IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.37 OF 2019

APPELLANTS (Ori. Resp 2)	:		**National Insurance Co. Ltd.,** Branch Office, at Khamgaon, Tq. Khamgaon, Distt. Buldana, Through its Regional Manager, Regional Office, Fidvi Towers, Mount Road, Sadar, Nagpur
			..VERSUS..
RESPONDENTS (Ori. Pet. No. 1 to 6) (On R.A.)	:	1	Smt. Sunita Gajanan Sable, Age 35 Yrs., Occu. Household
		2	Ku. Shital d/o Gajanan Sable, Aged 16 Yrs, Occu. Education
		3	**Avinash S/o Gajanan Sable,** Aged 13 Yrs., Occu. Education
		4	**Sarthak S/o Gajanan Sable,** Aged 6 Yr., Occu. Nil
(Deleted as per courts order dtd. 4/12/2018)		5	**Vithoba S/o Laxman Sable,** Aged 75 Yrs., Occu. Nil
		6	**Su. Shewantabai Vithoba Sable,** Aged 65 Yrs., Occu. Nil. Resp. No. 2 to 4 minor, through natural guardian mother respondent no.1. 1 to 6 all R/o Dahid Bk. Tq. Buldana, Distt. Buldana.
[Orig. Resp. No.1]		7	**Shakil Miya Chote Miya,** Aged major, Occu. Business, R/o Malipura, Chikhli, Tq. Chikhli, Distt.

Buldana.

Mr C. A. Anthony, Advocate for Appellant.
Mr A. Thakkar and Mr D. Chauragade, Advocate for Respondent Nos.1 to 4.

CORAM : M. W. CHANDWANI, J.
DATED : 29th AUGUST, 2024.

ORAL JUDGMENT

1. Heard.

2. Correctness of the impugned award dated 18.03.2017 passed by the Motor Accident Claims Tribunal, Buldhana, has been challenged in the instant appeal, whereby the Tribunal has granted compensation to the original petitioners on account of death of deceased Gajanan Vithoba Sable, who died in a vehicular accident on 06.07.2012.

3. The main contention raised in this appeal is that the petition was filed by the respondent Nos.1 to 6 herein under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M. V. Act"). However, the Tribunal tried the petition and granted compensation under the heads which are not admissible under Section 163A of the M. V. Act, as if the petition had been made under Section 166 of the M. V. Act.

4. Having heard the learned counsel appearing for the respective parties and having gone through the impugned award, it is transpired that the Tribunal has assessed the annual income of the deceased at the rate of Rs.40,000/- and applied the multiplier of 16 as enumerated in Second Schedule of the M. V. Act, for claim under Section 163A of the M. V. Act. However, it appears that the Tribunal has also awarded the future prospects, which according to the learned counsel for the appellant ought not to have been granted. The calculation of compensation awarded by the Tribunal is reproduced here :

Sr. No.	Heads	Calculation
(i)	Annual Income	Rs.40,000/-
(ii)	1/3rd of (i) to be deducted as personal living expenses (Rs.40,000 – Rs.13,330)	Rs.26,670/-
(iii)	Compensation for loss of dependency after multiplier 16 is applied (Rs.26,670/- x 16)	Rs.4,26,720/-
(iv)	Future prospects 50% is to be added	Rs.4,80,000/-

	(Rs.4,26,720 + Rs.2,13,360)	
(v)	Consortium	Rs.1,00,000/-
(vi)	Loss of Estate	Rs.50,000/-
(vii)	Funeral expenses	Rs.25,000/-
	Total Compensation awarded	Rs.8,15,100/-

5. The first objection is about addition on account of future prospects. It is urged that since the petition is under Section 163A of the M.V. Act, claimants are not entitled for said addition, but the entitlement is only as per Second Schedule. In this regard, it is relevant to refer the decision of this Court in the case of ***Late Suman Vishwanath Chavan & ors. Vs. The Divisional Controller, Maharashtra State Road Transport Corporation, Jalgaon decided on 29.10.2018 by this Court (Aurangabad Bench)***. In said case, the similar question regarding grant of future prospects and compensation under conventional head was considered. This Court in para 10 posed a specific question to be answered as follows:-

> *"Whether in the petitions filed under Section 163-A of the M. V. Act, the ration or law laid down by the Apex Court in "**Smt Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr." [2009(5) Mh. L. J. 775], "National Insurance Company Ltd. Vs. Pranay Sethi and***

> *others" (supra), or "Reshma Kumari vs Madan Mohan" [2018(3) Mh.L.J.70] is applicable."*

6. After considering both the pronouncements of the Hon'ble Apex Court, this Court categorically held that when the claim is under Section 163A of the M. V. Act, the determination should only be on structural formula basis. There can be no addition towards loss of future prospects. Besides, it is observed that the addition on account of conventional heads should also be on the structural formula basis i.e. as per Second Schedule of Section 163A of the M. V. Act.

