

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**FMA 197 of 2019
Ruksana Bibi & Another
versus**

The Divisional Manager, National Insurance Company Limited & Another

For the Appellants	: Mr. Subir Banerjee, Advocate Mr. Sandip Bandyopadhyay, Advocate Mrs. Ruxmini Basu Ray, Advocate
For the Respondent	: Mr. Sanjay Paul, Advocate Ms. Jaita Ghosh, Advocate
Heard on	: 14.09.2022, 13.12.2022
Judgment on	: 13.06.2023

Bivas Pattanayak, J. :-

1. This appeal is preferred against the judgment and award dated 28th June, 2018 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Uttar Dinajpur in M.A.C. Case No. 90 of 2014 granting compensation of Rs.1,80,000/- in favour of the claimants together with interest under Section 163A of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 21st May, 2014, at about 17:00 hours, while the victim aged about 7 years, was standing on the left side “*kuccha*” portion of the road at Bilashpur on NH-34 in front of his relative’s house, at that time the offending vehicle bearing registration no.WB-74P/6755 which was coming from Raiganj side towards Dalkhola side in a high speed dashed

the victim, as a result of which, he was thrown off at a considerable distance and sustained severe injuries on his person. Immediately after the accident the victim was taken to Raiganj Sadar Hospital and finding his condition serious the doctor referred him to Siliguri for better treatment. On way to Siliguri the condition of the victim deteriorated further and he was taken to Karandighi Primary Health Centre where the doctor declared him dead. On account of sudden demise of the minor-victim, the claimants being the parents of the victim filed application for compensation of Rs.2,00,000/- together with interest under Section 163A of the Motor Vehicles Act,1988.

3. The claimants, in order to establish their case, examined two witnesses and produced documents which have been marked as **Exhibit 1** to **7** respectively.

4. The respondent no.1- insurance company did not adduce any evidence.

5. By order dated 26th August 2022 service of notice of appeal upon respondent no.2-owner of the offending vehicle has been dispensed with since he did not contest the claim application.

6. Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.1,80,000/- in favour of the claimants together with interest under Section 163A of the Motor Vehicles Act.

7. Being aggrieved by and dissatisfied with the impugned judgment and award, the claimants have preferred the present appeal.

8. Mr. Subir Banerjee, learned advocate for appellants-claimants submitted that notional income of Rs.30,000/- per annum should be taken into account in case of minor victim, however the learned tribunal erred in taking Rs.15,000/- per annum as the income of minor-deceased. In support of his contention, he relied on the following decisions of the Hon'ble Supreme Court:

- i. ***Kurvan Ansari alias Kurvan Ali & Anr. versus Shyam Kishore Murmu & Anr.*** reported in **2021 (4) T.A.C 673 (SC).**
- ii. ***Meena Devi versus Nunu Chand Mahto @ Nemchand Mahto & Ors.*** reported in **2022 SAR (Civ) 1057**

He further submitted that the Hon'ble Supreme Court in its decision passed in ***Sarla Verma (Smt) and Others versus Delhi Transport Corporation and Another*** reported in **2009 (6) SCC 121** taking into account the quantum of compensation prepared a table indicating the multiplier actually used in Second Schedule to the Motor Vehicles Act and as per the said table, in case of a victim of road accident who is aged below 15 years, the multiplier would be 20. Such proposition has also been adopted by the Hon'ble Supreme Court and this Hon'ble Court in the following reports:

- i. ***Reshma Kumari and Others versus Madan Mohan and Another*** reported in **(2013) 9 SCC 65.**
- ii. ***United India Insurance Co. Ltd. versus Shri Buro Mahara and Others*** reported in **2015 (2) T.A.C. 753 (Cal.)**
- iii. ***Bajaj Allianz General Insurance Company Limited versus Talamoy Baskey and Another*** passed in FMA 853 of 2019.

