

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 69 OF 2007

Bhausahab s/o Rakhama Rohokale
Age: 48 years, Occ. Service & Agri.,
R/o Supa, Taluka Parner,
District Ahmednagar

... **Appellant**
[Orig. Claimant]

Versus

1. Shamrao N. Kulat
Age: Major, Occu. Business,
R/o Khatgaon Takali,
Tal. Nagar, Dist. Ahmednagar
(Owner of Jeep No.MH-20-E-8074)

2. The New India Assurance Co. Ltd.,
Notice to be served on its Divisional Office
at Near Ashoka Hotel, Ahmednagar,
District Ahmednagar
(Insurer of Jeep No.MH-20-E-8074)

... **Respondents**
[Orig. Opponents]

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Mr. N. D. Kendre, Advocate (appointed) for the appellant
Mr. P. B. Vikhe Patil, Advocate for the appellant
Mr. S. G. Chapalgaonkar, Advocate for respondent No.2

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CORAM : R. G. AVACHAT, J.

**RESERVED ON : 14th DECEMBER, 2021
PRONOUNCED ON : 08th FEBRUARY, 2022**

J U D G M E N T :-

. This is an appeal under Section 173 of the Motor Vehicles Act (for short, 'M.V. Act'). The challenge herein is to the judgment and award refusing to grant compensation on account of injuries and permanent disability suffered in an accident involving motor vehicles. The original petitioner has, therefore, preferred the present appeal.

2. Facts giving rise to the present appeal are as follows :

The petitioner was travelling in a Jeep MH-20-E-8074, from Shirdi to Supa, on 25.07.1997. An unknown truck approaching from opposite side, dashed against the Jeep and fled. It was about 9.15 p.m., the petitioner and others in the Jeep suffered multiple injuries. The petitioner's right leg was amputated. He, therefore, preferred the petition (Motor Accident Claim Petition No.328 of 1998) against the owner and the insurer of the Jeep he was travelling in.

3. The Tribunal, on appreciation of the evidence in the petition, dismissed the same mainly on the ground of the petitioner

having failed to even aver and prove the Jeep driver to have been responsible for the accident.

4. Heard.

Learned Advocate Shri N. D. Kendre (appointed) and the learned Advocate Shri P. B. Vikhe Patil, representing the petitioner, would submit that it was a case of composite negligence of the drivers of both the vehicles involved in the accident. The petitioner was one of the passengers in the Jeep. Although, the First Information Report was lodged against the driver of the truck, it was only in respect of a criminal liability. The petitioner averred in the petition that the accident took place due to rash and negligence on the part of the drivers of the vehicles. According to the learned Advocates, the petitioner's right leg had to be amputated. He had to spend a lot for medical treatment. Both the learned Advocates, therefore, urged for allowing the appeal. Both of them, in the alternative, urged for permitting them to convert the petition to one under Section 163-A of the M.V. Act.

5. Learned Advocate for the respondent – Insurance Company would, on the other hand, submit that proof of negligence

and/or rashness on the part of driver of the offending vehicle/vehicles is a '*sine qua non*' for grant of compensation under Section 166 of the M.V. Act. The learned Advocate took this Court through the averments in the petition, police papers relied on and even the own testimony of the petitioner to ultimately submit that even there is no slightest of whisper attributing rashness or negligence to the driver of the Jeep. According to the learned Advocate, the Tribunal has therefore rightly dismissed the petition. On the alternative, prayer for converting the petition to one under Section 163-A of the M.V. Act, the learned Advocate would submit that the petitioner had already taken recourse to Section 166. He preferred application under Section 140 as well, and received the compensation. According to him, for a claim under Section 163-A of the M.V. Act, income of the claimant shall not be more than 40,000/- per annum. The petitioner has been serving and his income is more than the ceiling limit. According to the learned Advocate, it is therefore not permissible in law to convert the petition under Section 166 to one under Section 163-A of the M.V. Act. In support of his contentions, the learned Advocate has relied on the following authorities:

- (i) Minu B. Mehta and another Vs. Balkrishna Ramchandra Nayan and another – (1977) 2 SCC 441;
- (ii) Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd., Baroda – (2004) 5 SCC 385;
- (iii) United India Insurance Co. Ltd., Vs. Janabai Yeshwant Kurhat and others – 2002 (Supp.2) Bom.C.R. 487;
- (iv) M/s New India Assurance Co. Ltd., Vs. Smt. Ashabai w/o Kalyan Kothi and others – 2008 SCC OnLine Bom 574.

