
(2011) 07 KL CK 0097
In the High Court Of Kerala
Case No : MACA No. 223 of 2007

National Insurance Company Ltd.

APPELLANT

Vs

P.C. Chacko and Other

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Constitution of India, 1950 — Article 141
Motor Vehicles Act, 1988 — Section 147, 149, 163A, 165, 166

Citation : (2011) 4 ILR (Ker) 17 : (2011) 3 KLJ 449

Hon'ble Judges : R. Basant, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : Rajan P. Kaliyath, for the Appellant; S. Sreekumar, for the Respondent

Final Decision : Dismissed

Judgement

Basant, J.—(i) How is the amount payable in the case of death u/s 163A of the Motor Vehicles Act ("the Act" hereafter) to be ascertained?

(ii) Are the Tribunals to employ the multiplier/multiplicand method to ascertain the quantum of compensation payable in the case of death under the Second Schedule also?

(iii) For what purpose is the "multiplier" furnished in the chart/table in the Second Schedule?

(iv) Even in a claim u/s 163A are the claimants/legal heirs bound to prove the extent of dependency and loss?

(v) Is negligence or contributory negligence relevant in a claim u/s 163A?

vi) Can the Schedule to 163A be ignored or disregarded while ascertaining quantum of compensation u/s 163A?

vii) Can the quantum of compensation payable in the case of death be ascertained independently without resort to the Second Schedule in a claim u/s

163A?

2. These very fundamental doubts/questions seem to disturb and vex Tribunals in the State. In matters coming up before us for admission and hearing in this jurisdiction we are able to perceive gross and chaotic confusion in the minds of tribunals and we are hence persuaded to consider the questions in detail to afford guidelines for the Tribunals.

3. These appeals are preferred by the authorised insurer, who has suffered directions under a common award u/s 163A of the Act to pay an amount of Rs.1,65,000/- each to the common claimant. The challenge of the appellant/insurer is directed against the quantum of compensation awarded. The respondent/claimant, an elderly person, aged about 74 years, has preferred Cross Objections. In the Cross Objections, he contends that the entire claim of Rs.2 lakhs must have been awarded by the Tribunal in both cases as compensation u/s 163A of the Motor Vehicles Act.

4. A brief reference to the vitally relevant facts may be useful. A couple and their 2 minor children were travelling in a car. The husband was driving the car. The other 3 were passengers. Another vehicle insured by the appellant herein/authorised insurer was coming in the opposite direction. There was a head on collision between the two vehicles resulting in the sustaining of injuries by all the 4 passengers in the car. Three of them - the husband and two minor children, succumbed to the injuries on the spot. The wife suffered injuries, but she survived for a short period of time and succumbed to such injuries later.

5. The claimant, in this case, has filed applications u/s 163A of the Motor Vehicles Act claiming compensation for the death of his daughter and his grand child. An amount of Rs.2 lakhs each was claimed. The claims in respect of one grand child and its father, who also had died in the accident were not filed by the claimant herein. We are not posted with the details of such claims if any by either side. There is a suggestion at the bar that claims in respect of the husband and one child have been staked by the paternal grandfather.

6. We are not adverting to the other unnecessary details as it is very clear now that the claimants are pressing the claim for compensation only against the owner and the insurer of the lorry which had collided with the vehicle in which the deceased were travelling.

7. While the learned counsel for the common appellant contends that in a claim u/s 163A of the Motor Vehicles Act also, the precise loss suffered by the claimant has to be established, the learned counsel for the respondent submits that the said requirement u/s 166 of the M.V Act cannot be blindly imported while deciding a claim u/s 163A of the M.V Act. The learned counsel for the appellant repeats the oft repeated contention that a claim for compensation for death in a motor accident u/s 163A must be computed employing the multiplier-multiplicand method and not by ascertaining the relevant figure in the table/chart given under clause 1 of the Second Schedule of the M.V Act. There are

disputes between the parties about the correct amount payable as per the said table/chart also.

8. In view of the various interesting contentions raised by the learned counsel for the appellant Sri. Rajan P.Kaliyath, we feel it appropriate to consider the change in law brought about by Section 163A of the M.V Act. It will be appropriate and apposite straight away to note that the amendment was brought about in 1994 for obvious purposes. The legislature, like all well meaning persons in the community, was getting perturbed and concerned about the scandalous delay in the disposal of claims for compensation staked before the Tribunals u/s 166 of the M.V Act. The challenge before the Tribunals was so enormous that the legislature felt obliged to devise simple, effective and expeditious procedure to ensure that just and reasonable compensation by resort to a rough and ready method is made available to the victims. Such amount payable may not be correct to the last decimal considering the loss suffered. But the legislature felt persuaded to incorporate Section 163A into the M.V Act to ensure that this compelling necessity of making rough and ready justice available to the victims and their legal heirs is met. Section 163A was born under these circumstances. We may venture to opine that Section 163A must be read along with the second schedule and when so read, it gives an effective, efficacious and expeditious method of ensuring the minimum amount of compensation to the victims/legal heirs, if they in their option choose to make such a claim.