Furthermore, it is submitted that the Hon'ble Supreme Court in several of its decisions bearing in mind the changed economic scenario including the rise in cost of living and rate of inflation directed the Central Government to amend the Second Schedule to the Motor Vehicles Act. Relying on the decision of Hon'ble Supreme Court in ***Puttamma & Ors. versus K. L. Narayana Reddy & Anr.*** reported in ***2014 SAR (Civil) 276***, he submitted that the Second Schedule has become redundant, irrational and unworkable due to changed economic scenario including the present cost of living and current rate of inflation and increased life expectancy. Therefore, the compensation should be assessed, in an application under Section 163A of the Act, keeping in mind the changes in the economic scenario and the cost of living, inflation rate since the enactment of the Second Schedule has been made way back in the year 1994. Further relying on ***U.P. State Road Transport Corporation and Others versus Trilok Chandra and Others*** reported in ***(1996) 4 SCC 362*** he submitted that the Second Schedule can at best be used as a guide for assessment of compensation.

He further submitted that there should not be any deduction towards personal and living expenses of the deceased while computing the compensation amount since the victim in the case at hand is a minor aged 7 years and he relied on the decision of Hon'ble Supreme Court in *Kurvan Ansari alias Kurvan Ali (supra)*.

Further he submitted that Motor Vehicles Act is a beneficial piece of legislation and courts/tribunals are to provide 'just compensation' under

Section 168 of the Act. Since in the case at hand rash and negligent act has been proved hence the application of the claimants under Section 163A of the Act be treated as an application under Section 166 of the Act for providing 'just compensation'. To buttress his contentions, he relied on the decision of this Court passed in **Smt. Upasi Singha & Ors. versus The Oriental Insurance Co. Ltd. & Ors.** reported in **(2010)4 WBLR (Cal) 552** and **Smt. Bhagya Majumdar & Ors. versus The New India Assurance Company Ltd. & Anr.** reported in **(2012)2 WBLR (Cal) 653**.

In the light of his aforesaid submissions, he prayed for modification and enhancement of the compensation amount.

9. In reply to the contentions raised on behalf of the appellants-claimants, Mr. Sanjay Paul, learned advocate for the respondent no.1-insurance company, submitted that in an application under Section 163A of the Motor Vehicles Act, the Second Schedule is to be strictly followed and the determination of the compensation should be on the basis of the structured formula provided in the Second Schedule to the Motor Vehicles Act. Thus, the income of minor victim, the deduction towards personal and living expenses and the multiplier is to be applied following the Second Schedule to the Act. In support of his contention, he relied on the decision of Hon'ble Supreme Court in **Deepal Girishbhai Soni and Others versus United India Insurance Co. Ltd., Baroda** reported in **AIR 2004 SC 2107**. He also placed reliance on decision of this Court passed in **Smt. Pato Mondal versus The New India Assurance Company Limited & Anr.** (F.M.A. No. 1805 of 2006)

and other appeals and ***Sri Shama Prasad Roy @ Nemai Roy @ Nemay Roi versus National Insurance Company Ltd*** (F.M.A. No. 407 of 2012).

He further submitted that the learned tribunal has erroneously granted general damages under the conventional heads of loss of estate and funeral expenses to the tune of Rs.30,000/- which is beyond the scope of the Second Schedule and should be modified.

Further he submitted that there is no occasion for treating the application under Section 163A of the Act as an application under Section 166 of the Act and the decisions of this Hon'ble Court in *Smt. Upasi Singha (supra)* and *Smt. Bhagya Majumdar (supra)* are factually distinguishable and hence is not applicable.

10. Having heard the learned advocates for the respective parties, it is found that appellants-claimants have raised the following grounds in the present appeal:

Firstly, whether the income of the minor victim aged 7 years should be considered at Rs.30,000/- per annum.

Secondly, whether the multiplier of 20 is to be adopted in case of a minor aged below 15 years.

Thirdly, whether the 1/3rd of the income of the minor-victim should be deducted towards his personal and living expenses.

Lastly, whether the present application under Section 163A of the Act be treated as an application under Section 166 of the Act for providing 'just compensation'.

