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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 18th October, 2024

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MAC.APP. 97/2024

LAJJA WATI

.....Appellant

Through: Mr. Jatinder Kamra, Advocate.
versus

MOHAMMAD SHARUCK & ANR.

.....Respondent

Through: Counsel for respondent (appearance
not given).

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Appeal under Section 173 of the Motor Vehicle Act has been filed on behalf of the Ms. Lajja Wati, the legal heir/daughter of the deceased, Ms. Rambeti Devi, who died in a road accident on 26.11.2020, to challenge the Award dated 20.09.2023 whereby the Claim Petition that was filed under Section 166 of the Motor Vehicle Act, 1988 ("Act, 1988" *hereinafter*), was treated as under Section 163A of the Motor Vehicle Act, 1988 and meagre amount of compensation has been granted.
2. ***Briefly stated***, Ms. Lajja Wati along with her husband, Mr. Dev Pal and her mother, Ms. Rambeti Devi, were travelling in a bus on 26.11.2020. At about 6:00 p.m. they both de-boarded the bus at SJM Cut and were crossing the road when Ms. Lajja Wati and her mother Ms. Rambeti Devi, were hit by a speeding motorcycle bearing UP 14EM-7151, driven by the



respondent No. 1, Mr. Mohammad Sharuck, in a rash and negligent manner. Ms. Lajja Wati and her mother, Ms. Rambeti Devi, both received grievous injuries and were taken to SJ Memorial Super Speciality Hospital, Noida, where Ms. Rambeti Devi died on the same day while Ms. Lajja Wati suffered 3% permanent physical disability, in relation to her both lower limbs.

3. The *Claim Petition bearing No. 37/2021 under Section 163A* was filed by Ms. Lajja Wati, for claiming the compensation on account of demise of her mother, Ms. Rambeti Devi. The second Claim Petition bearing No. 39/2021 under Section 166 of the Act, 1988 was filed by Ms. Lajja Wati, for claiming the injuries suffered by her in the accident.

4. The respondent No. 1/driver-cum-owner was served through publication but failed to contest the Claim Petition and was proceeded *ex-parte*.

5. The Insurance Company/respondent No. 2, took the *preliminary objections* that the Claim was bad for non-joinder and mis-joinder of the necessary parties as all the legal heirs of the deceased, Ms. Rambeti Devi, had not been impleaded. Moreover, Ms. Lajja Wati was not financially dependent on the deceased and was also not residing with her. Furthermore, it was claimed that the accident occurred due to sole negligence of the deceased, who failed to follow the traffic rules and regulations while crossing the road at the time of the accident. Moreover, Lajja Wati, who is the married daughter of the deceased Ms. Rambeti Devi, cannot claim loss of financial dependence on account of death of her mother.

6. The Objection was also taken that since the respondents were resident of U.P. and the motorcycle was also registered in UP, this Court had no



territorial jurisdiction to entertain the Suit.

7. The *learned Tribunal*, after referring to the evidence of the parties on record, came to the conclusion that the accident had occurred due to rash and negligent driving of the motorcycle by its driver. Having so concluded, it was further observed that since in both the Petitions, it was the same accident, therefore, *MACT Petition No. 37/2021*, which was filed under Section 163A (*on account of demise of the mother*), was held to be erroneously so filed and was treated as Petition under Section 166 of the Motor Vehicle Act. *The compensation to the petitioner on account of death of her mother, was thus, quantified at Rs.55,000/-.*

8. Aggrieved by the grant of such compensation, the present Appeal under Section 173 of the Act, 1988 has been filed.

9. The sole grievance of the appellant is that she had consciously filed her Claim Petition under Section 163A of the Motor Vehicle Act, to claim a lump sum of Rs. 5,00,000/-, on account of death of her mother. However, the learned Tribunal erroneously converted her Claim Petition into 166 Motor Vehicle Act and has granted less compensation.

10. It is argued on behalf of the appellant that the learned Tribunal could not have *suo motu* converted the Petition into the Petition under Section 166 of the Motor Vehicle Act. Therefore, the impugned Award is liable to be set-aside and she is entitled to a lump sum of Rs.5,00,000/- under Section 163A of the Motor Vehicle Act.

11. *Learned counsel for the Insurance Company* has submitted on similar averments, petitions were filed by the Claimant, but under different Sections. The learned Tribunal on finding that the accident in fact was caused due to rash and negligent driving of the motorcyclist, treated the two



Petitions arising from the same accident, together and for this reason, the Petition though filed under Section 163A, was converted into under Section 166 of the Motor Vehicle Act.