9. It will be myopic not to perceive the thrust of the scheme evolved u/s 163A and the Schedule. Tribunals have to be spared of the obligation to consider and decide all unnecessary contentions which consume their time. Tribunals should not have the obligation to specifically ascertain the precise age or the precise income of the victims. The scheme of Section 163A clearly shows that the very purpose was to avoid contentious issues so that the pace of the process of adjudication can be quickened. That, to us, appears to be the fundamental concern which prompted the legislature to introduce Section 163A into the statute book. With that end in view primarily, a different statutory liability was created by the legislature.

10. Experience must definitely have taught the legislature that a lot of time of the Tribunals is spent in ascertaining the responsibility for the accident. u/s 166, negligence continues to be the foundation of liability. We may straight away note that Section 166 does not create any right or liability, but only provides an efficacious and expeditious procedure for enforcement of the right which is already vested in the victim of an accident under the Law of Torts. In deciding a claim under the Law of Torts, the court has to look for negligence. A lot of time in litigation is taken up by this yearning/endeavour of the Tribunal to place the blame for an accident at the doors of either or both. Therefore we find the legislature coming out with the idea that negligence need not be proved in a claim u/s 163A. Negligence is irrelevant u/s 163A. It might have been shocking initially for the legal community, groomed in the tradition of the law of torts, to

even conceive that there could be such a liability under law. The Indo Anglo Saxon Law hitherto knew of liability based only on fault. Of course Section 140 and its predecessor provisions had introduced the concept of no fault liability in a very limited sense. Fault is no more relevant in a claim u/s 163A. It must perhaps be apposite to look at the changing concepts relating to the law of compensation. Winds of changes are blowing and the legal community has to readjust its moorings and norms.

11. A person in a modern society is exposed to the complexities of development. Travel by motor vehicles, he must, whether he likes it or not. To exist in today's world, he has to use the road. Risk involved in travelling by road, on foot or in vehicles is something which a person is forced to take not merely because of his volition. He is forced to use the road, whether he likes it or not. Such risk involved might expose him to damage and loss. The legislature in its vibrant compassion, call it new jurisprudence, modern jurisprudence or socialist jurisprudence, places emphasis on the suffering of the victim rather than the fault of the other. What entitles a person to compensation under the new regime of no fault liability is not fault, but the suffering. The compassionate legislature of the modern socialist Indian republic therefore accepted that, not the minimal amount payable u/s 140, but larger amounts which is just compensation for the suffering/loss can also be paid under the scheme of Section 163A to the person who opts to stake his claim under that Section. The shift in emphasis from fault to suffering cannot be lost sight of by a discerning mind when he attempts to study the development and transformation of the law relating to payment of compensation in respect of a motor accident.

12. We shall now straight away refer to Section 163A. We extract Section 163A below:

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 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 subsection, "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 subsection (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.]

(emphasis supplied)

13. There can be no doubt that Section 163A creates a new, different, distinct and absolute statutory liability. In adjudication u/s 163A, the following questions 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 is 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?

14. These are the only questions to be ascertained in a claim u/s 163A. We repeat that negligence is irrelevant. Consequently contributory negligence must also be held to be absolutely irrelevant. To ascertain the liability u/s 163A, one need not go beyond the four walls of Section 163A as it is a distinct and different absolute statutory liability imposed u/s 163A. Extent of dependency is also irrelevant to ascertain the quantum of compensation. Of course, later while directing apportionment among the legal heirs where there is plurality of legal heirs dependency may assume some relevance. But dependency or extent of dependency is absolutely irrelevant while ascertaining liability or quantum of liability of the owner/insurer in a claim u/s 163A. The legislature was conscious that it may be difficult for the polity and the legal community to accept the altered norms. That explains the employment of the non obstante clause in the opening words of the section. We may note that while any legal representative can sustain a claim u/s 166, only the legal heirs or the victim can sustain the claim u/s 163A.