11. With regard to the determination of income of the minor-victim, it has been strenuously argued on behalf of the appellants-claimants relying on *Kurvan Ansari alias Kurvan Ali (supra)* and *Meena Devi (supra)* that the notional income of Rs. 30,000/-per annum in case of a minor victim should be taken into account for assessment of compensation bearing in mind the present cost of living. Further placing reliance on *Puttamma (supra)* he argued that although such income is a deviation from Second Schedule to the Act but it can be accepted since the Second Schedule has become redundant. The Second Schedule to the Act provides for notional income of Rs.15,000/- per annum in case of non-earning person. If income of the minor-victim of Rs.30,000/- per annum, as pressed into service, is accepted, it would no doubt be a deviation from the structured formula provided in the Second Schedule to the Act. At this stage, the question which falls for consideration is whether the Second Schedule to the Act is to be strictly followed or there can be deviation from it. In order to appreciate the aforesaid question, it would be profitable to refer to the observation of three-Judges Bench of Hon'ble Supreme Court in *Deepal Girishbhai Soni (supra)* which is reproduced hereunder:

“46. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A 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 or the victim, as the case may be. Sub-section (2) of Section 163-A is in pari materia with sub-section (3) of Section 140 of the Act.

47. xxxxxxxxxxxxxxxxx

48. By reason of the Section 163-A, therefore, the compensation is required to be determined on the basis of a structured formula whereas in terms of Section 140 only a fixed amount is to be given. A provision of law providing for compensation is presumed to be final in nature unless a contra indication therefor is found to be in the statute either expressly or by necessary implication. While granting compensation, the Tribunal is required to adjudicate upon the disputed question as regard age and income of the deceased or the victim, as the case may be. Unlike Section 140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding under Section 163-A of the Act.”

The larger bench of the Hon’ble Court in the above decision clearly lays down the proposition that Section 163A of the Act, which has an overriding effect, provides for special provisions as to payment of compensation which is required to be determined on the basis of a structured formula.

Bearing in mind the aforesaid observation of the Hon’ble Court, at the outset, it is found that the report in respect of *Meena Devi (supra)* relates to claim petition filed under Section 166 of the Motor Vehicles Act and thus does not

apply to the case at hand, since the application in the present case has been filed under Section 163A of the Motor Vehicles Act.

The decision rendered by the Hon'ble supreme Court in *Kurvan Ansari alias Kurvan Ali (supra)*, though passed in respect of application under Section 163A of the Act, yet has not considered the decision of the larger bench of the Hon'ble Supreme Court in *Deepal Girishbhai Soni (supra)*, which clearly holds that the determination of compensation in an application under Section 163A of the Act should be made on the basis of the structured formula of the Second Schedule to the Motor Vehicles Act. I find substance in the submission of Mr. Paul, learned advocate for the respondent no.1-insurance company, that such findings in *Kurvan Ansari alias Kurvan Ali (supra)*, is a departure from the principles of law laid down by a larger bench in *Deepal Girishbhai Soni (supra)*.

In *Trilok Chandra (supra)* after finding that the Second Schedule suffer from several defects the Hon'ble Supreme Court observed that it can only be used as a guide. However, in *Reshma Kumari (supra)* while making reference the Hon'ble Court observed that though in *Trilok Chandra (supra)* the Hon'ble Supreme Court pointed out certain purported calculation mistakes in the Second Schedule but in fact there is no mistake therein.

In *Puttamma (supra)* the Hon'ble Supreme after considering the observation in *Deepal Girishbhai Soni (supra)* in paragraph no.41, 42, 52, 53, 57 and 72 held that the Second Schedule has become redundant, irrational and unworkable and issued direction upon the Central Government for making proper

amendments to the Second Schedule. But has not considered the observation of larger bench in *Deepal Girishbhai Soni (supra)* made in paragraph no. 46 and 48 respectively that Section 163A of the Act, which has an overriding effect, provides for special provisions as to payment of compensation which is required to be determined on the basis of a structured formula.

The Hon'ble Supreme Court in its decision passed in ***M/s Trimurthi Fragrances (P) Ltd. Through its Director Shri Pradeep Kumar Agarwal versus Government of N.C.T. of Delhi Through its Principal Secretary (Finance) & Ors.*** reported in **2022 LiveLaw (SC) 778** held as hereunder:

“19..... It is settled that the majority decision of a Bench of larger strength would prevail over the decision of a Bench of lesser strength, irrespective of the number of Judges constituting the majority.”

Further Justice Hemant Gupta, J (as his Lordship then was) after agreeing with the majority decision also expressed his opinion and concluded as follows.

“G. The conclusion (1) is that a decision delivered by a Bench of largest strength is binding on any subsequent bench of lesser or coequal strength. It is the strength of the Bench and not number of Judges who have taken a particular view which is said to be relevant. However, conclusion (2) makes it absolutely clear that a Bench of lesser quorum cannot disagree or dissent from the view of law taken by a Bench of larger quorum. Quorum means the bench strength which was hearing the matter.