12. It is further argued that the Claimant, Ms. Lajja Wati is the married daughter of the deceased, who was not financially dependent upon her mother. She has been rightly granted the compensation in the sum of Rs.55,000/- under non-pecuniary heads. There is no infirmity in the impugned Award dated 20.09.2023 and the Appeal is liable to be set-aside.

13. Submissions heard.

14. The Motor Vehicle Act is a benevolent Act wherein Sections 163A and 166 of the Motor Vehicles Act, have been enacted with the objective of providing *just and fair compensation* to the victim of a road accident. While the Courts are expected to be liberal and not be constrained by the technical procedures or technical objections, but at the same time, the compensation to be granted, has to be just and fair. A corresponding responsibility lies on the Claimants to be fair and honest and not indulge in manipulation only with the objective of extracting maximum compensation.

15. The present case falls somewhere in the category where the Claimant has tried to take the benefit of both the Provisions under Section 163A as well as under Section 166 of the Motor Vehicles Act. She had filed the Claim Petition under Section 166 of the Motor Vehicle Act, for compensation on account of the injuries sustained by her alleging that the accident occurred due to rash and negligent driving of the motorcycle by its driver. Simultaneously, she also filed the present MACT Petition No. 37/2021, in regard to the same accident wherein the mother had died. She was conscious that the compensation to be granted under Section 166 of the



Motor Vehicle Act, on account of demise of her mother may not be as high as under Section 163A of the Motor Vehicle Act because she was a married daughter, who was not financially dependent upon the deceased mother.

16. The petitioner cannot in respect of the same accident, take the benefit of Section 163A having alleged that the accident occurred due to rash and negligent driving of the motorcyclist. The learned Tribunal, therefore, was right in deeming the Petition though filed under Section 163A of the Motor Vehicle Act, as one under Section 166 of the Motor Vehicle Act. There is no infirmity in the findings of the learned Tribunal, in this regard.

17. In this regard, reference be also made to the Judgment of the Apex Court in the Case of **Deepal Girishbhai Soni And Ors. vs. United India Insurance Co. Ltd. Baroda**, (2004) 5 SCC 385 wherein the issue of filing simultaneous Applications under Section 166 and 163A of the Motor Vehicle Act, came up for consideration. It was held that the remedy of payment of compensation both under Section 163A and 166 of the Motor Vehicle Act, are final and independent of each other as statutorily provided. A Claimant cannot pursue the remedy thereunder simultaneously. One thus, must opt or elect to go either for the proceedings under Section 163A or under Section 166 of the Motor Vehicles Act and not under both.

18. Ld. Tribunal therefore, rightly held in the Petition for compensation under Section 166 of the Motor Vehicle Act, 1988. Accordingly, Compensation to the petitioner on account of death of the mother, has been calculated, as under:-

Loss of consortium	Rs.40,000/-
Funeral Expenses	Rs.15,000/-

19. The Claimant in her testimony as PW-1 had deposed that she is the



only legal heir of her mother and the father had pre-deceased her mother. She also produced the Aadhar Card of her mother as Ex.PW-1/3 which reflected that the address of the mother was the same as that of the Claimant whereby establishing that the mother had been residing with the Claimant.

20. Ld. Tribunal, considering these circumstances, observed that though the Claimant was not financially dependent upon the mother, but was entitled to loss of consortium as well as funeral expenses. In the light of the Judgment of National Insurance Co. Ltd. vs. Pranay Sethi & Ors., the amount of consortium in the sum of Rs. 40,000/- was granted.

21. In the case of *Pranay Sethi* (supra), it was held that in the case of death, Rs. 15,000/- is liable to be paid towards the loss of estate and funeral charges, while Rs. 40,000/- was payable towards the loss of consortium and the same may be enhanced by 10% every three years.

22. The *funeral expenses* awarded in the sum of Rs.15,000/- is hereby enhanced to Rs. 16,500/-. In addition, the loss of Estate is granted in the sum of Rs. 16,500/-.

23. The compensation amount is therefore, enhanced to Rs. 73,000/- (40,000 + 16,500 + 16,500) along with Interest @9% on the same terms as the Award.

24. The impugned Award dated 20.09.2023 is accordingly modified.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 18, 2024/RS