



FAO-195-2006 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**FAO-195-2006 (O&M)
Date of Decision : 29.05.2024**

Mamta & Others

....Appellants

VERSUS

Happy and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Ekta Thakur, Advocate for the appellants.

Mr. Paul S. Saini, Advocate with
Mr. Vipul Sharma, Advocate for respondent No.3.

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SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been preferred against the award dated 24.10.2005 passed by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') whereby the claimants-appellants have been granted compensation to the tune of Rs.4,17,500/- alongwith interest @7.5% per annum, for the enhancement of the awarded amount.

BRIEF FACTS OF THE CASE

2. The brief facts of the case are that on 03.07.2002 the claimants – Master Lucky, Prabha Devi, Prem Kishore and Sanjay Dubey were travelling in Maruti Van bearing registration No. CH-01-J-1101 being driven by respondent No.1 Happy. They were going towards Ambala Cantt. When the aforesaid maruti van crossed the chowk of Hallo Majra it tried to over-take a truck going ahead of



it. Due to high speed of the van respondent No.1 could not control the same. As a result thereof, the van dashed into the truck from its back side. In this accident, the claimants - Lucky, Prabha Devi and Prem Kishore sustained multiple injuries on their persons whereas Sanjay Dubey (since deceased) sustained fatal injuries.

3. Upon notice, respondent No.1 remained ex-parte. Respondent Nos.2 and 3 appeared and denied the factum of claim.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether death of deceased Sanjay Dubey had occurred and claimants Lucky, Prabha Devi and Prem Kishore had sustained multiple injuries on their persons to a road side accident which had occurred on 03.07.2002 on account of use of maruti van No.CH-01-J-1101 by respondent No.1? OPP
2. Whether the claimant Lucky is entitled to be compensated for the injuries sustained by him in the above accident? If so to what extent and by whom? OPP
3. Whether the claimant Prabha Devi is entitled to be compensated for the injuries sustained by her in the above accident? If so to what effects and by whom? OPP
4. Whether the claimant Prem Kishore is entitled to be compensated for the injuries sustained by him in the above accident? If so to what extent and by whom? OPP
5. Whether the claimants Mamta etc., are entitled to be compensated for the death of Sanjay Dubey having occurred in the above accident? If so to what extent and by whom? OPP



6. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident? If so, its effect? OPR- 3
7. Relief.
5. After considering the evidence, the appellants/claimants were held entitled to receive the total compensation of Rs.4,17,500/- along with interest @7.5% per annum. The present appeal is filed by the appellants under Section 163-A of the Motor Vehicles Act, 1988 (prior to 2019 Amendment w.e.f 01.04.2022), for enhancement of the awarded amount of compensation.

SUBMISSIONS OF THE COUNSELS

6. Learned counsel for the appellants contends that though the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 (prior to 2019 Amendment w.e.f 01.04.2022) for enhancement, she prays that the present appeal be treated under Section 166 of the Act. She has relied upon a judgment of this Court in case of **Smt. Babli Devi and Others Vs. Kuldeep Singh and Others** [FAO-8201-2015, Decided on 28.05.2018].

7. *Per contra*, learned counsel for respondent No.3- Insurance Company submits that no formal application with respect to Section 166 of the Act was moved during the pendency of the claim petition, therefore, the claim petition cannot be converted to Section 166 of the Act.

8. I have heard the learned counsel for the parties and thoroughly gone through the record.

SUBSTANTIAL QUESTION OF LAW

9. The question of law involved in the present appeal is whether at the appellate stage, the claim petition under Section 163-A be converted to Section 166 of the Motor Vehicles Act, 1988?



10. **THE RELEVANT LEGAL PROVISIONS UNDER THE
MOTOR VEHICLES ACT, 1988**

BEFORE 2019 AMENDMENT w.e.f. 01.04.2022

Section:-140 :- Liability to pay compensation in certain cases on the principle of no fault.— (1) *Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.*

(2) *The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.*

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

(4) *A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in*



respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163-A.

Section 163-A. 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.

Section 165:- Claims Tribunals.— *(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.*

Explanation.—For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under section 140 and section 163-A.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he—



(a) is, or has been, a Judge of a High Court, or
(b) is, or has been, a District Judge, or
(c) is qualified for appointment as a Judge of a High Court [or as a District Judge].

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

Section 166:- Application for compensation.— *(1) An application for compensation arising out of an accident of the nature specified in subsection (1) of section 165 may be made—*

- (a) by the person who has sustained the injury; or*
- (b) by the owner of the property; or*
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or*
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:*

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.



(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed: Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

* * * * *

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.

AFTER 2019 AMENDMENT w.e.f. 01.04.2022

Section – 166 :- Application for compensation :-

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made--

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:



Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.]

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

** * * **

(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under section 159 as an application for compensation under this Act.

(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to



his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.

