

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 762 of 2013**

1. State of Chhattisgarh through the Secretary to the Government of Chhattisgarh, Department of Water Resourced, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
 2. The Collector, Tahsil and District Raipur Chhattisgarh
- Appellants**

VERSUS

1. Smt. Meena Yadav aged about 40 years, Wd/o Kanhaiya Yadav
2. Ku. Manisha aged about 14 years, D/o late Kanhaiya Yadav
3. Ku. Manjusha, aged about 12 years D/o late Kanhaiya Yadav
4. Abhijit Kumar Yadav, aged about 9 years S/o late Kanhaiya Yadav

Respondents 2 to 4 are minors and represented by their mother Smt. Meena Yadav

All are residents of Shitlapara Ward no. 1, Nayapara, Tahsil Nayapara, District Raipur Chhattisgarh (Now district Gariyaband) p.s. Nayapara.

----Respondents

For Appellants	:	Mr. Vimlesh Bajpai, Govt. Advocate
For Respondents	:	Mr. Shivendu Pandya, Advocate

(proceedings through Video Conferencing)

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

27/07/2021

1. Challenge in this appeal is to the award dated 10.12.2012 passed by learned Third Additional Motor Accident Claims Tribunal, Raipur, C.G. (for short "Claims Tribunal") in claim case no. 70/2004, whereby learned Claims Tribunal allowed the application filed under Section 163-A of the Motor Vehicles Act, 1988 (for short "Act of 1988") in part and awarded

Rs. 5,96,000/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are, that Kanhaiya Yadav was under the employment of appellant-department as driver. He was sent along with Marshal jeep (official jeep) bearing registration no. CG02/1695 (henceforth "offending vehicle") from Raipur to Mainpur under the Pulse Polio program. On 07.04.2004 at about 03:00 pm, while returning from Mainpur to Raipur by driving official jeep, he dashed with a standing tree on the road side near Kachna-Dharwa road and met with an accident. In the said accident, he received severe injuries over his person and succumbed to the injuries. The accident was reported to concerned police station based on which crime for offence under Section 279, 337, 304A of IPC was registered against the driver of offending vehicle. After investigation, final report of closure was filed mentioning that the Kanhaiya Yadav died during the course of treatment.
3. Claimants/ Respondents 1 to 4 who are widow and children of late Kanhaiya Yadav filed an application under Section 163-A of the Act of 1988, seeking compensation of Rs. 33,50,000/-, pleading therein that the deceased on the date of accident was 42 years of age, working as driver in the Irrigation department and earning Rs. 8,000/- per month.
4. Non-applicants submitted reply to the claim application and denied the facts pleaded therein.
5. Learned Claims Tribunal, upon considering the pleadings and evidence brought on record by the respective parties, initially dismissed the application for grant of compensation,

considering that the applicants are receiving pension and further that the application is not maintainable as the appellants/ Non-applicants 1 and 2 have not been given prior notice, vide award dated 11.05.2005. The award dated 11.05.2005 was to be challenged in Miscellaneous Appeal No. 1028/2005. The said Miscellaneous Appeal filed by non-applicants came up for hearing along with another Miscellaneous Appeal 1027/2005 and the Division Bench of this Court allowed the appeal and remitted back the case for deciding afresh on merits. After remand, the Tribunal has passed afresh award on 10.12.2012, awarded Rs. 5,96,000/- as compensation assessing the monthly income of deceased as Rs. 6,665/-

6. Mr. Vimlesh Bajpai, learned counsel for the appellants would submit that the impugned award passed by learned Claims Tribunal is in bad in law. He submits that the deceased was driver of offending vehicle and while driving the offending vehicle he met with an accident dashing with standing tree on roadside. There is no involvement of any other motor vehicle in the accident. The accident was a result of rash and negligent act of deceased himself, therefore, they have chosen to file an application under Section 163-A of the Act. He submits that in the claim case itself, the claimants have pleaded the income of deceased as Rs. 8,000/- per month. Application under Section 163-A of the Act filed by Respondents itself is not maintainable as they have pleaded income of deceased as Rs. 8,000/- per month ie. Rs. 96,000/- per annum, whereas, as per the IIInd Schedule under the Act

of 1988, the maximum income for maintaining the application under Section 163-A of the Act is prescribed as Rs. 40,000/- per annum only.