6. Considered the submissions advanced. Perused the pleadings, police papers relied on and the evidence, as well. In all these documents, the petitioner has put a blame on driver of the unknown truck involved in the accident. For grant of compensation under Section 166 of the M.V. Act, proof of negligence and/or rashness on the part of the driver of an offending vehicle is a '*sine qua non*'. It is true that in case of composite negligence, the claimant may proceed against both or any of the vehicles involved in the accident. It is also true that petition under Section 166 is to be decided on preponderance of probabilities. Rules of pleadings are liberally construed. Considered to give the petitioner some relief, but could not find reason to accept the petitioner's claim. The Tribunal has rightly dismissed the petition. No interference therewith is required.

7. On the question of alternative prayer for treating the claim petition as one under Section 163-A and not under Section 166 of the M.V. Act is concerned, it is to be stated that in case of ***New India Assurance Co. Ltd. Vs Smt. Ashabai (supra)***, this Court has observed that, for invoking provisions of Section 163-A, annual income of Rs.40,000/- shall be treated as cap. Claimants cannot notionally bring down income to Rs.40,000/-. Moreover, a Three Judge Bench of the Hon'ble Supre Court of India in the case of ***Deepal Girishbhai Soni and others Vs United India Insurance Co. Ltd. (supra)***, has observed that the proceeding under Section 163-A being a social security provision providing for a distinct scheme only those whose annual income is upto Rs.40,000/-, can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

8. Section 163-A was brought on the statute book way back in November 1994. We are in 2022. About 28 years have passed. The Second Schedule of M. V. Act has remained unchanged in spite of Apex Court directions to amend it in view of dwindling value of rupee, inflation and cost of living, index etc. ***(Kurvan Ansari alias Kurvan Ali & Anr. Vs. Shyam Kishore Murmu & Anr. - Supreme Court***

of India Civil Appeal No.6902 of 2021). A thought had come to the mind of this Court to allow the petitioner to convert the petition to one under Section 163-A of the M.V. Act on this ground alone. It is, however, found that the accident took place in July 1997 i.e. within a 2 ½ years of Section 163-A of the M.V. Act was brought on the statute book. For grant of compensation, necessarily, income of the petitioner when the accident did take place, will have to be taken into consideration. With a passage of only 2 ½ years, there would not have been substantial change in the income and value of rupee. The petitioner, in the petition itself has averred that his annual income from salary was Rs.84,000/-, plus from agriculture, Rs.2,000/- per month. This aspect, necessarily comes in the way of the petitioner for grant of an alternate prayer. The Court is very much conscious of the fact that the merits of the proposed amendment cannot be looked into. The fact, however, remains that no fruitful purpose would be served by granting alternative prayer. Even this Court takes his petition under Section 163-A of the M.V. Act and proceed to grant relief, the petitioner would not be entitled to any compensation therein in view of his income being more than double the ceiling of Rs. 40,000/- per annum at the relevant time.

9. Be that as it may. In view of the cap of income of Rs.40,000/- per annum for grant of compensation under Section 163-A of the M.V. Act and the petitioner's annual income from salary being Rs.84,000/- per annum, plus Rs.24,000/- per annum as an agricultural income in the year 1997, the petitioner would not be entitled to prefer a claim under Section 163-A of the M.V. Act. The alternative prayer cannot be considered favorably.

Unfortunately, the appeal fails. The same is thus, dismissed.

10. The fees of Shri N. D. Kendre, learned Advocate, who was appointed for the appellant is quantified at Rs.10,000/- (Rupees Ten Thousand), to be paid by the Legal Aid Services Sub-Committee, Aurangabad.

[R. G. AVACHAT, J.]

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