11. RELEVANT PROVISIONS UNDER THE CODE OF CIVIL PROCEDURE, 1908

Section 107 :- Powers of Appellate Court.— (1) *Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—*

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) *Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.*

Order XLI Rule 33 of the Code of Civil Procedure, 1908:-

33. Power of Court of Appeal.—*The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents*



or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

[Provided that the Appellate Court shall not make any order under section 35A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

12. Chapter 10 of the Motor Vehicle Act, 1988 (prior to 2019 Amendment w.e.f 01.04.2022), the marginal heading of which is “**LIABILITY WITHOUT FAULT IN CERTAIN CASES**” containing Section 140 to 144 is omitted by Act 32 of 2019 w.e.f. 01.04.2022.

13. Chapter 11 (containing Sections 145 to 163, 163-A, 163-B and 164) is substituted by the Act 32 of 2019 w.e.f 01.04.2022. Now as per the Motor Vehicles Act, 1988, as amended by the Motor Vehicles (Amendment) Act, 2019 (32 of 2019), Section 164 is introduced, language of which shows that it is a combination of Section 140 and 163-A [prior to 2019 Amendment Act (32 of 2019)]. Section 164 of the Motor Vehicles (Amendment) Act, 2019 (32 of 2019) is reproduced as under:-

Section 164:- Payment of compensation in case of death or grievous hurt, etc:-

(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 or the authorised insurer shall be liable to



pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt 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 of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.”

OBJECT BEHIND THE LEGISLATION

14. There cannot be any dispute that the Motor Vehicles Act is a beneficial piece of legislation and, therefore, endeavour has to be made as to how best the intention of the legislation can be achieved so as to safe-guard the interest of the victims of the accident, rather than defeating the same. The statute has to be construed according to the intent of the makers and it is the duty of the Courts to interpret the statute in such a manner that the true intention of legislature is achieved. Taking a purposive interpretation of Section 163-A of the Motor Vehicles Act (pre-amendment i.e 2019 amendment w.e.f 01.04.2022), the clear intention of the legislation was to come to the rescue of all those who in the



absence of any evidence are not in a position to file a claim petition under Section 166 of the Motor Vehicle Act, where death of the victim or permanent disablement of the victim is required to be proved by establishing the factum of negligence involving the offending vehicle resulting into causing of accident, but under Section 163-A (pre-amendment i.e 2019 amendment w.e.f 01.04.2022) the requirement of proving the negligence was dispensed with.

15. A bare reading of Section 164 of the Motor Vehicles Act, 1988 (amended by the Act 32 of 2019), shows that the claimant shall not be required to plead or establish that the death or grievous hurt 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 the vehicles concerned or of any other person.

16. The object and purpose of incorporating Section 163-A of the Motor Vehicle Act, 1988 (pre-amendment i.e. 2019) was to provide a speedy remedy to the victims or their dependents. And the compensation to be granted in case of death or permanent disability due to accident arising out of the use of motor vehicle under Section 163-A of the Motor Vehicle Act, 1988 (pre-amendment i.e. 2019) is indicated in IInd Schedule of the Act whereby straight-jacket/structured formula has been applied as per the income, age of the victim only. Further the claimant under this Section shall not be required to be pleaded or establish that the death or permanent disability was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or any other person. Section 140 of the Motor Vehicle Act 1988 (pre-amendment i.e. 2019) lays down the liability to pay compensation in certain cases on the principle of no-fault. And the amount of compensation in case of death of any person shall be fixed to the tune of Rs.50,000/- and in respect of permanent disability of any person shall be fixed to



the tune of Rs.25,000/-. This section also provides that the claimant shall not be required to plead and establish that the death or permanent disability in respect of which the claim has been made was due to any wrongful act, neglect or default of owner or owners of vehicle or vehicles concerned or of any other person.

17. As mentioned above in pre-amendment Motor Vehicles Act, there were two provisions regarding the grant of compensation to the victims/claimants i.e. Sections 140 and 163-A and now after the 2019 amendment the amount of compensation is also increased and by combining both the Sections i.e. Section 140 and 163-A, there is only one Section i.e. Section 164. The Court should try to appreciate and see the intention of the legislation before deciding the cases. The litigants place immense trust in the judicial system, viewing judges as symbols of justice. Thus, judges have a duty to maintain this trust by delivering fair and substantive justice to the parties by actually and factually appreciating the evidence/conduct and over all facts and circumstances, difficulties faced by the near and dear ones, the gravity of loss, the gravity of agony and pain.

18. The object of the legislation in constituting the claim Tribunals is for the purpose of adjudicating upon the claims for compensation in respect of accidents involving the death of, or bodily injury to, persons, arising out the use of motor vehicles, or damages to any property of the third party so arising or both. Even the discretion has been granted under Section 166 (4) to the claim Tribunals by the legislation that claim Tribunal shall treat any report of accident forwarded to it under Section 159 of the Motor Vehicles Act, 1988 as an application for compensation under the Motor Vehicles Act.1988.



