

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1002 OF 2004

1. The Oriental Insurance Company Ltd.,
 Thr its Divisional Manager,
 Mr. Aktar Abbas Hallari,
 Age : 53 years, Occ. : service,
 R/o. : Divisional Office, Adalat Road,
 Aurangabad

... Appellant

(Ori. Respondent No.2)

VERSUS

1. Sudamati Sahebrao Nirmal,
 Age : 32 years, Occ. : household,
 R/o. : Hivara (Govardhan, Tq. Parli Vaijanath,
 Dist. Beed
2. Bharat Sahebrao Nirmal,
 Age : 6 years (Minor), U/G. real mother Sudamati
 Sahebrao Nirmal i.e. Petitioner No.1 as above.
3. Keshavrao Gyanba Nirmal,
 Age : 60 years, Occ. : Agriculturist,
 R/o. : as above
4. Gangubai Keshavrao Nirmal,
 Age : 55 years, Occ. : Household,
 R/o. : as above
5. Mohammad Nazir Mohammad Bashir,
 Age : 45 years, Occ. : Busi., & Truck Owner,
 R/o. : Tat-Gawalipura, D.
 Raja Road, Jalna, Tq. & Dist. Jalna

... Respondents

(Resp. Nos.1 to 4 – Orig. claimants,
 Resp. No.5 – Orig. Resp. No.1)

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Mr. R.F. Totala – Advocate for Appellant
 Mr. M.P. Tripathi – Advocate for Respondent Nos.1 and 2
 Mr. A.R. Lukhe – Advocate for Respondent No.4
 Mr. A.S. Shelke – Advocate for Respondent No.5

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CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 12th June, 2023
PRONOUNCED ON : 16th June, 2023

JUDGMENT :

1. The appellant – Insurance Company has challenged the judgment and award dated 3rd January, 2003 passed by the Motor Accident Claims Tribunal, Parbhani (hereinafter referred to as “*the learned Tribunal*” for short) in Motor Accident Claim Petition No. 541 of 2001, whereby the learned Tribunal has awarded total compensation of Rs.6,22,000/- alongwith interest @ 9% p.a. from the date of petition till its realization to present respondent Nos.1 to 4 – original claimants under Section 163-A of the Motor Vehicles Act.

2. It is to be noted here that, though the appellant – Insurance Company has filed this appeal but they have accepted the liability of compensation of Rs.4,07,000/-, calculated as per the Second Schedule under the aforesaid Section of the Motor Vehicles Act.

3. Learned Counsel for appellant – Insurance Company submits that, the Insurance Company has challenged the impugned judgment mainly on the following two grounds :-

- (i) grant of excessive interest @ 9% p.a.
- (ii) despite there being outer limit of Rs.40,000/- in respect of annual income of the deceased under the Second Schedule of Section 163 – A of the Motor Vehicles Act, the learned Tribunal held income of the deceased more than that i.e. Rs.5,088,-/ p.m.

4. Learned Counsel for appellant – Insurance Company thus pointed out that, the learned Tribunal should have considered the income of deceased only upto Rs.40,000/- p.a., while calculating the amount of compensation and rate of interest @ 6% p.a. should have been applied instead of the rate of interest 9% p.a. He also relied upon following judgment :

- (a) Allahabad High Court in the case of **Shriram General Insurance Company Ltd. Vs. Asif and Ors.**, in *First Appeal From Order No. 2434 of 2018*

5. On the contrary, learned Counsel for respondent Nos.1 to 4 – original claimants strongly opposed the submissions made on behalf of appellant – Insurance Company and supported the impugned judgment and award. According to him, the learned Tribunal has properly calculated the amount of compensation, which is inconsonance with the recent amendment in Schedule – II under Section 163 – A of the Motor Vehicles Act. To support his

contentions he relied on following judgments :

- (a) Hon'ble Supreme Court in the case of **Puttamma and Ors. Vs. K.L. Narayana Reddy and Anr.**, reported in *(2013) 15 SCC 45*
- (b) High Court of Gauhati in the case of **National Insurance Company Ltd. Vs. Bijaya Bhuyan and Ors.**, reported in *LAWS(GA) 2018-10-76*
- (c) High Court of Bombay (at Aurangabad) in the case of **New India Assurance Company Ltd., Vs. Ashabai Kalyan Kothi** reported in *LAWS (BOM) 2008-6-235*
- (d) Hon'ble Supreme Court in the case of **Kurvan Ansari alias Kurvan Ali and Anr. Vs. Shyam Kishore Murmu and Anr.**, in *Civil Appeal No. 6902 of 2021 (arising out of Special Leave Petition © No. 5311 of 2019)*

6. Heard rival submissions and also perused the record and proceeding of original Claim Petition No. 541 of 2001 alongwith judgments cited.

