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2025:CGHC:38546

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 237 of 2021

1. IFFCO Tokio general insurance company limited through branch manager , having its raipur office 205, 2nd floor, m.m. Silver Plaza , In front of Udyog Bhawan, Near Mining Office, Ring Road No. 1, Raipur, District Raipur Chhattisgarh.

... Appellant

versus

1. Shivkumari Bai Wd/o Panchram Banjare Aged About 30 Years
2. Ku. Neelam Banjare D/o Panchram Banjare aged about 14 Yrs
3. Ku. Kavita Banjare D/o Panchram Banjare aged about 11 Yrs
4. Ku. Kamini D/o Panchram Banjare Aged About 11 Years
5. Manendra Banjare S/o Panchram Banjare aged about 4 Years
6. Dhankibai Wd/o Jethuram Banjare Aged About 62 Years

Respondent No.2 to 5 are minor through natural guardian Mother Shiv Kumari Bai, All R/o Village Khaira Sethganga, Tehsil And District Mungeli Chhattisgarh. (Claimants)

7. Tulsiram Banjare S/o Jethuram Banjare Aged About 28 Years R/o Village Khaira Sethganga, Tehsil And District Mungeli Chhattisgarh. (Claimants), District : Mungeli, Chhattisgarh

For Appellant : Mr. Pravesh Sahu, Advocate on behalf of Mr. P.R. Patankar, Advocate

For Respondents : None though served.

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****4/8/2025**

1. Appellant-Insurance Company has preferred this appeal against the award dated 24.2.2021 passed in Claim Case No.28/2019 by which learned Motor Accident Claims Tribunal, Mungeli (for short 'the Claims Tribunal') while allowing claim application in part, saddled appellant Insurance Company with liability to pay entire amount of compensation to claimants.
2. Facts of the case giving rise to these appeals are that on 8.3.2019 Panchram Banjare was returning home in tractor-trolley bearing registration mark CG28-D-0833 and CG28-D-1196 respectively (for short 'offending vehicle'), when he reached near village Keshlikala, he lost control over offending vehicle as a result it overturned, he pressed under tractor-trolley and died on spot. Claimants filed an application under Section 163A of the Motor Vehicles Act, 1988 (henceforth 'the Act of 1988') seeking total compensation of Rs.16,00,000/- on the ground that at the time of accident, injured claimant was 33 years of age, he was engaged in agriculture work as also driving tractor and earning Rs.3,300/- per month. They were dependent on the deceased and due to sudden death of deceased, they have suffered loss of income.

3. Non-applicant No.1 and 2, driver and owner of offending vehicle, filed their joint reply pleading that as the offending vehicle was insured with non-applicant No.3, therefore, responsibility to pay compensation is upon non-applicant No.3.
4. Non-applicant No.3-Insurance Company filed its reply and took a stand that at the time of accident deceased, who was driving offending vehicle, was not holding a valid and effective driving license, which amounts to violation of condition of insurance policy and, therefore, insurance company is not liable to pay the compensation.
5. The Claims Tribunal after appreciating the pleadings and evidence placed on record (oral and documentary both) by respective parties, arrived at a conclusion that deceased died in a road traffic accident; there was no violation of any condition of insurance policy and consequently, allowed claim application of claimants in part, awarded total compensation of Rs.7,35,280/- under different heads and fastened liability to pay the amount of compensation upon non-applicants, jointly and severally.
6. Learned counsel for appellant Insurance Company would submit that the claim application was filed under Section 163A of the Act of 1988, therefore, compensation should have been awarded strictly as per Second Schedule of the Act of

1988, wherein there is no provision for awarding compensation under the head of "future prospects", However, the Claims Tribunal overlooking that the principle of computation of compensation under Section 163A is different from that of Section 166 of the Act of 1988, added future prospects to the income of deceased, which is not permissible. Hence, he prays that quantum of compensation be reduced/modified by deleting compensation towards future prospects, which is not envisaged under the Second Schedule of the M. V. Act.