19. As per Section 107 of Code of Civil Procedure, 1908 which refers to the powers of the Appellate Court, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein, and the Motor Vehicle Act 1988 since being a beneficial legislation, the evidence led by the parties cannot be ignored by the Appellate Authority.

RELEVANT CASE LAWS:-

20. In the case of **United India Insurance Company Ltd. Vs. Sunil Kumar and Another, 2019 (12) SCC 398**, the Hon'ble Apex Court held as under:-

“8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault



liability was taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.”

21. In the case of **Deepal Girishbhai Soni and Ors. Versus United India Insurance Co. Ltd., Baroda 2004(5) SCC 385,** the Hon’ble Apex Court held as under :-

“2. A Division bench of this Court by an order dated 19.04.2002 doubting the correctness of 2-Judge Bench decision in Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala and Others [(2001) 5 SCC 175] (Kodala) : 2001(2) RCR (Civil) 629 (SC) has referred the matter to a 3-Judge Bench whereby and whereunder the proceedings under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to and called for the sake of brevity as "the Act") has been held to be a final proceeding as a result whereof the claimants had been debarred from proceeding with their further claims made on the basis of fault liability in terms of Section 165 thereof.

* * * * *

6. *The appellants filed two claim petitions; one under Section 163-A of the Act and the other under Section 166 thereof claiming compensation for a sum of Rs.4,97,800/- for the death of their mother, Ms. Prabhaven as also a sum of Rs.17,30,900/- for the death of their*



father, Shri Girishbhai Soni. Proceeding on the basis that in terms of Section 163-A of the Act, merely an interim relief was to be granted, the Motor Accidents Claim Tribunal in MAC Petition No. 2133 of 1998 and M.A.C. Petition No. 2134 of 1998 vide its order dated 24.3.2000 awarded a sum of Rs.4,20,500/- and Rs.11,74,500/- respectively with interest at the rate of 12% per annum from the date of the application till realisation. It is not in dispute that although while passing the said order the learned Tribunal considered the matter also on their own merits but directed that the applications filed by the appellants herein purported to be under Section 166 of the Act would be determined separately.

* * * * *

32. The relevant provisions of the Act are beneficial in nature. The Act indisputable is in the nature of a social welfare legislation.

33. The provisions as regard on fault liability evidently were inserted having regard to the fact that the road accidents in India had touched a new height and at least in some of the cases it was found that rash or negligent driving causing death or injury to the innocent persons could not be proved. Whereas in terms of Section 140 of the Act a statutory liability has been cast upon the owner in case of death or permanent disablement; both under Section 163-A as also Section 166 of the Act, the insurer had been made responsible.

34. It is true that in terms of Section 163-B of the Act an option had been provided for so as to enable a person to lay a claim for



compensation either under Section 140 or Section 163-A and not under both but having regard to the scheme of the Act, the same was not necessary.

35. Section 163-A was introduced in the Act by way of a social security scheme. It is a code by itself. It appears from the Objects and Reasons of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act several representations and suggestions were made from the State Governments, transport operators and members of public in relation to certain provisions thereof. Taking note of the observations made by the various Courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a Review Committee. The Review Committee in its report made the following recommendations :

"The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability cases. It also provides for payment of compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31.3.1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as



the Insurance Company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different clauses of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels.

The General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for settlement of claims on "fault liability" in respect of third party liability under Chapter XI of M.V. Act, 1988. They have suggested that the claimants should first file their Claims with Motor Accident Claims Tribunals and then the insurers may be allowed six months time to confirm their prima facie liability subject to the defences available under Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time."

The recommendations of the Review Committee and representations from public were placed before the Transport Development Council



for seeking their views pursuant whereto several sections were amended. Section 163-A was inserted in the Act to provide for payment of compensation in motor accident cases in accordance with the Second Schedule providing for the structured formula which may be amended by the Central Government from time to time.

36. Section 140 of the Act dealt with interim compensation but by inserting Section 163-A, the Parliament intended to provide for making of an award consisting of a pre-determined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The Amendment was, thus, a deviation from the common law liability under the Law of Torts and was also in derogation of the provisions of the Fatal Accidents Act. The Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought to be evolved so as to grant a quick and efficacious relief to the victims falling within the specified category. The heirs of the deceased or the victims in terms of the said provisions were assured of a speedy and effective remedy which was not available to the claimants under Section 166 of the Act.

37. Chapter XI was, thus, enacted for grant of immediate relief to a section of people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto; compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefore. An award made thereunder, therefore, shall be in full and final



settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in column Nos. 2 to 6 thereof leaves no manner of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

38. The submission of learned counsel appearing on behalf of the appellants to the effect that Sections 140 and 163-A provide for similar scheme cannot be accepted for more than one reason. Payment of the amount in terms of Section 140 of the Act is ad hoc in nature. A claim made there-under, as has been noticed hereinbefore, is in addition to any other claim which may be made under any other law for the time being in force. Section 163-A of the Act does not contain any such provision.

