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**(2003) 04 MP CK 0047**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Appeal No. 300/98**

Kanhaiyalal and Another

APPELLANT

Vs

Sitabai and Others

RESPONDENT

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**Date of Decision : 24-04-2003**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 163A

**Citation :** (2004) 1 ACC 176 : (2004) ACJ 1372 : (2003) 4 MPHT 74 : (2003) 4 MPLJ 89

**Hon'ble Judges :** S.S. Jha, J; Chandresh Bhushan, J

**Bench :** Division Bench

**Advocate :** R.P. Gupta, for the Appellant; M.P. Agrawal, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S.S. Jha, J.

This appeal is by claimants for grant of compensation on account of death of Lokesh. Appellants filed claim petition u/s 166 of the Motor Vehicles Act in the Court of Second Motor Accident Claims Tribunal, Shivpuri, claiming compensation of Rs. 4,60,000/-. Deceased Lokesh was son of the appellants. Deceased was driving a vehicle bearing registration No. MP/13-C/2886 on 28-2-1994 under the employment of owner of motor vehicle Ramdev. Ramdev was also travelling in the said jeep. Jeep met an accident which resulted into death of Lokesh and Ramdev. Claimants/appellants are father and mother of the deceased Lokesh. Claims Tribunal after considering the evidence on record has dismissed the application holding therein that for the negligence of deceased Lokesh claimants are not entitled for any compensation.

Counsel for appellants submitted that Claims Tribunal has not considered the amended provisions of Motor Vehicles Act. He submitted that after the amendment in Section 163A of the Motor Vehicles Act it is not necessary to prove negligence of the driver. It is sufficient that driver was under the employment of

the owner and the claimants are entitled for compensation. Counsel for respondent submitted that Section 163A is prospective in nature and it is not applicable to present case. He submitted that accident had occurred on 28-2-1994 whereas the Act was amended on 14-11-1994, Counsel for respondent submitted that since the provision was not available on the date of accident, petitioners are not entitled for the benefit of Section 163A of the Act. Counsel for the appellants submitted that on the date of amendment their application was pending, therefore, provisions of Section 163A will be applicable. Only question involved in the case is whether Section 163A of the Act has a retrospective operation or prospective operation. Section 163A is inserted by Act No. 54 of 1994 which came into force with effect from 14-11-1994. Section 163A of the Motor Vehicles Act as inserted by amending Act creates a new right in favour of the claimants and this right is similar to Section 140 of Motor Vehicles Act, 1988. This amendment creates a new liability on the owners of the vehicles and, therefore, it is to be governed by the rule that unless legislature makes it retrospectively operation, its operation shall be prospective only.

Full Bench of this Court had considered the scope of amendment in Section 140 of the Motor Vehicles Act in the case of Jivakhan v. Shivcharandas and Ors., reported in 1999 (1) JLJ 129. The question was framed and referred to Full Bench :--

"Whether Section 140 of the Motor Vehicles Act of 1988 is retrospective in operation for the reason Section 144 there of expressly says that-- "the provisions of this chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being force ?"

This Court after considering the relevant provisions of the Act held that Section 140 of the Motor Vehicles Act is not retrospective and it is further held that the rights and liabilities between the parties arise on the happening of the accident and that would be the date for determining quantum of compensation fixed under the law existing therein. Similar view is taken by another Full Bench of this Court in the case of New India Assurance Company Ltd. v. Nafis Begum and Ors., reported in 1991 JLJ 490. Section 163A of the Motor Vehicles Act confers a new right upon the claimants. This is a special provision as the payment of compensation is on structured formula basis irrespective of negligence. In this case the owner of motor vehicle of the authorised insurer shall be liable to pay in case of death or permanent disablement due to accident arising out of the use of motor vehicle. Compensation as indicated in the second schedule, is to be paid to the legal heirs of the victim as the case may be. It is admitted position that when the accident occurred and claim petition was filed, the said provision was not in existence. Appellants have filed an application u/s 166 of the Motor Vehicles Act and have also claimed interim compensation u/s 140 of the Motor Vehicles Act. The application was allowed and interim compensation was awarded. Section 140 of the Motor Vehicles Act provides for liability to pay compensation in said two cases on principle of no fault. Even if there is no fault or negligence, party is

entitled for interim compensation on the ground of no fault. Sub-section (5) of Section 140 provides 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 u/s 163A. Thus, any compensation paid in any other law shall be reduced while calculating compensation u/s 163A but it is not vice-versa. Only question involved in the case is whether Section 163A has a retrospective operation or prospective operation.

Since the provision is a new provision, the effect of amendment in the act is considered in a judgment of the Apex Court in the case of K.S. Paripoornan Vs. State of Kerala and Others, . While considering the amendment in Land Acquisition Act the Apex Court held :--

"A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a state dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. The statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character of consequences of transactions previously entered into or of other past conduct. By virtue of presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirement subsequently imposed, nor open to attack under powers of avoidance subsequently conferred."

Thus, Section 163A of the Act as inserted by amending Act No. 54 of 1994 creates new right in favour of the claimants and it creates new liability on the owner and insurer. Therefore, the provision will be applicable to the cases where accident has occurred on the date of commencement of the Act or after the amendment. The provision will not be applicable to the accident which has occurred prior to the amendment. There is no legislative intent to apply the provision retrospectively. Therefore, the provision of Section 163A is not applicable to the present case. At this stage Counsel for the appellants submitted that this is hard case and liberty be given to the appellants to file petition before a competent forum for the compensation. We are of the opinion that since the legal heirs are entitled for compensation under the Workmen's Compensation Act and, therefore; the appellants are permitted to avail remedy available to them before Commissioner, Workmen's Compensation. If such application is filed, authority shall decide the application in accordance with law. Since in this case the Claims Tribunal has found that deceased Lokesh died on account of his own negligence, no compensation is awarded. The application was filed u/s 166 of the Act and is rejected. It is not a fit case for interference and the question has been determined by the Division Bench in the case of Krishna Mourya and

Others Vs. J.P. Sharma and Others, .

In the result as indicated above the appeal is dismissed without any order as to costs.