7. So far as the first ground of appeal is concerned, the appellant – Insurance Company is claiming that, the learned Tribunal has granted excessive rate of interest @ 9% p.a. on the amount of compensation, which according to it should have been

@6% p.a. However, it appears that, the impugned judgment and award is passed in the year 2003 and, therefore, considering the prevailing rate of interest in the said year, the awarded interest @9% p.a. is definitely appropriate and therefore, I do not find any substance in the aforesaid ground of challenge as regards the interest awarded.

8. However, the second ground of appeal needs some consideration as it relates to some vital questions, as to whether the recent amendment in the Schedule – II under Section 163 – A of the Motor Vehicles Act applies retrospectively and for the pending cases and whether the learned Tribunal is permitted to consider the income of deceased more than Rs.40,000/- p.a.

9. It is the main contention of the learned Counsel for appellant – Insurance Company that as per Second Schedule of Section 163 – A of the Motor Vehicles Act, the learned Tribunal is not at all permitted to consider higher income of the deceased than Rs.40,000/- p.a. For that purpose, the learned Counsel for appellant – Insurance Company has relied upon the judgment of Allahabad High Court in the case of Shriram General Insurance Company Limited (*supra*). In the aforesaid judgment, it has been

observed that the learned Tribunal is bound to follow the provisions contending in Schedule – II under Section 163 – A of the Motor Vehicles Act and there was no deduction of 1/5th from the income of deceased permissible under the aforesaid Schedule but only 1/3rd deduction was permissible. Further, it was also held that, the grant of additional amount of Rs.15,000/- towards future prospect as granted by the learned Tribunal was also not permissible, as no future prospects were allowed under that Schedule. Thus it appears that, the Allahabad High Court in the said case has observed that only whatever permissible in the Second Schedule as per Section 163 – A of the Motor Vehicles Act can be awarded.

10. On the contrary, learned Counsel for respondent Nos.1 to 4 – claimants tried to argue that, in the light of recent amendment in Second Schedule under Section 163 – A of the Motor Vehicles Act, 1988, the cap of Rs. 40,000/- being the upper limit under the said Schedule in respect of the income of deceased has been removed and from the date of such amendment compensation of Rs.5,00,000/- in case of death is provided. He further pointed out that, under the said amendment it has been clarified that there

shall be addition of 5% amount of the Rs.5,00,000/- per year in the compensation. He also pointed out that, as per the judgment of this Court in the case of New India Assurance Company Limited (*supra*), the learned Tribunal is also permitted to convert the Claim Petition under Section 163 – A of the Motor Vehicles Act to a Petition under Section 166 of the Motor Vehicles Act, if it is found that the income of deceased is more than amount of Rs.40,000/- p.a. Further, he submitted that, even the consortium as described in the judgment of Hon'ble Apex Court in the case of **Magma General Insurance Company Ltd. Vs. Nanu Ram Alias Chuhru Ram and Ors.**, in *Civil Appeal No. 9581 of 2018* [arising out of S.L.P. (Civil) No. 3192 of 2018] i.e. Rs.40,000/- to each claimant can be granted in the Claim Petition under Section 163 – A of the Motor Vehicles Act as per the observation of Hon'ble Apex Court in the case of Kurvan Ansari alias Kurvan Ali and Another (*supra*). He also relied on the judgment of Hon'ble Apex Court in the case of Puttamma and Others (*supra*), wherein it is observed that, “*the Second Schedule as enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including present cost of living and current rate of inflation and increased life expectancy*”.

11. In the light of aforesaid rival submissions and the respective judgments relied upon, let us come to the second ground of challenge as to whether the learned Tribunal can travel beyond the scope of structured formula of determination of compensation as given in the Second Schedule under Section 163 – A of the Motor Vehicles Act. Admittedly, prior to the amendment the upper limit of considering the income of deceased was upto Rs.40,000/- p.a. and after applying the proper multiplier as per the said Schedule it was expected to deduct 1/3rd amount of personal expenses of deceased from the arrived figure. Further, certain limited amounts were permissible on account of funeral expenses, loss of estate and medical expenses (supported by the actual receipts). It is to be noted here that, the Hon'ble Supreme Court in case of **Deepal Girishbhai Soni Vs. United India Insurance Company Ltd.**, reported in (2004) 5 SCC 385 has observed that, the claim under Section 163 – A of the Motor Vehicles Act is maintainable in the cases only where the income of deceased is upto Rs.40,000/- p.a. and if it is found that the income of deceased is more than said limit then the petition itself is not maintainable. Further, this Court in the case of New India Assurance Company Limited (*supra*) has also given concession to convert the petition under Section

163 – A of the Motor Vehicles Act into the petition under Section 166 of the Motor Vehicles Act, if it is found that the annual income of deceased goes beyond the upper limit of Rs.40,000/- as contemplated in Second Schedule.