H. Thus, it has been rightly concluded that the numerical strength of the Judges taking a particular view is not relevant, but the Bench strength is determinative of the binding nature of the judgment”

Bearing in mind the aforesaid proposition, the principles laid down in *Deepal Girishbhai Soni (supra)* by a larger bench of Hon’ble Supreme Court that in an application under 163A of the Act the compensation is required to be determined on the basis of a structured formula as per Second Schedule to the Act still holds the field and needs to be adhered to. The Second Schedule to the Act provides for notional income of Rs.15,000/- per annum in case of non-earning persons. This Hon’ble Court has consistently considered the notional income of Rs. 15,000/- per annum in case of a minor-victim in an application under Section 163A of the Act in *Smt. Pato Mondal (supra)*, *Sri Shama Prasad Roy @ Nemai Roy @ Nemay Roi (supra)*, ***Sabina Yeasmin & Anr. versus The Branch Manager, New India Assurance Co. Ltd. & Anr.*** reported in **(2016) 2 WBLR (Cal) 71** and ***National Insurance Company Ltd. versus Jayanti Barik and Another*** reported in **2019 (1) T.A.C. 201 (Cal.)**. Therefore, in view of the above discussion the notional income of Rs.15,000/- per annum is to be taken into consideration, in case of a minor-victim, in an application under Section 163A of the Act.

12. With regard to the second issue relating to multiplier, it has been argued vociferously on behalf of the appellants-claimants relying on *Reshma Kumari (supra)*, *Shri Buro Mahara (supra)*, *Talamoy Baskey (supra)* that the multiplier

should be 20. *Per contra*, Mr. Paul, learned advocate for the respondent no.1-insurance company relying on *Smt. Pato Mondal (supra)* and *Sri Shama Prasad Roy @ Nemai Roy @ Nemay Roi (supra)*, argued that in case of a minor-victim the multiplier should be 15.

In this regard, reference may be made to the decision of the Hon'ble Supreme Court in case of *Reshma Kumari (supra)* wherein the Hon'ble Supreme Court held as follows:

“43.2. *In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.”*

Further in paragraph 40 of the decision of *Sarla Verma (Smt) (supra)*, it is found that a table has been prepared upon noticing several decisions which is reproduced hereunder for convenience:

“40. *The multipliers indicated in Susamma Thomas, Trilok Chandra and Charlie (for claims under section 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under section 163-A of MV Act (with appropriate deceleration after 50 years):*

Age of the deceased	Multiplier scale as envisaged in Susamma Thomas	Multiplier scale as adopted by Trilok Chandra	Multiplier scale in Trilok Chandra as clarified in Charlie	Multiplier specified in Second Column in the Table in Second Schedule to the MV Act	Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)

(1)	(2)	(3)	(4)	(5)	(6)
Up to 15 yrs	-	-	-	15	20
15 to 20 yrs	16	18	18	16	19
21 to 25 yrs	15	17	18	17	18
26 to 30 yrs	14	16	17	18	17
31 to 35 yrs	13	15	16	17	16
36 to 40 yrs	12	14	15	16	15
41 to 45 yrs	11	13	14	15	14
46 to 50 yrs	10	12	13	13	12
51 to 55 yrs	9	11	11	11	10
56 to 60 yrs	8	10	09	8	8
61 to 65 yrs	6	08	07	5	6
Above 65 yrs	5	05	05	5	5

The header of column (6) reads as “Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)”. The aforesaid proposition has also been followed by this Hon’ble Court in *Shri Buro Mahara (supra)*, *Sabina Yeasmin (supra)*, *Jayanti Barik (supra)* and *Talamoy Baskey (supra)*. Thus, bearing in mind the aforesaid, the multiplier for a victim of road accident who was aged below 15 years would be 20.

