central Government may amend Second Schedule from time to time. This Court accordingly held that Tribunal had committed an error in relying upon judgments wherein observations were made about Schedule II, pertaining to cases where claim petitions were filed under Section 166 of the Motor Vehicles Act. The principles laid down by this Court in the said judgment would apply to the facts of this case. There is thus no merit in the submission of Mr.Kulkarni, learned counsel for the respondent no.1 that the Tribunal was justified in awarding the inevitable expenses in the sum of Rs.23,25,000/- in favour of his client.

51. Learned counsel for the respondent no.1 is right in his submission that by passage of time, the amount of compensation provided under Section 163-A of the Motor Vehicles Act, 1988 and Second Schedule have become redundant and meaningless. Second Schedule has been already deleted by 2019 Amendment. The said amended section however has not been notified till date. There is no merit in the submission of the learned counsel that while awarding just compensation though the application was filed under section 163A, Tribunal was empowered to grant compensation payable under section 166 of the Motor Vehicles Act, 1988.

52. Insofar as submission of the learned counsel for the respondent no.1 that Second Schedule does not apply to the children is concerned, there is no

substance in the submission of the learned counsel. A perusal of the Second Schedule clearly indicates that it has provided multiplier in case of victim below the age of 15 years. The Tribunal has applied the multiplier accordingly after computing the compensation. In my view, the said schedule apply also in case of children who has met with an accident. Judgment of Supreme Court in case of **Kajal** (supra) relied upon by the learned counsel for the respondent no.1 would not apply to the facts of this case in view of the said judgment dealing with a claim for compensation under Section 166 of the Act. Tribunal could not have allowed claim of Rs.3,00,000/- towards loss of amenities under Second Schedule of the Act.

53. The respondent no.1 thus would not be entitled to recover a sum of Rs.23,25,000/- as awarded by the Tribunal in the impugned judgment and award. At the same time, the respondent no.1 was not liable to plead or prove the negligence or breach on the part of the driver of the offending vehicle or otherwise before the Tribunal in view of the claim application having been filed by the respondent no.1 being admittedly under section 163-A of the Motor Vehicles Act, 1988. The compensation thus payable to the respondent no.1 would be in the sum of Rs.1,49,150/- towards hospital/ medical bills, pain and sufferings Rs.5,000/-, Rs.7,20,000/- towards loss of income, totalling to Rs.8,74,150/-. In my view, in the facts and circumstances of this case, the Tribunal ought to have awarded interest at the rate of 9% per annum from the date of filing petition till the date of

realization instead of 8% per annum.

54. I, therefore, pass the following order :-

- (a) The respondent no.1 (original applicant) is entitled to receive compensation amount in the sum of Rs.8,74,150/- from the appellant with interest at the rate of 9% per annum from the date of filing claim petition till its realization.
- (b) It is made clear that the respondent no.1 will give credit of the amount already recovered from the appellant out of the amount deposited by the appellant pursuant to the interim order passed by this court if any.
- (c) If there is any shortfall in the amount deposited by the appellant before the M.A.C.T., Kolhapur in MACP No. 451 of 2009, after paying the decretal amount to the respondent no.1, such shortfall amount shall be deposited by the appellant with the M.A.C.T., Kolhapur within two weeks from the date of compensation of such shortfall by the M.A.C.T., Kolhapur.
- (d) If there is any surplus amount found deposited by the appellant after paying the decretal amount to the respondent no.1 as awarded by the Tribunal and modified by this judgment, the same shall be refunded by the M.A.C.T., Kolhapur to the appellant within two weeks from the date of such computation.
- (e) Office is directed to transmit the statutory amount of Rs.25,000/- to the M.A.C.T., Kolhapur deposited by the appellant if not transmitted so far expeditiously.
- (f) Impugned judgment and award dated 10th June, 2011 is partly

modified to the aforesaid extent.

- (g) First Appeal is partly allowed in the aforesaid terms. There shall be no order as to costs.
- (h) This order will be digitally signed by the Personal Assistant of this Court. Associate of this Court is permitted to forward the parties copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

(R.D. DHANUKA, J.)