15. It may not be inapposite straightaway to note that the owner of the motor vehicle as also the authorised insurer are made statutorily liable. One cannot omit to note the significance of including the authorised insurer as the one on whose shoulders the principal liability would rest. It is hence possible to take a view that the authorised insurer has been advisedly made principally liable u/s 163A to pay the amounts due u/s 163A. Non obstante clause makes it clear that the liability has to be understood ignoring the provisions of all other laws including the provisions of the M.V Act - nay including the other provisions in Chapter XI of the M.V 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. Thereafter it is possible to hold that even the policy of insurance may turn out to be irrelevant. It would be myopic not to perceive the significance of

the legislature making the authorised insurer principally liable unlike in a claim u/s 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. The mere fact that Section 163A was included in Chapter XI of the Act and that Chapter XI has the heading "Insurance of Motor Vehicles against third party risks" appears to be irrelevant considering the opening non obstante clause of Section 163A. The fact that the word "third party" appears on the heading of the Second Schedule does also appear to be irrelevant to us considering the language of Section 163A. The argument appears to be possible that Second 163A can apply only to third parties - that is, all persons other than the owner and authorised insurer, who are made liable u/s 163A. If suffering and not fault is the foundation of liability, it appears to us to be necessary to bring all who have suffered death/personal disablement within the sweep of the section - without exclusion of even the owner, if possible. We feel, one has to view the liability u/s 163A more as a welfare measure by the State which outsources its obligation to ameliorate the sufferings of victims of accidents and gets the same done by authorised insurers (basically Govt. companies) who are given monopoly rights to carry on the lucrative business activity of motor vehicles insurance. The State's liability/responsibility can be viewed as that of patronpatriarch to ameliorate the sufferings of victim citizens. It can also be viewed from the angle of its proven inability to prevent actionable negligence on its roads. Want of adequate infrastructure may also contribute/cause the accident in which even also the responsibility of the State is prominent. It appears to us that the liability u/s 163A is advisedly placed on the broad shoulders of the authorised insurer of the vehicle who is favoured by the State to exclusively undertake such lucrative business activity. It is true that the owner is also made liable. We feel that it applies to a defaulter owner who despite the mandate of the M.V Act has defaulted in getting his vehicle insured. That the defaulter owner has been made liable in a case where there is no authorised insurer in respect of a vehicle is according to us too unsatisfactory an indication to deny benefits of Section 163A to victim/owners, their employees, or those who allegedly step into their shoes. All victims appear to fall within the target group to whom benefits are intended under beneficial statutory provision gong by the simple and plain language of Section 163A. We need not and do not intend to delve deeper into those aspects in the facts of this case. The question is really interesting and challenging, we feel. We have digressed and given expressions to our thoughts on this aspect in this paragraph only in our attempt to properly understand the concept of the new liability u/s 163A. We confess that our thoughts have not been restrained by observations in some other precedents - binding and persuasive.

16. Be that as it may, what we need to particularly note is that Section 163A creates a new absolute statutory liability which was hitherto unknown to the law relating to compensation for motor accidents. To understand that liability/right, the polity including the experts in law will have to adapt to the changing times.

17. The second schedule prescribes the amounts payable. It is true that amounts payable are described to be "compensation" u/s 163A. The expression compensation cannot be read and understood to be anything more than "amount" in the circumstances. The learned counsel Sri. Rajan P.Kalityath advances an ingenious argument that the amounts stipulated under the Second Schedule would not become payable unless loss is established by the claimant. We are unable to accept this contention. Notwithstanding the employment of the expression "compensation" in the body of Section 163A(1), we must note that in the context, true to the purpose, reason, object and scheme of the section, the expression compensation can only mean "amount". It is impermissible to import the concept of actual loss suffered by the claimant merely from the use of the expression "compensation" in Section 163A. Such an interpretation would defeat the very purpose and object of Section 163A. If the expression "compensation" were to be so read and the obligation to prove actual loss were to be imported merely from the deployment of the word "compensation", one will be at a loss to understand why the Second Schedule at all prescribes amounts. The attempt to bring all the theories regarding payment of compensation back to Section 163A with the help of the deployment of the expression "compensation" in Section 163A must, in these circumstances, fail certainly.

18. It will be apposite straightaway to refer to the Second Schedule. The Second Schedule has 6 clauses - the first deals with the fatal accidents, the second deals with the minimum amount of compensation, the third deals with the general damages payable in the case of death, the fourth deals with the general damages payable in the case of injuries and disabilities, the 5th describes how the disability in non-fatal accidents is to be calculated and the sixth deals with the presumption regarding the notional income of compensation of those who had no income prior to the accident. 19. In clause(1) a table/chart is given. The table has several horizontal columns as also vertical columns. The horizontal columns relate to the age of victims. Victims are sub divided into 12 categories - the first one being persons upto 15 years and the last one being persons above the age of 65 years. In between, we have 10 groups of victims each falling within a 5 year age group (15-20, 20-25, 25-30 etc.). We have vertical columns also. The first one deals with the age of the victim. Second one deals with the multiplier. The next 13 columns give figures which as per the heading represents "rupees in thousands" which is payable as "compensation in case of death". The heading of the 13 vertical columns refer to the annual income of the victim. In these 13 columns, different figures are given starting with Rs.3,000 and ending with Rs.40,000/-. In between, we have 11 figures representing the possible annual income of the victim/deceased. To ascertain the quantum of compensation payable in fatal accidents under the table/chart, the Tribunal is not expected to

embark on any detailed enquiry pressing into service the multiplier-multiplicand method. The table/chart clearly shows the amounts payable in thousands in each case. All that the Tribunal has to do is to ascertain the correct X axis, (ie. the age group of the victim). Thereafter the correct Y axis, (ie. the annual income of the deceased), has to be ascertained. Thereafter the Tribunal has to ascertain the relevant entry where the two axes meet. That is the amount representing rupees in thousands that must be paid as compensation. Of course, this is subject to the rider in the note under the table/chart that 1/3 of the amount must be deducted towards personal expenses of the deceased.