7. Mr. Shivendu Pandya, learned counsel for Respondents/ claimants, opposing the submissions made by learned counsel for the appellants, submits that the appellants have not taken specific plea/ defence with regard to maintaining of claim application before the Claims Tribunal in their reply, hence, the appellants cannot be permitted to raise new grounds before this Court in appeal. The award passed by learned Claims Tribunal is just and proper in the facts and circumstances of the case. He further pointed out that by virtue of the interim order dated 06.03.2014, appellants have deposited Rs. 2 Lakh which was paid to Respondents/ claimants.

8. At this stage, Mr. Vimlesh Bajpai, learned counsel for appellants submits that as there are more than one applications arising out of the same accident, another one is as *Smt. Mankibai and others vs. Water Resource Department and others*. In both case reply was filed. Due to some mistake, specific pleadings were not made. The ground raised is a legal ground with regard to maintainability of the claim application itself, hence, this ground can be raised at any stage of the proceedings. Claims Tribunal ought to have taken cognizance based on the legal ground which is to be considered based on the pleadings of the claimants and the provision under which application is filed.

9. I have heard learned counsel for the respective parties and also perused the record.

10. Undisputedly, the application filed by the respondents is under Section 163-A of the Act, income pleaded is Rs. 8,000/- per month as driver in government department. In evidence, Respondent 1/ Meena Yadav has stated the income of deceased as Rs. 8,000/- per month. Claims Tribunal completely overlooked the provisions under which the applications for seeking compensation ie. Section 163-A has assessed the income of deceased as Rs. 6,665/- per month ie. Rs. 79,980/- p.a. Section 163-A of the Act is enacted as a special provision as to payment of compensation on structured formula basis for the victim falling under special category as per second schedule. In the second schedule, income, multiplier considering the age of deceased has been mentioned. The maximum income is fixed as Rs. 40,000/- per annum. From perusal of second schedule, it is apparent that the application under Section 163-A would be maintainable only if the income of the deceased is pleaded and proved as Rs. 40,000/- or below. This special provision under Section 163-A is enacted with an object to provide compensation to the family members of the deceased/ victim without any proof of negligence on the part of others and at the earliest. The compensation under Section 163-A is to be paid on the basis of principle of social justice as a social security measure. The Hon'ble Supreme Court in case of **Oriental Insurance Co. Ltd. v. Hansrajhai V. Kodala** reported in (2001) 5 SCC 175 and held as under:

“15. ... The purpose of this Section and the Second Schedule is to avoid long-drawn litigation and delay in payment of compensation to the victims or his heirs who are in dire need of relief. If such affected claimant opts for accepting the lump-sum compensation based on structured formula, he would get relief at the earliest. It also gives vital advantage of not pleading or establishing any wrongful act or neglect or default of the owner of the offending vehicle or vehicles. This no fault liability appears to have been introduced on the basis of the suggestion of the Law Commission to the effect that the expanding notions of social security and social justice envisage that liability to pay compensation must be “no-fault liability” and as observed by this Court in *Ramanbhai* case (Supra), “in order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents”. However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs.40,000/- which is the highest slab in the Second Schedule which indicates that the legislature wanted to give benefit of no fault liability to a certain limit. This would clearly indicate that the scheme is in alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay compensation without there being any long drawn litigation on a predetermined formula, which is known as structured formula basis which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever increasing motor vehicles accidents in a fast moving society. ...”

11. When the compensation is to be paid under the provisions of Section 163A on structured formula basis then as per the pleadings, the case of claimants ought to be within the structure of second schedule particularly with regard to income, and compensation is to be calculated based on the other factors provided therein. The claimants have approached the Tribunal under the provisions of Section 163-A of the Act knowing well that the deceased himself was driving the vehicle, there is no involvement of any other motor vehicle

and he met with an accident due to his rash and negligent driving. Deceased was a government servant and further the claimants in their evidence have also stated income of deceased on the date of accident as Rs. 8,000/- per month.

12. So far as the submissions of not raising the ground of maintainability of claim application in reply to claim application is concerned, in view of the income pleaded, the application for grant of compensation filed under Section 163-A, is not maintainable and it is liable to be dismissed.
13. Resultantly, appeal is allowed, impugned award is not sustainable in the eyes of law, accordingly, it is set aside. As the learned counsel for the Respondents submitted that in pursuance of order dated 06.03.2014, the amount of Rs. 2,00,000/- (Rupees: Two Lakhs) deposited by the appellants has been withdrawn by the Respondents/ Claimants, there shall be no recovery of any amount which was already withdrawn by Respondents/ claimants in pursuant to the impugned award. Any amount deposited by appellant and still lying with the Tribunal shall be refunded/ return back to appellants.

Sd/-
(Parth Prateem Sahu)
Judge