IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.214 OF 2003

National Insurance Company Ltd.,
Delhi-6, Through its
Divisional Manager,
Hajari Chembers, Aurangabad .... APPELLANT

VERSUS

1. Prithbeersingh s/o Galjarsingh,
Age : 45 years, Occu.: Agril.,
R/o.: House No. 78, Village Kawan,
Post Preet nagar, Tq. Anjala,
District Amritsar (Punjab)

2. Kashmirkaur Prithbeersingh,
Age : 39 years, Occu.: Household,
R/o.: As above.

3. Jaspalsingh s/o Massasingh,
Age ; 45 years, Occu.: Truck owner,
R/o.: C/o. Shivshakti Road Lines,
1215, Faizganj, Bhandurgarh Road,
Delhi-6. ... RESPONDENTS

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Advocate for Appellant: Mr. S. S. Chapalgaonkar h/f
Mr. S. P. Chapalgaonkar
Advocate for Respondent Nos.1 & 2 : Mr. U. N. Shete
Advocate for Respondent No.3 : Mr. Sanjay Munde

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 27/07/2022
PRONOUNCED ON : 18/08/2022

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JUDGMENT :

1. Being dissatisfied with the judgment and award dated 04/06/1999 passed by the Member, MSCT, Parbhani in MACP No.157 of 1997, respondent No.2 i.e. National Insurance Company Ltd. has filed this appeal only on the ground that though the petition was filed by the petitioner, who are the present respondent Nos.1 & 2 under Section 163A of the Motor Vehicles Act, 1988 but the learned Tribunal allowed the same by considering the income of the deceased was more than Rs.40,000/- per annum.

2. It is not disputed that the claim Petition No. 157 of 1997 was filed by present respondent Nos.1 & 2, who are the original claimants for accidental death of their son Brahmindersingh, who died in a motor accident, which took place on 13/01/1997 near Hingoli. It further appears that the learned Tribunal by holding the monthly income of the deceased to the tune of Rs.3,500/- per month, granted an amount of Rs.5,00,000/- to the original claimants inclusive of NFL amount.

3. The learned counsel for the appellant vehemently argued that the learned Tribunal has committed an error apparent since in the claims under section 163A of the Motor Vehicles Act there is restriction on the income of the deceased and no claim petition under said section is maintainable if the income of the deceased goes beyond Rs.40,000/- per annum. He heavily relied upon the judgment of this Court in the case of ***New India Assurance Company Limited vs. Ashabai Kalyan Kothi and others, reported in 2008(6) Bom.C.R. 89.***

4. On the contrary, the learned counsel for contesting respondent Nos.1 & 2 supported the judgment and prayed for dismissal of the appeal.

5. Heard rival submissions. Also perused the entire documents on record along with impugned judgment in the light of the rival submissions.

6. It is significant to note that the present appeal is only on limited issue as to whether the learned Tribunal can entertain motor accident claim petition under Section 163A of the Motor Vehicles Act, wherein the income of deceased is beyond the prescribed limit of Rs.40,000/- per annum as provided in Schedule-II table under the Act. Admittedly, on going through the said section as well as the schedule provided thereunder, upper limit of income of the deceased is fixed up to Rs.40,000/- per annum for calculating the compensation. The learned counsel for the appellant- National Insurance Company Ltd. claims that when such upper limit of income of deceased is fixed under Schedule-II, the very act of the learned Tribunal entertaining the present claim, which is admittedly under Section 163A of the Motor Vehicles Act by holding annual income of the deceased to the tune of Rs.42,000/- per annum is totally erroneous. He has relied upon the judgment of this Court as mentioned above. I have carefully gone through the said judgment. Admittedly, this court has observed that no claim petition under Section 163A of the Motor Vehicles Act can be entertained when the income of deceased is pleaded more than Rs.40,000/- per annum and in such cases, where the income of deceased is more than Rs.40,000/- per

annum is pleaded, such petitions are required to be converted in to petitions under Section 166 of the Motor Vehicles Act, 1988. By observing the same, this court in the said judgment has passed following order as per para No.19, which is reproduced herein below :

"19. -----

(i) The impugned judgment and Award dated 30th March, 2007 is quashed and set-aside and M.A.C.P. No. 138/05 is restored.

(ii) On the application being made by the claimants, the learned Member of the Tribunal will allow the claimants to carry out necessary amendments to claim petition for converting the claim petition into a claim petition under Section 166 of the Motor Vehicles Act, 1988.

(iii) It will be open for the respondents in the claim petition to file their written statements or to file supplementary written statements by adopting the earlier written statements which are already on record.

(iv) The claim petition shall be decided expeditiously.

(v) All contentions of the parties including various contentions raised by the appellant in this appeal are kept.

(vi) The appeal is partly allowed in above terms with no orders as to costs.

(vii) In view of this judgment, it will be open for the appellant to withdrew the sums of Rs.25,000/- and Rs.4,68,624/- deposited in this Court.

(viii) Pending Civil Applications are disposed of.

Appeal allowed."