13. The next issue that has fallen for consideration in the present appeal is whether deduction of 1/3rd of the annual income of a minor should be made towards his personal and living expenses or not. Learned advocate for the appellants-claimants relying on *Kurvan Ansari alias Kurvan Ali (supra)* have argued that since the victim was a minor and was non-earning, hence there should not be any deduction towards personal and living expenses. Although

such argument has been pressed into service on behalf of the claimants yet following the observation of the Hon'ble Supreme Court in *Deepal Girishbhai Soni (supra)* that the determination of compensation in an application under Section 163A of the Act should be made on the basis of the structured formula of the Second Schedule to the Act, deduction of 1/3rd of the notional income towards personal and living expenses as provided under the Second Schedule is to be taken into account. In *Kurvan Ansari alias Kurvan Ali (supra)*, the Hon'ble Supreme Court has not deducted any amount towards personal and living expenses, however, the decision of the larger bench passed in *Deepal Girishbhai Soni (supra)* has not been considered in the said decision. Therefore, following the proposition laid down in *Deepal Girishbhai Soni (supra)*, I do not find any merit in the argument advanced by learned advocate for the appellants-claimants in this regard.

14. The last issue relates to treating the present application under Section 163A of the Act as an application under Section 166 of the Act. Mr Banerjee, learned advocate for the appellants-claimants relying on *Smt. Upasi Singha (supra)* and *Smt. Bhagya Majumdar (supra)* submitted that the present application under Section 163A of the Act as an application under Section 166 of the Act on the ground that rash and negligent act of the driver has been proved. Though the learned tribunal has discussed regarding the materials pertaining to rash and negligent act of the driver but has neither framed any issues with regard to rash and negligent act of the driver of the offending vehicle nor has made any conclusive findings of the said fact. In

Smt. Upasi Singha (supra), the learned Tribunal proceeded dealing with aspects germane to an application under Section 166 of the Act and considering the same, this Court held that mere caption of an application cannot decide the real nature of the same which is quite distinguishable from the case at hand. In *Smt. Bhagya Majumdar (supra)*, this Court distinguishing *Smt. Upasi Singha (supra)* held that in the absence of any opportunity to the insurance company to rebut the claim of the appellants it would be improper to make such conversion from Section 163A. In view of the above discussion the argument advanced on behalf of appellants-claimants fall short of merit.

15. Mr Paul, learned advocate for respondent no.1-insurance company has indicated that the learned tribunal has granted Rs.30,000/- towards general damages beyond the scope of Second Schedule which needs to be modified. It is found that learned tribunal has granted general damages under conventional heads of loss of estate and funeral expenses of Rs 15,000/- each. However, following the Second Schedule the claimants are entitled to Rs. 2,500 /- towards loss of estate and Rs.2000/- towards funeral expenses and hence the amount under such heads needs to be modified.

16. In view of the above discussion, the calculation of compensation is made hereunder:

Calculation of Compensation

Notional yearly income	Rs. 15,000/-
Less: 1/3 rd on account of personal and living expenses of the victim (Rs.15,000 x 1/3)	Rs. 5,000/-
	Rs. 10,000/-

Compensation after multiplier of 20 is applied	Rs. 10,000 x 20 Rs. 2,00,000/-
Loss of estate	Rs. 2,500/-
Funeral expenses	Rs. 2,000/-
Total compensation awardable	Rs. 2,04,500/-

17. Thus the claimants are entitled to compensation comes to Rs.2,04,500/- together with interest @ 6% per annum from the date of filing of the claim application till deposit.

18. It is informed that the appellants-claimants have already received the amount of compensation of Rs. 1,80,000/- together with interest in terms of order of the learned Tribunal.

19. Accordingly, the respondent no.1-Insurance Company is directed to deposit the balance amount of Rs. 24,500/- together with interest @ 6% per annum from the date of filing of the claim application till deposit, by way of cheque with learned Registrar General, High Court, Calcutta within a period of six weeks from date.

20. Appellants-claimants are directed to deposit *ad valorem* Court fees on the balance amount of compensation, if not already paid.

21. Upon deposit of the aforesaid amount, learned Registrar General, High Court, Calcutta shall release the said amount in favour of the appellants-claimants in equal proportion upon satisfaction of their identity and payment of *ad valorem* Court fees on the balance amount of compensation, if not already paid.

22. With the aforesaid observation the appeal stands disposed of. The impugned judgment and award of the tribunal stands modified to the aforesaid extent. No order as to cost.

23. All connected applications stand disposed of.

24. Interim order, if any, also stands vacated.

25. Let a copy of this judgment be forwarded to learned tribunal along with the lower court records for information.

26. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)