20. The task before the Tribunal appears to be very simple. A person who chooses to lodge a claim u/s 163A of the M.V Act in respect of a death of a victim will be entitled to get only the amount mentioned in the table/chart and nothing more. It is for the claimant to take an informed decision/option, before the Tribunal considers his claim. He must decide whether he wants to stake the claim u/s 166 of the M.V Act, in which event he will have to establish negligence and the actual loss. He can then claim a higher amount. But when it comes to the claim u/s 163A of the M.V Act, in the case of death, he will get only what is payable under the table/chart. Of course, in addition, the relevant minor amounts specified under clause (3) of the Second Schedule will also be payable. It may be relevant to note that whatever be the medical expenses involved, a claimant u/s 163A will only get Rs.15,000/- and that too on production of bills/ vouchers supporting the claim. For funeral expenses, whatever be the amount spent, in a claim u/s 163A, the claimant will get only Rs.2,000/-. Similarly if there is a claim for loss of consortium by a spouse, whatever be the actual loss, only Rs.5,000/- will be paid. For loss of estate also, whatever be the actual loss, only Rs.2,500/- will be paid, u/s 163A.

21. What we intend to note is that a fixed amount in accordance with the Second Schedule alone shall be ordered to be paid u/s 163A, whatever be the actual loss. Even if the actual loss is much greater, for one who chooses to claim u/s 163A, this is the only amount that shall be payable. Section 163A offers a package in full settlement of the claim for compensation. A claimant at his option can claim the amount u/s 163A. If such a claim is staked, whatever the actual loss (whether the actual loss be more or less) he can get only the amount prescribed under the Second Schedule.

22. We now come to the entry in the second column of the table/chart which bears the heading "multiplier". We feel that this entry has confused the issue in many cases decided. The multiplier given in column 2 of the table/chart has nothing to do in a claim for compensation in the case of death. That multiplier is given in the chart by the legislature to help the Tribunal to decide claims for compensation for disability in non fatal accidents coming under clause 5. Most unfortunately that was given in the schedule under clause 1. It could easily and legitimately have been given by a different table/chart in clause 5. But unfortunately the legislature, obviously to avoid repetition of the entries again in

clause 5 of the Second Schedule, thought of giving multiplier under the table/chart in clause 1 itself. This is evident from clause 5. This has unfortunately given rise to a lot of unnecessary doubts and confusion.

23. There is a contention strenuously urged that the second schedule should not be rigidly followed. We fail to understand this contention. Look at the language of Section 163A. The amount that would be payable is prescribed (indicated) under the second schedule. Without the Second Schedule, Section 163A will come to a grinding halt and the section cannot be worked. In a claim u/s 166, the Second Schedule can be used as a guide. But without a valid and binding Second Schedule, Section 163A cannot operate. There must therefore be a valid Second Schedule to decide amounts payable under 163A. To us it appears that it would be puerile to accept the validity of Section 163A without an effective schedule. The scheme of Section 163A would be lost if there is no valid schedule. Section 163A cannot be worked if there is no schedule which can be followed rigidly.

24. The schedule abounds in mistakes and inaccuracies, it is contended. Another Bench of this Court headed by Justice Abdul Gaffoor (judgment rendered by one of us) had gone into the alleged inadequacies in the schedule in detail. We do not intend to repeat the discussion. We are unable to perceive any such errors, mistakes or inadequacies in the schedule which can render the schedule unworkable. Undoubtedly the Schedule could have been prepared better. It could have been altered and modified u/s 163A (3). Unfortunately despite many directions/observations of Courts including the Supreme Court, nothing has been done in the matter by the legislature or the Central Government so far.

