

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 472 of 2013**

1. Degeshwari, wife of Shiv Kumar Sahu, aged about 27 years, resident of Village & Post- Riwa, Distt. Raipur C.G.
2. Ku. Manisha, daughter of Shiv Kumar Sahu, aged about 6 Years Minor, Through - Mother Smt. Digeshwari Bai, R/o Village & Post- Riwa, Distt. Raipur C.G.
3. Ku. Pinki, daughter of Shiv Kumar Sahu, aged about 2 Years, Minor, Through Mother Smt. Digeshwari Bai, R/o Village & Post- Riwa, Distt. Raipur C.G.
4. Dukhwaram S/o Late Lukas Sahu, aged about 60 years, R/o Village & Post- Riwa, Distt. Raipur C.G.

---- Appellants**Versus**

1. Santosh Kumar Duseja, S/o Mohan Das Duseja R/o Chandrashekhar Nagar, Sundar Nagar, P.O. Sundar Nagar, Raipur, Distt. Raipur C.G.
2. Anil, S/o Mohan Das Duseja R/o Maa Sharda Senetory, Ganj, Bans Toll, Station Road, Raipur C.G.
3. Ifco Tokyo General Insurance Co.Ltd. Thru- In Charge Officer, Iffco Tokyo General Insurance Co.Ltd., Lal Ganga Shopping Mall, G.E. Road, Raipur, Tah. And Distt. Raipur C.G.
4. United India Insu.Co.Ltd. Thru-Divisional Manager, G.E. Road, Near Kacheri, Raipur C.G.

---- Respondents

For Appellants	:	Mr. Amiyakant Tiwari, Advocate
For Respondent No.1	:	Mr. C. K. Sahu, Advocate
For Respondent No.3	:	Mr. Karri Rohan & Mr. Amrito Das, Advocates
For Respondent No.4	:	Mrs. Chitra Shrivastava, Advocate

HON'BLE SHRI JUSTICE GOUTAM BHADURI**ORDER ON BOARD****03/09/2015**

1. This is an appeal against the award dated 31st October 2012 passed by the Vth Additional Claims Tribunal, Raipur whereby the Tribunal has awarded compensation of Rs.1,96,750/- by holding that there was contributory negligence to the extent

of 50%.

2. Briefly stated facts of the case are that a claim petition u/s 163-A the Motor Vehicles Act was preferred by the widow, two minor children and father of deceased namely Shiv Kumar Sahu. It was pleaded that on 30th November, 2008, while the deceased was travelling on his motorcycle bearing Regn.No.C.G.04-DE/6782, he was dashed by another motorcycle bearing Regn. No. C.G.04/CZ-6093 driven by original non-applicant No.1 Santosh Kumar Duseja, as a result of such impact of accident, the deceased sustained grievous injuries and subsequently died. The said offending vehicle bearing C.G.04/CZ 6093 was insured with IFCO Tokyo General Insurance Company, original Non-applicant No.3 whereas the vehicle which was driven by the deceased bearing No.C.G.04 DE 6702 was insured with United Insurance Company the original Non-applicant No.4.
3. The tribunal after evaluating the evidence on record has passed an award on 3,93,500/- and by holding that since there is head-on-collision the deceased was also liable for contributory negligence and deducted 50% from the awarded amount. Therefore, the instant is appeal by the claimants challenging the validity of the award.
4. Shri Amiyakant Tiwari, appearing on behalf of the appellant claimant would submit that the learned court below has completely misdirected itself to hold the contributory negligence, since the petition was filed u/s 163-A of the MVA which contemplates the adjudication on no fault negligence and the compensation should have been awarded according to the second schedule appended to Section 163-A. He further

submits that even otherwise, it would be clear from the documents placed on record that no evidence was ever adduced. The driver of the vehicle which dashed the motorcycle of deceased has not entered into witness box, therefore, the Court could not have presumed the contributory negligence.

5. Shri K. Rohan and Shri Amrito Das, learned counsel appearing for respondent No.3 i.e., insurer of offending vehicle contend that the award is well merited which do not require any reconsideration.

6. Smt. Chitra Shrivastava appearing on behalf of the United Insurance Company submits that the petition should have been decided under the provisions of Section 163-A.

7. I have heard learned counsel for the parties and have also gone through the documents on record.

8. A perusal of the record would show that the claim petition was preferred categorically u/s 163-A of the Motor Vehicles Act. Reply was also filed considering the petition to be u/s 163-A of MVA. Therefore, the pleadings according to the claim petition were made qua section 163-A of the MVA. Hence, the question which fell for consideration is whether the finding of contributory negligence can at all be gone into by the learned Tribunal.

9. In order to consider whether liability was correctly arrived at by the learned Tribunal, it would be relevant quote section 163-A which reads as under:

“Section 163A.- Special provisions as to payment of compensation on structured formula basis.- (1)

Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or 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."

10. There can be no doubt that Section 163A of the Motor Vehicle Act creates a new, different distinct and absolute statutory liability. In adjudication under Section 163A, the following question will have to be considered by the Tribunal:-

- (i) Was there an accident arising out of the use of a motor vehicle?
- (ii) Did that accident result in death or permanent disablement?
- (iii) Who was the authorised insurer of the motor vehicle involved or its owner?
- (iv) Are the claimants the legal heirs of the victim or the victim?
- (v) What is the amount of compensation payable under the Second Schedule?
- (vi) If there are plurality of claimants/legal heirs, how is the amount to be distributed among them justly and reasonably?