39. Section 163-A of the Act is interlinked with several sections of Chapters XI and XII thereof. Section 140 imposes a liability upon the



owner of the vehicle to pay compensation where death or permanent disablement of any person has resulted from accident arising out of the use of a motor vehicle. By reason of the said provision a fixed sum is to be paid.

40. Sub-section (4) of Section 140 provides that the claim for compensation under sub-section (1) thereof shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. Sub-section (5) of Section 140 of the Act categorically provides that the obligation of the owner of the vehicle shall not be in derogation of any statutory law cast upon the owner of the vehicle to pay compensation under any other law for the time being in force subject, however, to the condition as has been laid down in the proviso appended thereto that the amount of such compensation to be given under any other law should be reduced from the amount of compensation payable there-under or Section 163-A.

41. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A contains non-obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is 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. Sub-section (2) of Section 163-A is in pari materia with sub-section (3) of Section 140 of the Act.

42. Section 163-A does not contain any provision identical to sub-section (5) of Section 140 which is also indicative of the fact that whereas in terms of the latter, the liability of the owner of the vehicle to give compensation or relief under any other law for the time being in force continues subject of course to the effect that the amount paid thereunder shall be reduced from the amount of compensation payable under the said Section or Section 163-A.

43. By reason of the Section 163-A, therefore, the compensation is required to be determined on the basis of a structured formula whereas in terms of Section 140 only a fixed amount is to be given. A provision of law providing for compensation is presumed to be final in nature unless a contra indication therefore is found to be in the statute either expressly or by necessary implication. While granting compensation, the Tribunal is required to adjudicate upon the disputed question as regard age and income of the deceased or the victim, as the case may be. Unlike Section 140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding under Section 163-A of the Act.

** * * * **

47. It may be true that Section 163-B provides for an option to a claimant to either go for a claim under Section 140 or Section 163-A



of the Act, as the case may be, but the same was inserted 'ex-abundanti cautela' so as to remove any misconception in the mind of the parties to the lis having regard to the fact that both relate to the claim on the basis of no-fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims either under Section 163-A or Section 166 does not arise. If the submission of the learned counsel is accepted the same would lead to an incongruity.

48. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby.

** * * * **

52. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.

53. In Kodala (supra) the contention of the claimant that right to get compensation is in addition to the no-fault liability was, thus, rightly rejected. In agreement with Kodala (supra) we are also of the



opinion that unlike Sections 140 and 141 of the Act the Parliament did not want to provide additional compensation in terms of Section 163-A of the Act.

54. The question may be considered from different angles. As for example, if in the proceedings under Section 166 of the Act, after obtaining compensation under Section 163-A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefore as a consequence where to the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula ? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, would it be at liberty to award compensation in terms of Section 163-A thereof.

55. The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under Section 163-A of the Act is interim in nature.

56. It is, therefore, evident that whenever the Parliament intended to provide for adjustment or refund of the compensation payable on the basis of no-fault liability, as for example, Sections 140 and 161 in case of hit and run motor accident, from the amount of compensation



payable under the award on the basis of fault liability under Section 168 of the Act, the same has expressly been provided for and having regard to the fact that no such procedure for refund or adjustment of compensation has been provided for in relation to the proceedings under Section 163-A of the Act, it must be held that the scheme of the provisions under Sections 163-A and 166 are distinct and separate in nature.

57. It is also not of much relevance that in terms of section 140 of the Act, the owner of the vehicle has been fastened with the statutory liability and in Section 163-A thereof both the owner as also his authorised insurer has been made so liable.

58. In sub-section (5) of Section 140 of the Act the expression "also" has been used which is indicative of the fact that the owner of the vehicle would be additionally liable to pay compensation under any other law for the time being in force. Proviso appended to sub-section (5) of Section 140 states that the amount of compensation payable under any other law for the time being in force is to be reduced from the amount of the compensation payable under Sub-section (2) thereof or under Section 163-A of the Act. Right to claim compensation under Section 140, having regard to the provisions contained in Section 141 is in addition to any other right to claim compensation on the principle of fault liability. Such a provision does not exist in Section 163 A. If no amount is payable under the fault liability or the compensation which may be received from any other law, no refund of the amount received by the claimant under Section 140 is postulated



in the Scheme. Section 163-A, on the other hand, nowhere provides that the payment of compensation of no-fault liability in terms of the structured formula is in addition to the liability to pay compensation in accordance with the right to get compensation on the principle of fault liability. It is also not correct to contend that the expression "any other law for the time being in force" used in Section 140(5) would include any other provisions of the Motor Vehicles Act. Had the intention of the Parliament been to include the other provisions of Motor Vehicles Act within the meaning of the expression "any other law for the time being in force", it could have said so expressly. The very fact that the Parliament has chosen to use the expression "any other law", the same, in our considered opinion, would mean a law other than the provisions of the Motor Vehicles Act. The proviso appended to sub-section (5) of Section 140 of the Act is required to be given a purposive meaning.