25. We must in this context alertly remind ourselves that we are only called upon to interpret the law u/s 163A. There is no challenge raised before us against the constitutional validity of Section 163A and the Second Schedule. In judicial review, may be a contention will have to be considered, when such a challenge comes, whether Section 163A is arbitrary, fanciful and capricious and hence unconstitutional. In the absence of a challenge against the constitutional validity of Section 163A, we are called upon only to interpret the section and the schedule and it is impossible to accept 163A sans the schedule. The contention that the second schedule can be ignored or not followed or deviated from by a Tribunal cannot, in these circumstances, be accepted as that would be the death knell of Section 163A. The Schedule can be reasonably interpreted. But without a valid second schedule, Section 163A cannot operate at all. The last trace of doubt if any on this aspect is laid to rest by the decision of the Supreme Court in para.8 of *National Insurance Co. v. Gurumallamma* ((2009) ACJ 2660 : 2009(9) SCALE 764 : 2009 KHC 6154 S.C), which we extract below:

Multiplier *stricto sensu* is not applicable in the case of fatal accident. The multiplier would be applicable only in case of disability in non-fatal accidents as would appear from the Note 5 appended to the Second Schedule..... As the Second Schedule provides for a structured formula, the question of determination of payment of compensation by application of judicial mind which

is otherwise necessary for a proceeding arising out of a claim petition filed u/s 166 would not arise. The Tribunal in a proceeding u/s 163A of the Act is required to determine the amount of compensation as specified in the Second Schedule. It is not required to apply the multiplier except in a case of injuries and disabilities.

26. In the light of Gurumallamma (supra), we do not think it necessary to advert to other decisions taking the view that multiplier-multiplicand method has to be followed in a claim u/s 163A also. Those decisions were rendered prior to and without reference to Gurumallamma (supra). Gurumallamma makes it clear that compensation in the case of death can be computed u/s 163A only by reference to the table/chart and not by pressing into service the multiplier-multiplicand method. The scheme of the statute is itself very clear. Gurumallamma eloquently declares and accepts the said scheme.

27. We note that in a subsequent decision of the Supreme Court in Reshma Kumari and Others Vs. Madan Mohan and Another, also while referring the question to a larger bench, the Supreme Court in paragraph 41 has reiterated the same conclusion.

Section 163A of the 1988 Act does not speak of application of any multiplier. Even the Second Schedule, so far as the same applies to fatal accident, does not say so. The multiplier, in terms of the Second Schedule, is required to be applied in a case of disability in non fatal accident. Consideration for payment of compensation in the case of death in a "no fault liability" case vis-a-vis the amount of compensation payable in a case of permanent total disability and permanent partial disability in terms of the Second Schedule is to be applied by different norms. Whereas in the case of fatal accident the amount specified in the Second Schedule depending upon the age and income of the deceased is required to be paid wherefor the multiplier is not to be applied at all. But in a case involving permanent total disability or permanent partial disability the amount of compensation payable is required to be arrived at by multiplying the annual loss of income by the multiplier applicable to the age of the injured as on the date of determining the compensation and in the case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) of the Second Schedule.

28. The learned counsel for the appellant has relied on the decision in Ramesh Singh v. Satbir Singh (2008(1) KLT 614 (SC)) in support of his contention that even in a claim u/s 163A of the Act, the multiplier has to be pressed into service. We have gone through the judgment in detail. The judgment does not indicate precisely that the claim was one u/s 163A of the Act. Of course, we notice that in paragraph 3 of the judgment the following lines appear:

However, as regards the application of the multiplier, the learned counsel heavily relied on the Second Schedule and contends that this was the case under S.163A of the Motor Vehicles Act and since the age of the deceased was only 22 years,

the multiplier of 16 was liable to be made applicable.

We do not reckon this as sufficient to come to a positive conclusion that the said claim was u/s 163A of the M.V. Act and the Tribunal was considering such a claim u/s 163A. We are unable to accept that the Supreme Court by the said decision wanted the Tribunals not to follow the Second Schedule and to independently calculate the compensation payable u/s 163A by resorting to the multiplier multiplicand method ignoring the scheme under the Schedule. A reading of the said decision carefully must definitely suggest that the claim that was being considered was not one u/s 163A. The language of Section 163A and the fact that rupees in thousand is specified in the table/chart in clause 1 of the Second Schedule were not considered in that decision. That eloquently conveys that the Court in that case was not considering a claim u/s 163A and was only attempting to use the same as a guide in a claim u/s 166. At any rate, we are of the opinion that the later decision in *National Insurance Co. Ltd. v Gurumallamma* (supra) in paragraph 8 considered the question specifically and resolved the dispute. The observations in *Reshma Kumari* (supra) also clearly support our conclusion.

29. We do note that though 15 is the multiplier specified for persons upto the age of 15 years under column 2 of the table/chart, the figures rupees in thousands given under the 13 heads of income reveal that really a multiplier of 20 was adopted by the legislature while fixing the quantum of compensation payable in the case of death. We do note that the multiplier under column 2 is for the purpose of clause 5 - to ascertain compensation payable in respect of disability in non fatal accident cases. The legislative wisdom in prescribing different multipliers for death and permanent disability (higher one for death) may appear to be not consistent with previous judicial pronouncements, but the legislative wisdom cannot obviously be questioned by an interpreter of the statute. We repeat that there is no challenge before us in judicial review about the constitutional validity of Section 163A.