12. Further, learned Counsel for respondent Nos.1 to 4 – claimants also pointed out that, the High Court of Gauhati in the case of National Insurance Company (*supra*) though observed that, no income more than Rs.40,000/- p.a. can be considered in the petition under Section 163 – A of the Motor Vehicles Act but the amendment in Second Schedule under the said section would come into picture for enhancing the compensation in death cases to Rs.5,00,000/-. The High Court of Gauhati has also observed that, the amendment is retrospective in effect and applicable to the pending cases. However, the learned Counsel for appellant – Insurance Company strongly resisted this aspect to the extent of application of the amendment in Second Schedule retrospectively. According to him, the said amendment is not at all applicable in the instant case.

13. For a quick reference, I would like to reproduce the amendment of Second Schedule of Section 163 – A of the Motor

Vehicles Act, vide Ministry of Road and Transport notification dated 22nd May, 2018 hereinbelow :

“1. (a) Fatal Accidents

Compensation payable in case of Death shall be five lakh rupees.

(b) Accidents resulting in permanent disability :

Compensation payable shall be = [Rs.5,00,000/- x percentage disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923)] :

Provided that the minimum compensation in case of permanent disability of any kind shall not be less than fifty thousand rupees.

(c) Accidents resulting in minor injury :

A fixed compensation on twenty five thousand rupees shall be payable :

2. On and from the date of 1st day of January, 2019 the amount of compensation specified in the clauses (a) to (c) of paragraph (1) shall stand increased by 5 per cent annually”.

3. This notification shall come into form on the date of its publication in the Official Gazette.”

14. It is important to note that, the High Court of Guahati in case of National Insurance Company Limited (*supra*) has observed as follows :

(27) From the object and reasons of the Motor Vehicle (Amendment) Act, 1994 also, it is clear that Section 163A was introduced in the Act by way social security scheme in order to grant immediate relief to a section of the

society whose annual income is not more than Rs.40,000/- on the basis of structured formula. Since the provision of Section 163A of the Act was introduced as a social security scheme to give relief to the victim of vehicular accident belonging to certain class and the Second Schedule is only a procedural tool to determine compensation in a claim under Section 163A, amendment of such procedural provision can by no stretch of imagination be held to affect any vested right. The context, as indicated in the notification amending the Second Schedule as well as the Judicial pronouncement, in which, the amendment has been made also give indication wherefrom it can be inferred that the amended provision of the Second Schedule shall be applicable in pending proceeding. Thus, keeping in view the basic object of introducing Section 163 A and also amendment of Second Schedule which merely relates to procedural matter and the social welfare object of the legislation itself, as well as, the context, in which the amendment occurred, this court is of the considered opinion that the amended Second Schedule has to be taken into account in the pending proceeding under Section 163A for deciding the quantum of compensation.

(28) There is no gain saying that the appeal is a continuation of the proceeding and as such, the amended Second Schedule has to be taken into account in the present appeal in deciding the claim under Section 163A of the Motor Vehicle Act.

(29) Since there was no denial that the claim petition was under Section 163A and the award granted by the learned Tribunal was not determined as per Second Schedule, the impugned award deserves to be modified as per the amended Second Schedule which provided that maximum amount of compensation for death cannot

be more than Rs.5,00,000/-. Accordingly, the award is modified and reduced to Rs.5,00,000/-.

15. However, the Hon'ble Apex Court in the case of **Ramkhiladi and Anr. Vs. United India Insurance Company and Anr.**, reported in AIR 2020 SC 527 has clearly observed as follows :

“5.8) However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs. 1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs. 5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs. 5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs. 1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.”

16. The aforesaid judgment is recently delivered and after the judgment of High Court of Gauhati in National Insurance Company

Limited (*supra*). Thus, in the light of the observation of Hon'ble Apex Court it is clarified that, the amendment in Second Schedule which has come into effect from 1st January, 2019 is not at all applicable to the instant case, since the date of accident i.e. 30th October, 2001 and the impugned judgment and award passed on 3rd January, 2003 were much prior to the amendment in Second Schedule. Even in the judgment of Allahabad High Court as relied upon by the appellant – Insurance Company in case of Shriram General Insurance Company Limited (*supra*) delivered on 18th February, 2020, it has been observed that, the amendment in Second Schedule whereby the compensation in death cases is increased by Rs.5,00,000/- is not retrospective but only prospective. Therefore, I find substance in the submission of learned Counsel for the appellant – Insurance Company that, the recent amendment in the Second Schedule of Motor Vehicles Act under Section 163 – A of the Motor Vehicles Act is not applicable in this case.