59. It is not in dispute that the claim of compensation irrespective of the death or bodily injury may arise under other statutes as, for example, Workmen's Compensation Act, Factories Act, Fatal Accidents Act and other acts governing various industries including hazardous industries.

60. In the event, the motor vehicle in question is insured ultimately the liability would also be fastened upon the insurer having regard to the provision laid down in Chapter XII of the Act. We may also notice that Rule 211(1) of Gujarat Motor Vehicle Rules provides for the application for compensation in terms of sub-section (1) of Section



166 of the Act. A claim application is to be filed in Form Comp. A. Rule 231 thereof provides for an application for compensation in respect of liability without fault and for the said purpose the claim application prescribed therefor is to be filed in Form No. CWF. The very fact that different forms had been prescribed as regard determination of the final compensation is also suggestive of the fact that both proceedings are meant to be final in nature. Column No. 10 in Form Comp. A requires the claimant to give brief particulars of the accident which would include the nature and extent of fault on the part of the driver of the vehicle, but no such column is provided for in Form CWF. Subject of the said distinction, all other particulars required to be furnished are almost identical.

61. We may notice that Section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, "under the provision of the Act", "provisions of this Act", "under any other provisions of this Act" or "any other law or otherwise". In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non- obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the



time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of.

62. We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annual shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

63. However, in this case, we may notice that the parties have proceeded to file two applications - one, under Section 163-A and another under Section 166 of the Act. Both have been entertained. Both the Tribunal as also the High Court have proceeded on the basis that the amount of compensation under Section 163-A is by way of an interim award and the same would not preclude the claimants to proceed with his claim made in terms of Section 166 of the Act. It is submitted at the Bar that the appellants have withdrawn 50% of the amount and rest of the amount has been invested. The appellants have lost both of their parents in the accident. Only one of the appellants at the relevant time was a major. It appears that 70% of the amount permitted to be withdrawn has been deposited in the Fixed Deposit.



We agree with the submission of Mr. Banerjee that the claim of the appellants made under Section 163-A be treated to be one under Section 140 of the Act and upon adjusting the amounts provided for thereunder, the appellants may refund the rest thereof to the insurer.

64. Keeping in view of the limited questions posed before us, in our opinion, it is not necessary to go into the purported discrepancies existing in the Second Schedule of the Act.

65. We, for the reasons aforementioned, do not find any merit in the review applications which are dismissed.

66. So far as Civil Appeal Nos. 3126 of 2002 and 3127 of 2002 are concerned, we in exercise of our jurisdiction under Article 142 of the Constitution direct that the claim applications of the appellants under Section 163-A of the Act be treated to be applications under Section 140 thereof. The amount invested by the Tribunal may be allowed to be withdrawn by the respondent- Insurance Company. The appellants shall refund the excess amount withdrawn by them after adjusting the amount payable in terms of Section 140 of the Act and the interest which would have accrued thereon shall be adjusted towards the compensation received by the claimant within four weeks from the date of communication of this order whereafter, the Motor Vehicles Accident Claims Tribunal shall proceed to determine their claim petitions filed under Section 166 of the Act in accordance with law. This order shall not be treated as a precedent.

67. Section 163-A was introduced in the year 1994. The executive authority of the Central Government has the requisite jurisdiction to



amend the Second Schedule from time to time. Having regard to the inflation and fall in the rate of bank interest; it is desirable that the Central Government bestows serious consideration to this aspect of the matter.”

22. In the case of **Sarla Verma Vs. Delhi Transport Corporation and Another** [(2009) 6 Supreme Court Cases 121], Hon’ble Supreme Court held that assessment of compensation though involving hypothetical considerations, should nevertheless is objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication and fairness and uniformity in the decision making process and the decisions.

23. Hon’ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.** [(2017) 16 SCC 680] has observed that it is well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be balance between the two extremes, i.e. a windfall and the pittance, a bonanza and the modicum. Further, Hon’ble Apex Court has observed in para 5 of the same as under:-

“5. Analysing further the rationale in determining the laws under Sections 163-A and 166, the Court had stated thus:-

“58. We are not unmindful of the Statement of Objects and Reasons to Act 54 of 1994 for introducing Section 163-A so as to provide for a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational. That may be so, but it defies logic as to why in a similar situation, the



injured claimant or his heirs/legal representatives, in the case of death, on proof of negligence on the part of the driver of a motor vehicle would get a lesser amount than the one specified in the Second Schedule. The courts, in our opinion, should also bear that factor in mind.”