11. Therefore, it would be necessary to quote the scheme under Section 163A, and the proof of negligence is irrelevant.

Consequently contributory negligence is also irrelevant. In order to ascertain the liability under Section 163A, the scheme of Section 163A is to be followed which creates different absolute statutory liability. Extent of dependency is also irrelevant to ascertain the quantum of compensation. To put it strait, it may be any compensation under Section 163A of the Act, the legislature has made the motor vehicle as also the authorised insurer as statutory liable. The significance of including the authorised insurer as the one on whose shoulders the principal liability exits can not be ignored. Meaning thereby the authorised insurer has been advisedly made principally liable under Section 163A to pay the amounts due under Section 163A. Non-obstanate clause makes it clear that the liability has to be understood ignoring the provisions of all other laws including the provisions of the Motor Vehicle Act. Policy of insurance may be relevant only to ascertain the status of the authorised insurer as such authorised insurer in respect of the vehicle. It would be myopic not to perceive the significance of the legislature making the authorised insurer principally liable to unlike in a claim under Section 166 or even Section 140 where the authorised insurer has no principal liability and such insurer becomes liable only by the play of Section 147 and Section 149 of the Act. Similarly Section 163A which declares the right and liability does not in any way limit the applicability of the section to third parties. Plain language of the section appears to take in all victims of motor accidents whether they are inside or outside the vehicle. The section, by the wide sweep of the semantics, appears to take within its width all victims of accidents, therefore, the liability and the claim

which has been decided by the learned Tribunal below are tested to be on the aforesaid provisions of Section 163A of the Act which has to be read along-with schedule.

12. In the instant case, the learned Tribunal has used the multiplier method. The second schedule prescribes the amounts payable. The amounts payable are described to be compensation. The expression "compensation" can not be read and understood to be anything more than amount shown in this schedule, therefore, the compensation was to be calculated as per schedule 163-A. The application of multiplier done by learned Tribunal appears to be wrong on the face of it. Therefore, in a claim under Section 163-A, the burden of the Tribunal is only to ascertain the correct horizontal column and the correct vertical column. At the point where the horizontal column and vertical column meet, we get a figure and that figure is stated to be "rupees in thousands" specifying compensation payable in case of death. From such figure given in thousands, one-third is to be reduced for the personal expenses of the deceased as stipulated in the note under the Table/chart. The rupees contained the word rupees in thousand was interpreted and clarified by the Supreme Court in the case law *National Insurance Company Ltd. Vs. Gurumallamma (2009) 16 SCC 43*. The interpretation has been made to remove all ambiguity that words figure shown for the compensation is in thousands gets clarity.

13. It is easy to identify the horizontal entry in Second Schedule on the basis of age of the deceased. In this case the evidence in respect of age of deceased is on record. As per the postmortem report Ex.P-9, the age of the deceased was shown as 35 years whereas Ex.D-4 the copy of Register of

Licence shows that the date of birth of the deceased was 07.07.1972. The accident in this case took place on 30.11.2008. Therefore, as per Ex.D-4, the age of the deceased comes to near about 36 years and 4 months. However, as per the horizontal column provided in Second Schedule, the deceased was above 35 years of age but not exceeded 40 years.

14. Similarly, there are 13 vertical columns dealing with different annual incomes of the deceased/victims ranging from Rs.3000 to Rs.40,000/- . In this case the Tribunal has held the notional income of the deceased to be Rs.3000/- per month i.e., 36,000/- per annum which appears to be just and reasonable. The 12th vertical column relates to income of Rs.36,000/-. Taking into account the age of deceased which is said to be 36 years at the time of death as also the income of deceased i.e., Rs.36,000/- per annum, both the horizontal column and vertical column of the second schedule meet at a point where the figure comes to 540 which is stated to be rupees in thousands. Thus the total income is worked out to Rs.5,40,000/-. Subsequently, there would be a deduction of 1/3rd amount of Rs.5,40,000/- which comes to Rs.1,80,000/- towards personal expenses. Thus, by deduction of Rs.1,80,000/-, the compensation comes to Rs.3,60,000/-.

15. In addition, under general damages as provided in Second Schedule, the claimants would be further entitled to Rs.9,500/- i.e., Rs.2000/- for funeral expenses; Rs. 5000/- for loss of consortium to the wife; Rs.2500/- for loss of estate. Thus the total compensation will be Rs.3,69,500/-. The said compensation shall further carry interest @ 9% per annum

from the date of filing of the claim petition till the date of realization. After deducting Rs.1,96,750/- awarded by the tribunal, the enhancement would be Rs. 1,72,750/-.

16. It is made clear that the finding of contributory negligence is set aside, therefore, no amount shall be deducted towards contributory negligence. This fact is not in dispute that at the relevant time, the offending vehicle was insured with Respondent No.3/IFKO Tokyo General Insurance Company Ltd, therefore, respondent No.3 shall be liable to make good the entire payment of compensation.

17. In the result, the appeal is partly allowed. No order as to costs.

18. The Registry is further directed to communicate the claimants in writing the "amount of award enhanced in this appeal" as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language.

Sd/-

**GOUTAM BHADURI
JUDGE**