30. For non earning persons Rs.15,000/- can be assumed to be the notional income, but for earning persons, the table/chart shows income groups below Rs.15,000/-. This is illogical, it is contended. We repeat that the legislative wisdom is not to be questioned by the interpreter. But taking into account clause 6, it can be seen that, that clause incorporates the presumption of notional income for persons who had no income prior to the accident. Clauses a and b thereof deal with non earning persons and spouses. We find nothing illogical in clause 6 as that relates to persons who have not been earning. Persons are categorised into two groups, persons who are earning and persons who are not earning. For persons who are not earning (ie. who have not started earning), it can be assumed that Rs.15,000/- is the annual income. For those who have started earning, their actual income will have to be taken into consideration. The dishonest person may always show that he is a non earning person even if he is earning below Rs.15,000/- per annum. Law takes care of not dishonest persons alone, but honest persons. If we assume persons to be honest, there is nothing

illogical in clause 6 also. Decisions have to be taken by Tribunals not merely on the assertions made by the claimants. That assertion can be countered by the owner/authorised insurer who is to be saddled with liability. Such owner/authorised insurer can certainly show that a person claiming the benefit of clause 6 is not really a non earning person, but he is an earning person earning below Rs.15,000/- per annum. He can claim only under the appropriate vertical column in the table/chart. Clause 6 therefore cannot lead us to the conclusion that the second schedule is unworkable. Of course we have no hesitation to agree that it would have been much better if the same compensation were directed to be paid for persons earning upto Rs.15,000/- per annum. But that is in the realm of the legislative wisdom and the interpreter cannot question such wisdom.

31. One more point deserves consideration. We have already considered this question in some earlier decisions (see unreported judgment dated 19.07.2011 in M.A.C.A No.2794 of 2009 (United India Insurance Co. Ltd. v. Lalitha & Ors.)). The 13 vertical columns relating to annual income of the victims show only specific figures like Rs.3,000/-, 4,200/-, 5,400/- etc., the last one being Rs.40,000/-. Suppose a person earns between these 2 incomes, how then is the compensation to be ascertained by the Tribunal? There will be no relevant entry for such persons in the table/chart. Suppose the annual income of a person is Rs.3,001/-, then there will be no specific column under which he can be brought. In such an event how is compensation to be ascertained?

32. It is argued that in that event also, as observed by the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it may not be impossible to ascertain the compensation payable for persons whose income falls between two entries. That can of course be done. But taking such a view would mean that the Tribunal will be obliged to ascertain the precise annual income of an individual victim. The thrust or the accent u/s 163A is avoidance of avoidable disputes warranting adducing of elaborate evidence for their resolution. So reckoned, we feel that the relevant vertical column can be reckoned as indicating the income group and not the precise income. Entry 1 shows Rs.3,000/-. It is certainly possible to reckon that entry by a process of interpretation as relating to persons having annual income upto Rs.3,000/-. The second entry can be reckoned as income upto Rs.4,200/- and then only persons earning above Rs.3,000/- upto 4,200 alone will come under that vertical column. Similarly all the vertical columns can be read to mean persons earning annual income upto the relevant amount shown. If that be so, the last entry (ie. the 13th vertical column) would relate to persons earning income above Rs.36,000/- upto Rs.40,000/-. If we so understand and reckon the relevant vertical columns, that would save the Tribunals of a lot of unnecessary work in the attempt to identify the precise annual income. If one would examine the circumstances under which Section 163A was born (we see detailed discussions by the Supreme Court on that aspect in Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala & Ors [2001(2) KLT 235(SC)] and Deepal Girishbhai Soni v. United India Insurance Co.Ltd. [2004 (2) KLT 395 (SC)] though for entirely different purposes), one