7. The references can be made to the decisions delivered by different High Courts in the cases of (1) ***Cholamandalam MS General Insurance Co. Ltd. Vs. Ankit Kumar and others, decided on 30.01.2019 by PunjabHaryana High Court***, (2) ***United India Insurance Co. Ltd. Vs. R. Shanthy, decided on 04.02.2019 by the Madras High Court***, (3) ***the Oriental Insurance Co. Ltd. Vs. Sukhveer Kaur and others, decided on***

10.05.2019 by the Punjab and Haryana High Court, at Chandigarh, (4) ***National Insurance Co. Ltd. Vs. Shooni and others, decided on 30.04.2019 by Punjab and Haryana High Court, at Chandigarh*** and (5) ***HDFC Ergo General Insurance Co. Vs. Panki Devi, decided on 30.05.2019 by Rajasthan High Court at Jodhpur***. In these cases, the different High Courts equally refused to make addition on account of future prospects in the petition under Section 163-A of the M. V. Act.

8. Undoubtedly, principles relating to determination of liability and quantum of compensation are different for claim under Section 163A of the M. V. Act and claim under Section 166 of the M. V. Act. It is the choice of the claimants to seek compensation either on structural formula basis as provided under Section 163A of the M. V. Act or make an application under Section 166 of the M. V. Act. If the claimants opt Section 163A, then they are not required to plead or establish that the death or permanent disablement was due to any wrongful act or neglect or default. Though, the special provisions of Section

163A of the M. V. Act provides immunity in proving negligence, however, it has its inbuilt mechanism to grant compensation strictly on the basis of the Second Schedule provided to the Section itself. Section 163A of the M. V. Act begins with non-obstance clause to the effect that, it shall override other provisions of the Act. Sub-clause (1) of Section 163A of the M. V. Act provides that the liability to pay the compensation due to vehicular accident is as indicated in the Second Schedule. This leaves no scope to interprate differently since the special provisions speak about the grant of compensation as per Second Schedule. This Court in above referred case of ***Late Suman Vishwanath Chavan*** (supra) took a resume of the Supreme Court cases and ultimately held that in claim under Section 163A of the M. V. Act, the claimants are not entitled for addition of income on account of future prospects. The decision of ***Late Suman Vishwanath Chavan*** (supra) is followed by this Court in the case of ***Oriental Insurance Co. Ltd. vs. Shri Ravindra Ananda Jadhav and***

others. There is no reason to take different view since by choice, claimants came under Section 163A of the M. V. Act, which has its own mechanism to award sum only on structural formula basis. Therefore, addition made by the Tribunal on account of future prospects needs to be corrected.

9. As regards to addition on account of conventional heads, the Tribunal made addition of Rs.50,000/- toward loss of estate and Rs.25,000/- on account of funeral expenses. As noted above, one has to adhere to the structural formula as provided in Second Schedule. Permissible addition would be as per Clause (3) of the Second Schedule which is Rs.2000/- towards funeral expenses, Rs.5000/- on loss of consortium and Rs.2500/- towards loss of estate. The Tribunal cannot deviate from structural formula therefore, the additions made under these heads need to be corrected.

10. The above discussion leads to hold that the claimants are not entitled for addition on account of future prospects.

The entitlement under non-pecuniary heads shall be strictly as per Second Schedule.

11. Thus, it is a well-settled principle of law that once a claim petition is filed under Section 163A of the M. V. Act, the compensation is to be awarded as per Second Schedule of the M. V. Act, which does not provide for the addition of future prospects to the assessed income of the deceased. Moreover, in the present case, loss of consortium, loss of estate and funeral expenses have not been awarded in line with the established principle of law. Therefore, the claimants are entitled for the following sums under different heads:-

Loss of dependency	:	Rs.4,26,720/-
Loss of consortium	:	Rs.5,000/-
Loss of estate	:	Rs.2,500/-
Funeral expenses	:	Rs.2,000/-
Total	**:**	**Rs.4,36,220/-**

12. In the result, this Court holds that the respondents/claimants are entitled for compensation of

Rs.4,36,220/- with interest as per the order of the Tribunal. It flows that the appeal deserves to be party allowed in above terms. The claimants are entitled for total compensation of Rs.4,36,220/- with interest as awarded by the Tribunal. Resultantly, the impugned award is modified to that extent by reducing the quantum of compensation. Needless to mention that the amount in excess deposited by the appellant be refunded to it with accrued interest. The appeal stands disposed of in above terms.

(M. W. CHANDWANI, J.)