While deciding the loss suffered by the legal-heirs/victim/relations, Hon’ble Apex Court observed as under:-

25. At this juncture, it is necessitous to advert to another three-Judge Bench decision in Munna Lal Jain V. Vipin Kumar Sharma. In the said case, the three-Judge Bench commenting on the judgments stated thus:-

“2. In the absence of any statutory and a straitjacket formula, there are bound to be grey areas despite several attempts made by this Court to lay down in the guidelines. Compensation would basically depend on the evidence available in a case and the formulas shown by the courts are only guidelines for the computation of the compensation.

*46. * * * * **

“17. In legal parlance, "consortium" is the right of the spouse the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-



pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

55. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an



apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in Sarla Verma and it has been approved in Reshma Kumari. The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well-accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the courts is difficult and hence, an endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardisation keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardisation" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.



24. Hon'ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** held as under:-

“21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

*21.1. **Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".*

*21.2. **Parental consortium** is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".*



21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.”



25. *Justice Warren Burger the former Chief Justice of the American Supreme Court while discussing the importance of ADR, had observed:*

“The harsh truth is that we may be on our way to a society over run by hordes of lawyers, hungry as locusts, and bridges of judges in numbers never before contemplated. The notion that ordinary people want black robed judges, well-dressed lawyers, fine panelled court rooms as the setting to resolve their disputes, is not correct. People with legal problems like people with pain, want relief and they want it as quickly and inexpensively as possible.” “The obligation of the legal profession is to serve as healers of human conflict and we should provide mechanism that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about.”

CONCLUSION

26. The Appellate Courts for the purpose of doing complete justice between the parties and completely adjudicating upon all the disputes, after appreciating the whole evidence on record, have power under Section 107 read with Order XLI Rule 33 of the Code of Civil Procedure, 1908 to pass any decree and make any order which ought to have been passed or made and to pass or make such further decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the



decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

27. Motor vehicle statute is a beneficial legislation. Generally the victims/claimants/legal-representatives are not aware of their right to compensation and it is Advocates who decide under which provision of the statute the claim petition is to be filed. Before deciding the claim petitions, after appreciating the evidence on record, it is the bounden duty of the Court to apprise the parties of their legal rights as to under which provision they can get the maximum of benefit/compensation. The Judges should apply their judicial mind after appreciating the evidence on record, gravity of offence, gravity of loss, conduct of parties and over all facts and circumstances of each case and after that decide the same. The Court should not go into the technicalities that under which provision of statute case is to be filed, specially in the motor accident cases. If at any stage after appreciating the evidence, since it is original jurisdiction of the Court and the case is at initial stage, normally a person of ordinary prudence can calculate the loss of near and dear one's/relationship, the Judge feels that case of the claimant falls under a particular section he should apprise the parties regarding the same. The Courts should not apply straight jacket formula in every case and are presumed actually to do the justice by applying their judicial mind to the facts and circumstances of each and every case. The beneficial intent of the legislation ought to be borne in mind and procedural and technical formalities cannot be invoked to defeat the purpose of the legislation.

28. The Courts have to be very cautious and careful while accepting the prayer of the claimants/appellants to convert the claim petition filed under Section 163-A to Section 166 of the Motor Vehicles Act, 1988. Under Section 107 read



with Order XLI Rule 33 of CPC the general rule is that an appeal is persistence of a suit and, therefore, an Appellate Court can do, while the appeal is pending, what the original Court could have done while the suit was pending. Thus, as per Section 107 Order XLI Rule 33 of CPC, an Appellate Court is empowered to re-appreciate the evidence. While hearing the appeal it is very important for a judge to apply his judicial mind. The Appellate Authority can re-appreciate the evidence before it. The grant of just and fair compensation is a statutory responsibility of the Court.

29. Over all conclusion of the above is that the Appellate Court has power to convert the petition under Section 163-A to Section 166 of the Motor Vehicles Act, 1988 to give justice to the claimants.

30. The claimant is normally not aware of the best course of action as available to him under the Act. It is only the Advocate who suggest the same.

31. The loss of life/relationship cannot be made good with any amount of compensation.

32. A bare reading of the judgment passed by the Apex Court in the case of **Deepal Girishbhai Soni** (Supra), shows that the question which was considered by a three Judge Bench of the Hon'ble Supreme Court was whether a proceeding under Section 163-A of the Motor Vehicles Act, 1988 is a final proceeding, by reason whereof, the claimant who has been granted compensation under Section 163-A, is debarred from proceeding with any further claims on the basis of fault liability in terms of Section 166. After considering the scheme envisaged by Section 163-A of the Act, it is held in the said case that Parliament intended to lay down a comprehensive scheme for the purpose of grant of adequate compensation



to a section of victims who would require the amount of compensation without fighting any protracted litigation. What is ruled therein is that the compensation determined and paid under Section 163-A of the Motor Vehicle Act, 1988 (pre-amendment i.e. 2019) is final and not an interim one. The clear proposition of law which emerges from the decision of this Court in Deepal Girishbhai Soni (supra) is that the remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously.