7. The learned counsel for the appellant-National Insurance Company Ltd., therefore, submitted that the learned Tribunal has accepted monthly income of the deceased to the tune of Rs.3,500/- per month, which annually comes to Rs.42,000/- and therefore, prayed that the petition needs to be remanded back for such conversion.

8. However, in the case of ***Rukmani Devi vs. New India Assurance Co. Ltd. and another, reported in 2009 ACJ 2202*** the Delhi High Court has taken a view that the income of deceased beyond the limit of Rs.40,000/- per annum would not come in the way of the claimant to file claim application under Section 163A of the Motor Vehicles Act. On going through the said judgment, it appears that the claimant therein had filed claim petition under Section 166 of the M. V. Act by pleading the income of Rs.60,000/- per annum. However, she thereafter withdrew the said petition and preferred same petition for same cause under Section 163A of the Act. The learned Tribunal had dismissed that claim petition, which was under Section 163A of the M. V. Act on the ground that income of the deceased pleaded goes beyond the restricted limit of Rs.40,000/- per annum as stated in the table under the said section. However, the Delhi High Court by observing that the Schedule-II which is brought into force under the amendment in the year 1994 was not revised even after lapse of more than 13 years and therefore, there was requirement of enhancement of Rs.40,000/- per annum. Accordingly, the first appeal was

remanded back by the Delhi High Court to the concerned Tribunal for fresh trial. It is specifically held in para 11 and 12 as follows :

> *"11. In the facts of the present case, the appellant-claimant has claimed income of the deceased at the rate of Rs.5,000/- per month from his job as driver. The accident in the present case had occurred on 18/05/2002 while the claim petition was filed by the claimant on 10/03/2003 and the impugned award has been passed on 18/09/2006. Had the government revised the Second Schedule as per the mandate of Section 163-A (3) of the Motor Vehicles Act, the said upper limit of Rs.40,000/- would have got increased to a much higher amount, then the annual income of the deceased pleaded by the appellant-claimant. Taking a note of the increase in the Minimum Wages Act, the said limit of Rs.40,000/- inserted in the Second Schedule in the year 1994 would have got increased minimum to about Rs.80,000/- in the year 2002 as per the high rise in cost of living and the inflation rate during the past period, which factors are mainly the determinative factors taken into consideration by the government at the time of revision of minimum wages of various categories of workers under the Minimum*

Wages Act. I am, therefore, of the view that in the absence of there being any revision by the government to the said upper limit of Rs.40,000/- in the Second Schedule to Motor Vehicles Act, the wages of the deceased or victim of the accident can be raised to the same limit as has been taken into account under Minimum Wages Act for the revision of minimum wages of various categories of workmen.

12. In the light of the above discussion, I do not find the wages of the deceased at Rs.5,000/- p.m. or Rs.60,000/- per annum would come in the way of the appellant-claimant to file the petition under section 163-A of the Motor Vehicles Act.

The impugned award passed by the Tribunal is set aside. The matter is remanded to the Tribunal for fresh trial of the case.

Parties are directed to appeal before the Tribunal on 25/05/2008."

9. It is extremely important to note that the present claim petition has been decided by the learned Tribunal on 04/06/1999 and this court is hearing the first appeal in the year 2022. The first appeal is filed in the year 2003, but somehow till 2022 it could not be decided. Moreover, the learned Tribunal while deciding the claim petition, which is admittedly under Section 163A of the M.V.

Act, has only considered income of the deceased to the tune of Rs.42,000/- per annum i.e. only Rs.2,000/- per annum in addition to the upper limit of Schedule-II, which is Rs.40,000/- per annum. Considering the fact that the Schedule-II table has not been revised since 1994, the additional income of only Rs.2,000/- per annum considered by the learned Tribunal for computing the compensation as per the structural formula under Section 163A of the Act, cannot be considered a grossly erroneous finding especially in the light of observation of the Delhi High Court in the case of ***Rukmani Devi*** (supra).

10. Apart from that it is also extremely important to note that though the appellant - National Insurance Company Ltd. was knowing that the claim was filed under Section 163A of the M. V. Act and that the income of the deceased was pleaded more than Rs.40,000/- per annum, it did not raise any objection in its written statement that the claim petition was not maintainable since the required income limit was exceeded by the claimants. Not a single averment is there in the written statement of the appellant-Insurance Company. In such circumstances, even if there is an observation of this court that the claim petition under Section 163A of the M. V. Act needs to be remanded back since the income of the deceased is pleaded more than Rs.40,000/- per annum. But, considering the huge delay in deciding the present appeal, it would not be just and proper to remand the matter back to the the learned Tribunal, which has been decided in the year, 1999. Therefore, I find that the judgment of this court in case of ***New India Assurance Company Ltd. Vs. Ashabai Khoti and others*** (supra) is not helpful to the present appellant in the peculiar facts

of this case. Hence, I find no merit in the appeal and the same stands dismissed with cots.

11. It appears that balance amount of Rs.2,20,817.25 has been kept in fixed deposit under the order dated 11/03/2003 of this court till final disposal of this appeal. As such, the said amount be paid to respondent Nos.1 & 2 in equal proportion along with interest accrued thereon.

12. The first appeal is disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-