7. Per contra, learned counsel appearing on behalf of claimants/ respondents No. 1 to 5 submitted that the award passed by the Claims Tribunal is just, reasonable and no interference in the same is called for.
8. I have heard learned counsel for respective parties and perused the documents available in record.
9. Admittedly, an application under Section 163A of the Act of 1988 was filed by widow, children and mother of deceased Panchram Banjare, who died in a motor vehicle accident dated 8.3.2019, claiming total compensation of Rs.16,00,000/- pleading income of deceased as Rs.3,300/- per month. The Claims Tribunal by the impugned award, awarded total compensation of Rs.7,35,280/-. While computing loss of dependency, Claims Tribunal added 40% of

monthly income of deceased towards loss of future prospects.

10. Section 163A of the Act of 1988 is extracted below for ready reference :

“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 authorized 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.”

11. A glance of above would show that Section 163A of the Act of 1988 contains a special provision as to payment of compensation on formula basis as indicated in Second Schedule of the Act of 1988. The Second Schedule contains a Table prescribing compensation to be awarded with reference to age and income of deceased. It specifies amount of compensation to be awarded with reference to annual income ranging from Rs.3,000/- to Rs.40,000/-. It also provides for fixed compensation under general damages like funeral expenses, loss of consortium, if beneficiary is spouse, loss of estate and actual medical expenses. The heads like "Future prospects, loss of love and affection etc." do not find place in the Second Schedule.
12. In exercise of powers conferred under sub-section (3) of Section 163A of the Act of 1988, the Ministry of Road Transport and Highways issued Notification dated 22.05.2018, whereby the Second Schedule was substituted. Relevant portion of Notification is reproduced below:

"MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
 NOTIFICATION New Delhi, the 22nd May, 2018 S.O.
 2022(E).--In exercise of the powers conferred by sub-
 section (3) of Section 163- A of the Motor Vehicles Act,
 1988 (59 of 1988), the Central Government, keeping in
 view the cost of living, hereby makes following
 amendment to the Second Schedule to the said Act,
 namely:--

In the Motor Vehicles Act, 1988 for the Second Schedule, the following Schedule shall be substituted namely:--

"THE SECOND SCHEDULE (See Section 163A)
SCHEDULE FOR COMPENSATION FOR THIRD
PARTY FATAL ACCIDENTS/INJURY CASES
CLAIMS

1. (a) Fatal Accidents:

Compensation payable in case of Death shall be
five lakh rupees...."

13. A bare reading of above would demonstrate that aforesaid amendment introduced in Second Schedule replaces the entire structured formula, taking away the concept of non-pecuniary damages and a consolidated/lump-sum amount of Rs.5,00,000/- in case of fatal accident causing death has been provided. Meaning thereby, while deciding an application under Section 163A of the Act of 1988 filed after 22.5.2018, Claims Tribunal requires to determine compensation payable to the legal heirs of an accident victim or to the victim himself as per amended second schedule. Thus, it is clear that compensation in a claim case under Section 163A of the Act of 1988, as far as death cases are concerned, as per amended schedule, a lump sum amount of compensation is to be granted only and there is no provision for grant of any sum towards future prospects or any other additional non-pecuniary damages, as provided in Second Schedule.

14. Needless to mention here that Section 163A of the Act of 1998 itself was repealed by the Motor Vehicles (Amendment) Act 2019, which came into effect on 1.4.2022, for the reason that a similar provision, namely Section 164, has been introduced in the Act of 1988. Section 164 of the Act of 1988 provides thus:-

"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."

15. Be that as it may, what is relevant in present case is that at the time when accident occurred i.e. 8.3.2019, it was Second

Schedule appended to Section 163A of the Act, as amended vide amendment dated 22.5.2018, which was in force and fully applicable to facts of present case, and according to which, compensation payable in case of death shall be five lakh rupees.

16.Hence, in light of above discussion, this Court is of the opinion that impugned award passed by Claims Tribunal granting compensation of Rs.7,35,280/- to claimants on a structured formula basis following the provisions of unamended Second Schedule appended to Section 163-A of the Act of 1988, which stood amended w.e.f. 22.5.2018 and not applicable in the case at hand, is not sustainable. As a matter of fact, the claimants are entitled to the benefit of lump sum amount of Rs.5,00,000/- as provided in amended Second Schedule attached to Section 163-A of the Act of 1998. The amount of compensation will carry interest @ 8% p.a. from the date of application. It is ordered accordingly.

17.In the result, appeal is allowed in part. Impugned award is modified to the extent as indicated above. Rest of conditions of impugned award shall remain intact.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-