cannot omit to note that the long queues for justice before the Tribunals was vexing the legislature. The legislative prescription for the malady was a scheme - a take it or leave it scheme, under which package a final (not interim) resolution of the claim for compensation was offered. The amount offered u/s 163A may not be compensation correct to the last decimal. But the legislature offered a scheme which must satisfy many a claimant and spare him of the obligation to stand in the long queue. The salient feature of the package is the yearning to avoid unnecessary litigation. Negligence - you need not prove. Dependency - you need not prove. Exact age - you need not prove. The same compensation will be payable to all of the same age group. If elimination of possible disputes warranting complex evidence is the thrust Section 163A, we have to understand the income specified also as in ranges and not in exact figures. If the contra view were to be accepted, for every victim earning an annual income of even one rupee more or less than the figure specified in the relevant vertical column, the Tribunal will again have to resort to the multiplier-multiplicand method to ascertain the compensation. Multiplier will have to be ascertained in each case - not by looking at vertical column No.2 of the table, but by ascertaining the rationale underlying the amounts prescribed for each age group. Such an interpretation and understanding would again bring back the obligation to ascertain the exact income obliging the parties to adduce specific and detailed evidence and obliging the Tribunals to come to specific findings. That is against the very scheme of Section 163A. That is against the fundamental rationale/ philosophy of Section 163A. Ranges of age and income of the victims are specified so that the Tribunals' obligation will only be to ascertain the range/ group. Rough and ready justice without the obligation to be exact and specific to the last digit in the ascertainment of age and income appears to be the signature tune of Section 163A of the M.V Act. An interpreter cannot lose sight of the basic purpose, object and thrust of the scheme under a newly introduced statutory provision. We therefore hold that though particular figures are shown on top of the relevant vertical columns, they must be read as income upto the amounts prescribed (specifying ranges of income).

33. It is not as though we have not appreciated the fact that for persons earning any particular income, compensation payable will be the highest, so far as a child upto the age of 15 years is concerned. This is incongruous and irrational, it is contended. It is not very difficult to see the reason in the argument. But the legislature has chosen to prescribe the highest amount of compensation for a child aged upto 15 years in each income group. What is the logic? How can this be justified? Queries are thrown at the Court by the learned counsel for the appellant Sri. Rajan P.Kaliyath. We can only say that it is the legislative wisdom which is reflected in the table/chart. One way of looking at it is that if a child before it attains the age of 15 years is earning such an amount, he must certainly be a prodigious child and therefore the legislature felt that for such a person, the highest amount of compensation must be awarded. It is not impossible to see reason and logic in the table even in respect of that entry by

such a process of reasoning and argument. The argument that a child aged below 15 cannot be employed, as child labour is prohibited in India is also of no avail as it is perfectly possible that a child prodigy, blessed with extraordinary skills in certain fields - say computers, music or dance, may still earn without being objectionably employed. Annual income specified is not evidently the return from investments or land belonging to a victim but the earnings from his labour, skill or effort. If before a child attains the age of 15 years, he is able to earn amounts, justice is not defeated, by granting higher amount of compensation for the death of such a child. Not that we accept the same completely, but we do intend only to note that the Second Schedule cannot be thrown away lock stock and barrel by such alleged incongruity pointed out by the learned counsel for the appellant. We have to see or even invent wisdom in a statutory provision, sitting as an interpreter. We have to respect such wisdom while interpreting such a provision.

34. We conclude the general discussions on this aspect by holding that

- i) in a claim u/s 163A of the M.V Act, negligence is absolutely irrelevant;
- ii) As negligence is irrelevant, consequently contributory negligence is also irrelevant;
- iii) Without the second schedule, Section 163A cannot be worked and hence the Second Schedule has to be accepted as such in claims u/s 163A subject, of course, to judicial interpretation till it is modified by the legislature/Central Government;
- iv) for ascertaining the quantum of compensation payable in the case of death, the amount given in "rupees in thousands" under the 13 vertical columns against the relevant horizontal column alone, subject to the note, has to be taken into consideration. The multiplier-multiplicand method would be irrelevant and cannot be pressed into service while ascertaining compensation payable in the case of death u/s 163A;
- v) the multiplier given under column 2 of the table/chart is relevant only while ascertaining the compensation payable for disability in non fatal accidents under clause 5 of the schedule;
- vi) The vertical columns specifying annual income of the victims will have to be read as applicable to persons belonging to that income group - ie. upto Rs.3,000/- (column i), above Rs.3,000/- upto Rs.4,200/- (column 2) and so on the last being above Rs.36,000/- upto Rs.40,000/- (column 13);
- vii) The actual loss suffered by the claimant/claimants is irrelevant while ascertaining the total amount of compensation payable u/s 163A. The claimant/claimants together shall be entitled to (only) the prescribed amount - whatever be the actual loss;
- viii) The question of dependency of a legal heir is irrelevant while ascertaining

the total amount payable u/s 163A. Only while apportioning the total amount among legal heirs do Tribunals have the obligation to even consider dependency. We say this to insist that apportionment among legal heirs will have to be done by the Tribunal justly, fairly and reasonably and not by mechanical equal division among all legal heirs, true to the basic mandate to them u/s 165 of the M.V Act - to be just, fair and reasonable.