33. The bare reading of law of compensation laid down by the Hon'ble Supreme Court in **Sarla Verma** (Supra), **Pranay Sethi** (Supra) and **Magma Insurance Co. Ltd.** (Supra) shows the concern of the Hon'ble Supreme Court towards the victims/relation etc. The calculations settled by Hon'ble Supreme Court are sympathetic and empathetic. The Hon'ble Supreme Court after considering the whole law on compensation under the Motor Vehicles Act, 1988 has shown its intention to give the highest amount of compensation to the claimants. That is why Hon'ble Supreme Court has tried to fill the gap of near and dear ones by introducing consortium.

34. Hon'ble Supreme Court in **Jagdish Vs. Mohan and Others** (2018) 4 SCC 571 in para 8 observed as under :-

“8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:



- (i) Pain, suffering and trauma resulting from the accident;*
- (ii) Loss of income including future income;*
- (iii) The inability of the victim to lead a normal life together with its amenities;*
- (iv) Medical expenses including those that the victim may be required to undertake in future; and*
- (v) Loss of expectation of life.*

The Hon'ble Supreme Court in para 14 has further observed as under:-

“14. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.”

35. THE PLEADINGS AS WELL AS EVIDENCE ON RECORD SHOWING THAT THE CASE OF THE APPELLANTS FALL UNDER SECTION 166 OF THE MOTOR VEHICLES ACT, 1988, ARE AS FOLLOWS:-

- (i) The claim petition was filed by the appellants under Section 163-A of the Motor Vehicles Act, 1988 wherein it has been stated that “the accident took place due to rash and negligent driving of respondent No.1”;*



- (ii) In the contents of FIR also it has been stated that “*due to the high-speed of the Van, the driver of the Van could not control the Van, as a result of which, the Van struck the back-side of the truck going ahead*”;
- (iii) Evidence by way of affidavit of **Mamta (PW-1)** i.e. **Ex.PA** wherein it has been stated that “*the accident took place due to rash and negligent driving of respondent No.1*”;
- (iv) Evidence by way of affidavit of **Prabha Devi (PW-2)** i.e. **Ex. PB** wherein it has been stated that *the accident took place due to rash and negligent driving of respondent No.1*”;
- (v) Evidence by way of affidavit of **Prem Kishore (PW-3)** i.e. **Ex. PC** wherein it has been stated that “*the accident took place due to rash and negligent driving of respondent No.1*”,
- (vi) Evidence by way of affidavit of **Vinod Tiwari (PW-4)** i.e. **Ex. PD** wherein it has been stated that “*respondent No.1 driver of Maruti Van CH-01-J-1101 tried to overtake the truck which was going ahead of the Maruti Van mentioned above, but due to high speed of the Van, respondent No.1 i.e. driver of the Van could not control his Van as a result of which Van struck the back-side of the said truck going ahead*”;



- (vii) Evidence by way of affidavit of **Happy alias Devinder Singh, driver of the Van (RW-1)** wherein it has been stated that *“while over-taking he applied the brakes all of sudden as a result of which my Van struck against the rear portion of the truck”*;
- (viii) Evidence by way of affidavit of **Babu Singh (RW-3), the owner of Maruti Van**, wherein he has stated that *“his Van met with an accident and when the accident took place his driver namely Happy alias Devidner was in the Van”*.

OBERSERVATIONS

36. A perusal of the record shows that the claim petition was filed under Section 163-A of the Motor Vehicle Act, 1988 (pre-amendment i.e. 2019 amendment w.e.f 01.04.2022).
37. In the present case, the evidence led by the appellant/claimant shows that the accident took place due to rash and negligent driving of respondent No.1 and there is no rebuttal to the same.
38. So far as the facts and circumstances of the present case is concerned, as explained above and as per the evidence led by the parties, the present case of the appellants falls under Section 166 of the Motor Vehicles Act, 1988. Therefore, in view of the above, appellants are entitled to compensation under Section 166 of the Motor Vehicles Act, 1988, as per the judgments passed by the Hon'ble Supreme Court supra.



39. Though no application was filed before this Court for seeking amendment of the claim petition under Section 166 of Motor Vehicle Act, but still on the oral request made by the counsel for the appellants and in view of the provisions under Section 107 read with Order XLI Rule 33 of CPC as per which an Appellate Court has identical powers as of the Court of original jurisdiction, I am of the considered view that the prayer made by the claimant at the appellate stage can be accepted by this Court, and therefore, this Court converts the claim petition of the claimants/appellants under Section 163-A to be under Section 166 of the Motor Vehicles Act, 1988.

SETTLED CASE LAWS ON CALCULATION OF AWARD

40. Hon'ble Supreme Court in the case of *Sarla Verma Vs. Delhi Transport Corporation and Another* [(2009) 6 Supreme Court Cases 121], laid down the law on assessment of compensation and the relevant paras of the same are as under:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having a considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the



number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. c Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.



