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

% *Date of decision: 11th December, 2024*

+ **MAC.APP. 437/2023**

1. KAMAL SINGH

S/o Late Sh. Ashok Singh

2. MEENA

W/o Late Sh. Ashok Singh

3. VIMAL SINGH

S/o Late Sh. Ashok Singh

4. AMAN SINGH

S/o Late Sh. Ashok Singh

5. RISHABH SINGH

S/o Late Sh. Ashok Singh

.....Appellants

All Residents of:-

H. No. 364, Durga Mandir,

Gali No. 1, Kondli, Delhi

Through: Mr. Anshuman Bal, Advocate.

versus

1. SBI GENERAL INS CO. LTD.

7-B, Near Rajendra Park,
Pillar No. 153, Pusa Road,
New Delhi - 110060

.....Respondent No. 1

2. JAGDISH PRASAD (Owner)

R/o Flat No. 2210 5828,
Varun Apartments, Sector 62,
Noida, U.P. -201309

.....Respondent No. 2

3. OM PRATAP SINGH (Driver)

S/o Sh. Virender Singh
R/o Push Vihar Colony, Sasni Gate,
Aligarh, U.P. -202001

.....Respondent No. 3



Through: Mr. Sameer Nandwani with Ms.
Heeba Ansari, Advocate for R-3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeal under *Section 173* of the *Motor Vehicles Act, 1988* ('MV Act') has been filed against the impugned Award dated 18.05.2023 wherein compensation in the sum of Rs.50,000/- along with interest @ 7% per annum under *Section 140* has been awarded on account of demise of Sh. Ashok Singh (*hereinafter referred to as "deceased"*) in a road accident dated 27.09.2015.
2. ***Briefly stated*** on 27.09.2015 at about 11:00 PM Sh. Ashok Kumar was going on a motorcycle bearing No. DL 7S BZ 2608 along with Sh. Sher Singh, the Pillion rider, from Delhi to Etah. When they reached Village Shahpur Qutub, their motorcycle collided with a Stationary Car bearing number UP-16-AB-4155. As a result they both fell and the deceased, Sh. Ashok Kumar suffered grievous injuries. He was taken to Meraj Hospital and then referred to Guru Tegh Bahadur Hospital. Thereafter, he was referred to Lok Nayak Hospital, where he expired during the course of his treatment on 02.10.2015. A GD entry dated 07.10.2015 was registered by the Police, though no FIR was registered.
3. Learned ***counsel for the Claimants*** has submitted that even though involvement of the vehicle was held to be proved, but instead of granting compensation under *Section 163A of the Act* in the sum of Rs.5 lakhs, compensation under *Section 140 of the Act* in the sum of Rs.50,000/- has



been awarded. It is argued that *Section 140 of the Act* deals with interim compensation and not with the compensation on merits under *Section 163A*. It is, therefore, submitted that the quantum of compensation may be enhanced.

4. Learned counsel *on behalf of the Insurance Company* has argued that admittedly the car was stationary as its tyre had got punctured and the deceased in fact, dashed into the car. Therefore, the negligence of the deceased himself cannot be ruled out on the basis of preponderance of probabilities and thus, no compensation can be awarded under Section 163 of MV Act.

5. However, the Appellants are entitled to interim compensation under Section 140 of the MV Act and consequently, a sum of Rs. 50,000/- along with interest @ 7% per annum has been granted to the Appellants/Claimants. It is thus, submitted that the learned Tribunal has rightly granted the compensation under *Section 140 of the MV Act*. There is no infirmity in the impugned Award and the Appeal is liable to be dismissed.

6. **Submissions heard and record perused.**

7. The Claim Petition had been filed on behalf of the Appellants/Claimants under Section 163A of MV Act for compensation on account of no fault liability.

8. Section 163A of MV Act is relevant which reads as under: -

“Section 163A. – Special provisions as to payment of compensation on structured formula basis.—

(1) Notwithstanding anything contained in this Act or in any



other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be 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.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

9. It is, therefore, evident from the bare reading of Section 163A of MV Act that the only factum which is relevant to be proved to claim compensation under Section 163A of MV Act is that there was an accident due to the involvement of a motor vehicle. In this backdrop, the facts of the present case may be considered.

10. The learned Tribunal has categorically held that from the Post Mortem Report and other evidence and the documents on record established that deceased died due to the road traffic accident. Therefore, it was held that the deceased died due to the motor accident on 27.09.2015 at about 11:00 A.M.



11. The learned Tribunal further held that there was no evidence on record to show the manner in which the accident took place. It is not possible to comment on any kind of negligence of any person, be it deceased or the Respondent No. 3-Driver of the car.

12. However, while ascertaining the quantum of compensation, the learned Tribunal observed that *“it is clear that at least the negligence of the driver of the car has not been imputed as per the Reply of RTI as relied upon by the Petitioner himself, the car was punctured and was on the side and it was the deceased who himself dashed in the car, though even these facts are unproved in this case. Therefore, the negligence of the deceased himself cannot be ruled out on the basis of preponderance of probabilities”*.

13. These observations of the learned Tribunal are absolutely contradictory to his earlier observations that the negligence of neither the driver of the car nor the deceased could be established. Therefore, once the learned Tribunal itself had observed that there was no evidence to establish the negligence of the deceased as well as that of the car driver, it could not have denied the compensation under Section 163A of MV Act by observing that the possibility of negligence of the deceased in driving his vehicle cannot be ruled out. Clearly, these are contradictory observations.

14. It cannot be overlooked that the Appellants/Claimants have claimed a compensation not under Section 166 of MV Act which mandates a necessary finding on the negligence of the driver of the vehicle, but under Section 163A of MV Act which requires only the involvement of the vehicle in a road accident. Further, once it has already been concluded that there is no



evidence on record to establish the manner of accident or to prove the negligence of the deceased, the contrary view could not have been taken while considering the grant of compensation.

15. The learned Tribunal, therefore, fell in error in denying the compensation under Section 163A MV Act by observing that the probability of negligence of the deceased cannot be ruled out.

16. Before concluding, it may also be observed that Section 140 of MV Act is for interim relief by awarding a sum of Rs. 50,000/- in case the Petition is filed whether under Section 163A or Section 166 of MV Act and is not a substantive compensation under Section 163A of MV Act.

17. The Appellants/Claimants were, therefore, entitled to compensation under Section 163A of MV Act which needs to be computed in accordance with the settled principles.

18. Accordingly, the present Appeal is allowed and the impugned Award dated 18.05.2023 is set aside and the matter is remanded back to the learned Tribunal for adjudication of the just compensation under Section 163A of MV Act.

19. The parties are directed to appear before the learned Tribunal on 24.02.2025.

20. The present Appeal along with pending Application, if any, is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

2024:DHC:10211



DECEMBER 11, 2024

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