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HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 565 of 2015**

1. Sukwaro Bai, aged about 58 years, widow of late Darshan Singh Kanwar
2. Dhan Singh, aged about 35 years, on of late Darshan Singh Kanwar,
3. Surender, aged about 30 years, son of late Darshan Singh Kanwar,

All are R/o Village Sumedha, P.S. Bankimongara, Tahsil Katghora, District Korba (C.G.).

---- Appellants**Versus**

1. Budhwar Singh, aged about 43 years, son of Charan Singh,
 2. Jayanti Bai, aged about 40 years, wife of Budhwar Singh,
- Both R/o Village Sumedha, P.S. Bankimongara, Tahsil Katghora, District Korba (C.G.).

---- Respondents

For Appellants	: Mr. Basant Kaiwartya, Advocate
For Respondents	: Mr. Govind Ram Miri, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****31.01.2020**

1. This appeal has been filed by owner of the tractor bearing registration No.CG12/8667 and trolley bearing registration No.CG12/8669 (hereinafter referred to as 'offending vehicle') under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality and validity of impugned award dated 04.04.2015 passed by learned Additional Motor Accident Claims Tribunal, Katghora, Chhattisgarh

(hereinafter referred to as 'Claims Tribunal') in Accident Claim Case No.97/2011 whereby learned Claims Tribunal allowed the claim application in part filed under Section 163A of the M.V. Act and awarded a total sum of Rs.4,36,500/- as compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization to the respondents/claimants.

2. The facts of the case in nutshell, are that, on 12.06.2011 when Dhirpal Singh was returning from agricultural field while driving the offending vehicle, he met with an accident and offending vehicle turned turtle. In the said accident, Dhirpal Singh suffered grievous injuries over his head and other parts of body and succumbed to those injuries on spot. The accident was reported to concerned Police Station and based on which, Crime No.105/2011 was registered.
3. Claimants who are parents of the deceased Dhirpal Singh filed a claim application before the competent Claims Tribunal claiming Rs.22,67,000/- as compensation on account of untimely death of Dhirpal Singh pleading therein that on the date of accident, the deceased was earning Rs.3,000/- per month as driver and they were dependent upon him.
4. Non-applicant No.1 submitted reply to claim application separately and pleaded that accident took place on account of the negligence on the part of deceased tractor driver himself. It was also pleaded that the amount claimed by the claimants is on higher side.

5. Non-applicants No.2 and 3 also filed their reply separately and denied the pleadings made in the claim application. They have pleaded that the accident took place on account of negligence on the part of deceased himself, who was driver of the offending vehicle, therefore, the claimants are not entitled for any amount of compensation.
6. After appreciating the evidence, pleadings and material available on record by the respective parties, learned Claims Tribunal arrived at a finding that the accident took place due to mechanical fault of the offending vehicle and in the said accident, Dhirpal Singh, who was driver of the offending vehicle, suffered grievous injuries over his person and succumbed to those injuries on spot. Learned Claims Tribunal also recorded a finding that there was no negligence on the part of the deceased Dhirpal Singh/driver and awarded a total compensation of Rs.4,36,500/-.
7. Mr. Basant Kaiwartya, learned counsel appearing for the appellants submits that the accident took place on account of negligence on the part of deceased himself, who was driver of the offending vehicle, hence, the claimants/respondents cannot be awarded any amount towards compensation. He further submits that learned Claims Tribunal committed an error in deducting 1/3rd amount towards personal and living expenses ignoring the evidence and material available on record showing that the deceased was unmarried, therefore, proper deduction towards

personal and living expenses would be 1/2 (50%) instead of 1/3rd.

He also submits that the appellants have very specifically pleaded that on the date of accident, deceased was only earning Rs.2,000/- per month whereas learned Claims Tribunal has assessed the income of the deceased as Rs. 3,000/- per month.