35. We come back to the facts of the case. It is not disputed before us that the claimant is the legal heir in respect of his deceased daughter as also his deceased grandchild. All the 4 (2 parents and their 2 children) had expired in the same accident. The wife admittedly expired some time after the others expired. So far as the other 3 are concerned, it is safe to conclude in the absence of better evidence that the eldest, namely the father, expired before his children expired. In this view of the matter following the principles under Chapter II of Part V of the Indian Succession Act, 1925, claimant is the only legal heir of his deceased daughter and grandchild. No dispute is raised on that aspect. We do not, in these circumstances, feel the need to refer to the specific provisions in Chapter II of Part V of the Indian Succession Act. The legal heir is the claimant. We have already taken the view that the legal heir is entitled to the amount indicated under the Second Schedule without proof of actual loss. He does not have to prove the actual loss. The very purpose and scheme of Section 163A dispenses with the requirement of proof of the actual loss suffered by the claimant. We conclude that the claimant is entitled to the amount prescribed in the Second Schedule.

36. So far as both deceased are concerned, the claimant wants to invoke the presumption of prudence permitted under clause 6 in respect of non earning person. Both deceased persons can therefore be assumed to earn an income of Rs.15,000/-. So far as the child is concerned, the compensation payable has to be ascertained by reference to the first horizontal entry "upto 15 years". Rs.3,60,000/- is the amount payable as compensation for such persons earning income above Rs.12,000/- upto Rs.18,000/-. Deducting 1/3 as per the mandate of the note, Rs.2,40,000/- will be the amount payable under clause 1 in respect of the death of the child. In addition to that, an amount of Rs.2,000/- under clause 3(i) as funeral expenses and Rs.2,500/- under clause 3(iii) as loss of estate will also be payable. That means the total amount payable in respect of the minor child would be Rs.2,44,500/-. The amount claimed is only Rs.2 lakhs. There is no appeal or cross appeal raised that the claimant is entitled to any amount in excess of Rs.2 lakhs already claimed. In respect of the death of the child, the entire claim staked by the claimant has to be allowed. It is not as though we do not have the jurisdiction in an appropriate case to direct payment of the entire amount due u/s 163A of the M.V Act even in the absence of a specific claim. But in the facts and circumstances of this case, we are satisfied that interests of justice will be served eminently by directing payment of the amount as claimed by the claimant.

37. We now come to the claim in respect of the deceased daughter of the claimant. She was aged 44 years. There is no evidence of any income earned by her. There is no evidence of the income if any earned by her husband to enable us to draw any presumption under clause 6 of her income based on the earnings of her spouse. The horizontal entry applicable to her is Entry No.7, ie. above 40 years, but not exceeding 45 years. It is claimed that she would also come under the vertical entry relating to person having annual income above Rs.12,000/- upto Rs.18,000/-. Rs.2,52,000/- is the amount specified under the relevant horizontal entry and vertical column. One third is to be deducted towards the personal expenses of the deceased. Rs.1,68,000/- would hence be the amount payable to the claimant under clause 1. Under clause 3(i) and 3(iii), an amount of Rs.2,000/- and Rs.2,500/-, as already found in respect of the claim relating to the deceased child, will also have to be awarded. The total amount of compensation payable to the claimant in respect of the death of his daughter would be Rs.1,72,500/-.

38. On the basis of the above discussions, we are satisfied that these appeals deserve to be dismissed and the Cross Objections deserve to be allowed.

39. There is a dispute raised about the rate of interest payable. The Tribunal had awarded interest @ 7.5% per annum. u/s 171 of the M.V Act, the Tribunal has a discretion in the matter and the Tribunal has exercised the same. The learned counsel for the respondent strains, with the help of various precedents, to contend that the Hon"ble Supreme Court in some cases has awarded interest above the rate 7.5% per annum. But no law is laid down by the Supreme Court in any of the decisions that interest must invariably be awarded at a rate higher than 7.5% per annum. The course adopted by the Supreme Court to meet the interests of justice in a particular case cannot obviously be reckoned as the declaration of a law by the Supreme Court under Article 141 of the Constitution of India. In these circumstances, we are satisfied that the direction that interest be paid @ 7.5% per annum need not be interfered with by us invoking our appellate jurisdiction u/s 173 of the M.V Act.

40. In the result:

- a) M.A.C.A Nos.223 and 243 of 2007 are dismissed;
- b) Cross Objection Nos.75 of 2010 and 63 of 2010 are allowed;
- c) The impugned award in O.P(MV) No. 407 of 1999 is modified and it is directed that the claimant shall be entitled to an amount of Rs.2,00,000/- (Rupees Two lakhs only) as claimed by him along with interest thereon and cost as directed by the Tribunal;
- d) The impugned award in O.P(MV) No.333 of 1999 is modified and it is directed that the appellant claimant is entitled to Rs.1,72,000/- (Rupees One lakh seventy two thousand and five hundred only) along with interest thereon and costs as directed by the Tribunal;

e) All other directions of the Tribunal are upheld.

41. Considering the amount of confusion in the minds of the Tribunals, which we perceive sitting in this jurisdiction, we direct the Registry to forward copies of this judgment to all Motor Accident Claims Tribunals in the State.