17. However, even though the said amendment is not applicable to the present case but in the recent judgment in the case of **Kurvan Ansari alias Kurvan Ali and Another** (*supra*) the Hon'ble

Apex Court while deciding the claim petition under Section 163 – A of the Motor Vehicles Act has awarded filial consortium to the children of deceased to the extent of Rs.40,000/- each. It is to be noted that, though in the judgment in case of Shriram General Company Limited (supra), it has been observed that nothing is permissible beyond Second Schedule under Section 163 – A of the Motor Vehicles Act while determining the compensation under the said Section but the Hon'ble Apex Court in the aforesaid judgment has granted filial consortium to the extent of Rs.40,000/- each. The concept of spousal consortium, parental consortium and filial consortium has been discussed by the Hon'ble Apex Court in the case of Magma General Insurance Company Limited (supra). As per the aforesaid judgment, the spouse is entitled for spousal consortium of Rs.40,000/- whereas parents are entitled for parental consortium of Rs.40,000/- each and the children of deceased are also entitled for Filial consortium of Rs.40,000/- each. Herein the respondent No. 1 is spouse of deceased whereas the respondent No.2 is son and respondent Nos.3 and 4 are parents of the deceased, therefore, as per the observations of Hon'ble Apex Court in the case of Kurvan Ansari alias Kurvan Ali and Another (supra), the claimants are entitled to the aforesaid

consortium at the rate Rs.40,000/- each, despite it being the Claim Petition under Section 163 – A of the Motor Vehicles Act. Further, they are also entitled for the difference of Rs.13,000/- in respect of funeral expenses as granted by the Hon'ble Apex Court in the aforesaid judgment. Therefore, I now assess the compensation amount payable to the respondent Nos.1 to 4 as follows :

(I)	Loss of Dependency	: Rs.4,00,000/-
(II)	Spousal, Parental and Filial consortium	
	(Rs.40,000 x 4 = Rs.1,60,000)	: Rs.1,60,000/-
(III)	Additional funeral expenses	: Rs.13,000/-
(IV)	Loss of estate	: Rs.2,500/-

	Total	: Rs. 5,75,500/-

18. Accordingly, I modify the award of the learned Tribunal to the aforesaid amount of Rs.5,75,500/- by reducing it from awarded amount of Rs.6,22,000/- without any change in the interest applied. Thus, the appeal is partly allowed and the appellant – Insurance Company is now directed to pay the amount of Rs.5,75,500/- alongwith the interest @ 9% p.a. from the date of petition till its realization to the respondents – claimants.

19. However, during the course of argument it was pointed out by

the learned Counsel for respondent Nos.1 to 4 – claimants under pursis dated 15th June, 2023 that, the appeal against respondent No.3 i.e. father of the deceased stood abated under order of this Court dated 24th March, 2004, since it was found that he was already dead. It appears that, the other claimants i.e. respondent Nos.1, 2 and 4 are the legal heirs of deceased respondent No.3.

20. Learned Counsel for appellant – Insurance Company also pointed out that, under order dated 1st December, 2004 passed by this Court, the Insurance Company had deposited admitted amount of compensation i.e. Rs.4,07,000/- in concerned M.A.C.T., Parbhani and out of the said amount the present respondent Nos.1, 2 and 4 had withdrawn amount of Rs.3,00,000/-. The learned Counsel for said respondents also confirmed the said fact. Thus, by deducting the said amount of Rs.4,07,000/- deposited with concerned Motor Accident Claims Tribunal, Parbhani and amount of Rs. 25,000/- deposited with this Court as statutory deposit, the appellant – Insurance Company shall deposit the remaining amount of Rs.1,43,500/- alongwith the interest @ 9% p.a. from the date of petition till its realization. On deposit of such amount the respondent Nos.1, 2 and 4 are permitted to withdraw

the said amount as well as amount of statutory deposit i.e. Rs.25,000/- alongwith the interest accrued thereon in equal proportion. The concerned Motor Accident Claims Tribunal, Parbhani is also directed to pay the remaining amount of Rs.1,07,000/- to the respondent Nos.1, 2 and 4 in equal proportion alongwith the interest accrued thereon.

21. The Award be drawn up accordingly.

22. The appeal is disposed of.

[SANDIPKUMAR C. MORE]
JUDGE