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

FIRST APPEAL NO. 935 OF 2024

APPELANT : (Ori. Res.No.2)	SBI General Insurance Company Ltd. Through Branch Manager, 148, 3rd Floor, above SBI Ramdaspeth Branch, Thapar Enclave, Maharaj Bagh Road, Ramdaspeth, Nagpur.
	V E R S U S
RESPONDENTS : (Ori.Peti No.1 to 4)	1. Smt. Kavita Sudhakar Waghmare Aged – 32 yrs, Occu – Household
	2. Shambhu Sudhakar Waghmare Aged – 13 yrs, Occu – Nil.
	3. Hemant Sudhakar Waghmare Aged – 11 yrs, Occu – Nil Respt. No.2 & 3 are minor through G.A.L. Respt. No.1 Mother. At present R/o Sivlal Ramkrishana Bondre, Jayastamb Chowk, Buldhana, Tq. and Dist. Buldhana.
	4. Sau. Babibai Janardhan Waghmare Aged - 52 yrs, Occu – Household R/o Pimpalgaon Kale, Tq. Jalgaon Jamod, Tq. Chikhali, Dist. Buldhana.
(Ori.Res.No.1)	5. Sau. Asha Suresh Badhe R/o Alampur, Tq. Nandura, Dist. Buldhana.

Mrs. Mrunal Naik, Advocate for appellant.
Shri G. R. Kothari, Advocate for respondent Nos.1 to 4.

CORAM: M. W. CHANDWANI, J.
DATE : 08/09/2025.

ORAL JUDGMENT :

1. Heard. **Admit.** Taken up for final disposal forthwith with consent of the learned counsels appearing for the parties.

2. Correctness of the impugned award dated 10/07/2023 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 Sudhakar Janardan Waghmare, who died in a vehicular accident on 28/11/2014.

3. The main contention raised in this appeal is that the petition was filed by respondent Nos.1 to 4 herein under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M. V. Act"). However, the Tribunal decided the petition and granted compensation under the heads which are not admissible under Section 163-A of the M. V. Act and treated the petition as if it had been made under Section 166 of the M. V. Act.

4. Having heard the learned counsels appearing for the respective parties and having gone through the impugned

award, it transpires that the Tribunal has assessed the annual income of the deceased at the rate of Rs.39,600/- and has applied the multiplier of 17 as enumerated in the Second Schedule of the M. V. Act, for a claim made under Section 163-A of the M. V. Act. Moreover, it appears that the Tribunal has also awarded 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
1	Monthly Income : Rs.3,300 x 12		Rs.39,600/-
2	Future prospect 40%	(+)	Rs.15,840/-
	Total		**Rs.55,440/-**
3	¼ deduction : (Rs.55,440 / 4)	(-)	Rs.13,860/-
	Total Income		**Rs.41,580/-**
4	Multiplier by “17” (Rs.41,580/- x 17) Consortium Love and affection Funeral Expenses 10% enhancement	 (+) (+) (+) (+)	Rs.7,06,860/- Rs.40,000/- Rs.15,000/- Rs.15,000/- Rs.7,000/-
	Total Compensation		**Rs.7,83,860/-**

5. The first objection is regarding the addition on account of future prospects. It is urged that since the petition is under Section 163-A of the M.V. Act, the claimants are not entitled for

the said addition and the entitlement will only be as per the Second Schedule. In this regard, it is relevant to refer to 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 the said case, a similar question regarding grant of future prospects and compensation under conventional heads 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 163-A 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 structural formula basis i.e. as per Second Schedule of Section 163-A of the M. V. Act.

7. Reference 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 Punjab Haryana 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, different High Courts have refused to make addition on account of future prospects in the petition under Section 163-A of the M. V. Act.

8. Undoubtedly, the principles related to determination of liability and quantum of compensation are different for a claim under Section 163-A of the M. V. Act and a 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 163-A of the M. V. Act or make an application

under Section 166 of the M. V. Act. If the claimants opt Section 163-A, then they are not required to plead or establish that the death or permanent disablement was due to any wrongful act or negligence or default. Though, the special provision of Section 163-A 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 163-A of the M. V. Act begins with a non-obstance clause to the effect that, it shall override other provisions of the Act. Sub-clause (1) of Section 163-A 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 for a different interpretation since the special provisions speak about grant of compensation as per Second Schedule. This Court, in the above referred case of **Late Suman Vishwanath Chavan** (supra) took a resume of the Supreme Court cases and ultimately held that in a claim under Section 163-A 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) was followed by this Court in the case of **Oriental**

<u>**Insurance Co. Ltd. vs. Shri Ravindra Ananda Jadhav and others**</u>. There is no reason to take a different view since the claimants exercised their choice and decided to claim under Section 163-A 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 the addition on account of conventional heads, the Tribunal made an addition of Rs.40,000/- towards consortium, Rs.15,000/- towards love and affection and Rs.15,000/- on account of funeral expenses, besides Rs.7,000/- towards 10% enhancement. 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 the structural formula and therefore, the additions made under these heads need to be corrected. Accordingly, as per the Second Schedule, multiplier of '18' will be applicable to the present claim.

10. In view of the above, it will not be out of place to hold

that the claimants are not entitled for addition on account of future prospects. The entitlement under non-pecuniary heads shall strictly be as per the Second Schedule.

11. Thus, it is a well-settled principle of law that once a claim petition is filed under Section 163-A 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.5,34,600/-
Loss of consortium	: Rs.5,000/-
Loss of estate	: Rs.2,500/-
Funeral expenses	: Rs.2,000/-

Total	**: Rs.5,44,100/-**
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12. In the result, the respondents/claimants are entitled for the compensation of Rs.5,44,100/- with interest as per the order of the Tribunal. Resultantly, the appeal is partly allowed. The impugned award is modified to that extent by reducing the quantum of compensation. Rest of the award shall stand affirmed.

13. Needless to mention that the amount in excess deposited by the appellant be refunded to it with accrued interest.

14. The appeal stands disposed of in the above terms.

[M. W. CHANDWANI, J.]

Choulwar