8. Per contra, Mr. Govind Ram Miri, learned counsel appearing for respondents/claimants supported the impugned award and submits that learned Claims Tribunal has awarded just and proper amount of compensation in the facts and circumstances of the case, which do not call for any interference.
9. I have heard learned counsel appearing for the respective parties and perused the record carefully.
10. Perusal of the claim application would show that the claim application has been filed under the provisions of Section 163A of the M.V. Act. The claimants who filed a claim application under Section 163A of the M.V. Act, are not required to prove the negligence for the purpose of seeking compensation in a motor accident.
11. Section 163A of the M.V. Act reads as under :

“[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.]”

12. Sub-section (2) of Section 163A in clear terms states that 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.
13. Learned counsel for the appellants fairly submits that the deceased was engaged as a driver to drive the offending tractor. It

is not in dispute that the deceased died in a motor accident while driving the offending vehicle.

- 14.** The Hon'ble Supreme Court has considered the issue of award of compensation in claim application under the provisions of Section 163A of the M.V. Act in the matter of **United India Insurance Co. Ltd. v. Sunil Kumar and another**¹ and held thus :-

“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 163A(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 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A 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

¹ AIR 2017 SC 5710

understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A 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.”

15. In view of above discussion and the law laid down by the Hon'ble Supreme Court, the submission made by learned counsel for the appellant that the claimants are not entitled for any amount of compensation as the accident took place on account of negligence on the part of the deceased (driver of the offending vehicle) is not sustainable and is hereby repelled.
16. So far as the second argument that the learned Claims Tribunal has committed an error in deducting 1/3rd amount towards personal and living expenses is concerned, learned counsel for respondents have not disputed the fact that on the date of accident, the deceased was unmarried. The amount towards personal and living expenses which is to be deducted from the income of the deceased has been decided by the Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**² wherein the Hon'ble Supreme Court has specifically held that in case of death of an unmarried person, 1/2 (50%) amount of the income of deceased should be deducted towards his personal and living expenses.

² (2009) 6 SCC 121

- 17.** The last submission made by learned counsel for the appellants that the deceased was earning Rs.2,000/- per month at the time of accident is also not sustainable in view of the specific pleading made by respondents wherein they have pleaded that on the date of accident, deceased was earning Rs.100/- per day. The other aspect of the case is that the date of accident is 12.06.2011, the deceased was driver of the offending vehicle, who comes within the category of skilled labour and thereafter, considering the wage structure prevailing in the district, in the opinion of this Court, learned Claims Tribunal has not committed any error in assessing the income of the deceased as Rs.3,000/- per month.
- 18.** In view of above, the submission made by learned counsel for the appellants that the learned Claims Tribunal has committed error in assessing the income of the deceased as Rs.3,000/- per month is also not sustainable and is hereby repelled.
- 19.** In view of aforementioned discussions and law laid down by Hon'ble Supreme Court in the aforementioned cases, in the considered opinion of this Court, the appropriate compensation is to be awarded to the respondents/claimants.
- 20.** For the reasons stated herein-above, the amount of compensation to be awarded to the respondents/claimants require recalculation, which this Court proposed the same in following terms :-

The learned Claims Tribunal taken the monthly income of the deceased as Rs.3,000/- and yearly income comes to

Rs.36,000/-. After deducting 1/2 (50%) towards his personal and living expenses i.e. Rs.18,000/- ($36,000 / 2$), yearly dependency of the claimants would come to Rs.18,000/-. As at the time of accident, the deceased was shown to be aged about 25 years as per postmortem report, therefore, multiplier of 18 would be applicable in the present case. After applying the multiplier of 18, the total dependency comes to Rs.3,24,000/- ($18,000 \times 18$). In addition to the aforesaid amount of compensation, the claimants are also entitled for Rs.30,000/- towards conventional heads.

21. On the basis of above recalculation, the respondents/claimants will be entitled for total compensation of Rs.3,54,000/- ($3,24,000 + 30,000$) instead of Rs.4,36,500/- as awarded by the learned Claims Tribunal. The amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.
22. The appeal is allowed in part and impugned award dated 04.04.2015 is modified to the extent indicted herein-above.

Sd/-
(Parth Prateem Sahu)
Judge