* * * * *

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas³, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

41. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]** has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-



“52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in *Rajesh*². It has granted Rs.25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though *Rajesh*² refers to *Santosh Devi*, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the



revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

* * * * *

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed (or) on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall



be guided by paras 30 to 32 of Sarla Verma⁴ which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

42. Hon’ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** after considering **Sarla Verma (supra)** and **Pranay Sethi (Supra)** has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

“21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his



family. With respect to a spouse, it would include sexual relations with the deceased spouse.

*21.1. **Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".*

*21.2. **Parental consortium** is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".*

*21.3. **Filial consortium** is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most



jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi². In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium.

43. In view of the above discussion and the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is allowed. The claim petition under Section 163-A is converted to Section 166 of the Motor



Vehicles Act, 1988. The award dated 24.10.2005 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.3,000/-
2	Future prospects @ 40%	Rs.1,200/-
3	Deduction towards personal expenditure	Rs.1050/- [1/4 th of (3000+1200)]
4	Multiplier	17
5	Annual Dependency	Rs.6,42,600/- (3150 x 12 x 17)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : 48,000/- Spousal : 48,000/- Filial : 48,000/- x 2	Rs.1,92,000/-
	Total Compensation	Rs.8,70,600/-
	Amount Awarded by the Tribunal	Rs.4,17,500/-
	Enhanced amount	Rs.4,53,100/-

44. So far as the interest part is concerned, as held by Hon'ble Supreme Court in *Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma* 2019 ACJ 3176 and *R.Valli and Others VS. Tamil Nandu State Transport Corporation* (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

45. The Insurance Company is directed to deposit the awarded amount along with interest with the Tribunal within a period of two months from today.



The appellants-claimants are directed to furnish their bank account details to the Insurance Company/Tribunal. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the bank accounts of the appellants-claimants.

46. Before parting with the judgment, this Court deems it appropriate to issue certain guidelines to the Courts below which are dealing with the matters relating the Motor Accident Claims.

GUIDELINES

47. In view of the above, the following guidelines are being issued to the learned Tribunals :-

1. The learned Tribunals upon receiving the application under Sections 140, 163-A of the Motor Vehicles Act, 1988 (pre-amendment i.e. 2019 amendment w.e.f. 01.04.2022), Sections 164 and 166 (post- amendment i.e. 2019 amendment w.e.f. 01.04.2022), shall thoroughly appreciate the evidence and exercise their judicial discretion;
2. The learned Tribunals after applying their judicial mind to the evidence led as well as all relevant facts and circumstances of the case and the extent of loss to be compensated, shall, before announcing the award, shall apprise the claimants of their right to seek compensation, under the best available remedy to them, under the Motor Vehicles Act, 1988;
3. Even if the claim petition is filed under Sections 140, 163-A of the Motor Vehicles Act, 1988 (pre-amendment i.e. 2019



amendment w.e.f. 01.04.2022) or Sections 164, learned Tribunal shall after appreciation of the evidence and before passing the award, if it finds that respondents negligence is established should advise the claimant, in the interest of justice, to opt for Section 166 of the Motor Vehicles Act, 1988. The learned Tribunals shall then grant compensation under Section 166 of the Motor Vehicles Act, 1988 (post-amendment i.e. 2019 amendment w.e.f. 01.04.2022), keeping in view the law settled by the Hon'ble Apex Court in the case of Sarla Verma (Supra), Pranay Sethi (Supra) and Magma Insurance Company Ltd. (Supra);

4. It is further clarified that with the 2019 amendment (w.e.f.01.04.2022) Section 164 is introduced where the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and half lakh rupees in case of grievous hurt to the legal heirs of the victim, as the case may be, and the claimant shall not be required to plead or establish that the death or grievous hurt 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 of the vehicle concerned or of any other person. Therefore, the claim petition originally filed under Section 164 of the Motor Vehicles Act,



1988 (post-amendment i.e. 2019 amendment w.e.f. 01.04.2022), can also be converted to Section 166 of the Motor Vehicles Act, 1988, with due diligence, after considering the case's facts, circumstances and evidence led by both the parties.

5. The Judge should not go into the technicalities of the provisions, specially in motor vehicle cases, under which the application or petition is moved but should apply his judicial mind, since these are only the irregularities and not illegalities which cannot be cured. The Hon'ble Supreme Court in the above mentioned judgments have analysed that the Court should make every effort to fill the loss of the victims/legal-representatives/claimants/relationship. It has been observed by the Hon'ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically.
6. Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary.

48. The Registrar General is requested to circulate a copy of this judgment to the Trial Courts/Motor Accident Claim Tribunals in the State of Punjab, Haryana and U.T.Chandigarh.



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49. Pending applications, if any, also stand disposed off.

May 29, 2024

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(SUDEEPTI SHARMA)

JUDGE

Whether speaking/non-speaking : Speaking

Whether reportable : Yes/No