
(2014) 06 MAD CK 0258
In the Madras High Court
Case No : C.M.A. No. 2274 of 2011

The Branch Manager, The New India Assurance Co. Ltd.

APPELLANT

Vs

Munirathinamma

RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163B, 166

Citation : (2014) 06 MAD CK 0258

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

P.R. Shivakumar, J.—This is an appeal filed by the insurer of the offending vehicle, who figured as the second respondent before the Tribunal, against the award of the Motor Accidents Claims Tribunal (Additional District Judge), Krishnagiri dated 01.02.2011 made in M.C.O.P No. 200 of 2009, awarding a sum of Rs. 7,02,000/- as compensation for the death of one Narayanappa in an alleged accident that took place at Marudandapalli diversion on the Krishnagiri Hosur road on 25.08.2007 at 18.20 hours.

2. Respondents 1 to 6 herein made a claim in M.C.O.P No. 200 of 2009 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Krishnagiri u/s 163A of the Motor Vehicles Act claiming a sum of Rs. 8,00,000/- as compensation for the death of Narayanappa. Munirathinamma, the first respondent is the widow of Narayanappa. Venkatesh, Krishna Babu and Srimathi are, respectively, the sons and Daughter of Late Narayanappa. Errappa and Muniamma are the parents of Late Narayanappa. They figured as claimants 1 to 6 in the M.C.O.P. Since the claimants 2 to 4 were minors, they were represented by the first claimant Munirathinamma as their next friend and guardian. Following are the averments made in the petition:

On 25.08.2007, at about 18.20 hours, the deceased Narayanappa was riding a

T.V.S. XL Super two-wheeler bearing Registration No. TN24-V-5379 on the Soolagiri - Hosur Stretch of the National Highway. He was riding the said vehicle cautiously, observing traffic rules and keeping the left side of the road. When he was nearing Marudandapalli diversion, the driver of the car belonging to the 7th respondent herein/first respondent in the M.C.O.P, bearing Registration No. KA-02-MA-8291, which stood insured with the appellant herein/second respondent in the M.C.O.P, drove it in a rash and negligent manner in the same direction in which the deceased Narayanappa was proceeding in his two wheeler and caused the accident by hitting Narayanappa from behind. Due to the said impact, Narayanappa was thrown away from his vehicle and he sustained fatal injuries on vital organs resulting in his death on the spot. As the accident occurred due to the rash and negligent driving of the above said car by its driver, the respondent No. 7 and appellant/respondents 1 and 2 in the M.C.O.P are liable to pay compensation to the the legal heirs and dependents of the deceased Narayanappa, viz., respondents 1 to 6/petitioners 1 to 6 in the M.C.O.P. The deceased was earning a sum of Rs. 3,300/- per month and was contributing the entire amount to the maintenance and welfare of the family. Though the respondents 1 to 6 / claimants arrived at the figure Rs. 31,23,000/- as the amount to which they would be entitled to claim as compensation, they filed the petition restricting their claim to Rs. 8,00,000/- alone.

3. The 7th respondent herein/first respondent in the M.C.O.P, namely the owner of the offending vehicle, remained ex parte and the appellant/second respondent in the M.C.O.P, namely the insurer of the offending vehicle, alone contested the case by filing a counter statement containing, in brief, the following averments:

The road in which the accident took place is a broad one having 4 lanes. The deceased, without keeping the correct lane for his journey in the two wheeler, suddenly tried to change the lane by crossing from the southern lane to northern lane without giving any signal. The driver of the car belonging to the 7th respondent in the appeal/the first respondent in the M.C.O.P, who did not expect the same, made his maximum effort, in vein, to avoid the accident. The accident took place solely due to the negligent driving of the two wheeler by the deceased as he was carrying huge quantity of seedling trays on the backseat of the two wheeler and also the leg space of the two wheeler. The deceased was not employed as a milk vendor and his income was not Rs. 3,300/- per month, as claimed by the claimants in the M.C.O.P. The two wheeler bearing Registration No. TN24-V-5379, in which the deceased was proceeding at the time of accident, did not belong to him and the same was not in a good condition to be driven in the National Highways. The said vehicle was not covered by a valid permit and the deceased drove the vehicle without holding a valid driving licence. The deceased could not be construed to be a third party and hence, the amount could not be claimed from the insurer as compensation. The amount claimed as compensation is excessive and hence the petition as against the appellant/second respondent in the M.C.O.P should be dismissed.

4. The Tribunal conducted an enquiry in which the first respondent/first claimant figured as the sole witness (PW1) and 5 documents were produced as Ex.P1 to P5. No witness was examined and no document was marked on the side of the respondents. The Tribunal, on an appreciation of evidence, rendered a finding that the deceased Narayanappa was proved to have died due to the injuries sustained in the accident as alleged in the petition and that since the claim was made u/s 163A of the Motor Vehicles Act, there was no necessity for the respondents 1 to 6 herein/claimants 1 to 6 either to plead or prove negligence or fault on the part of the 7th respondent herein and the appellant herein/respondents 1 and 2 in the M.C.O.P, who were the owner and insurer of the vehicle involved in the accident.

5. Fixing the age of the deceased and the income of the deceased at 32 years and Rs. 3,000/- per month (Rs. 36,000/- Per annum) respectively, and adopting the multiplier "17", the Tribunal arrived at the figure Rs. 6,12,000/- to be the loss of dependency caused to the family. The Tribunal added a sum of Rs. 20,000/- towards loss of consortium to the first claimant, Rs. 15,000/- each to the claimants 2 to 4 (totally Rs. 45,000/-) towards loss of love and affection and Rs. 10,000/- each to claimants 5 and 6 (Rs. 20,000/-) for loss of love and affection caused to claimants 5 and 6 and yet another sum of Rs. 5,000/- towards funeral expenses. Accordingly, the Tribunal fixed the total compensation to which the respondents 1 to 6 /claimants were entitled to get from the 7th respondent and the appellant for the death of Narayanappa at Rs. 7,02,000/-. The Tribunal passed the award directing the 7th respondent and appellant in the C.M.A/respondents 1 and 2 in the M.C.O.P, as owner and insurer of the car bearing Registration No. KA02-MA-8291 involved in the accident leading to the death of Narayanappa, to jointly and severally pay the above said amount together with an interest at the rate of 6% per annum from the date of filing of the M.C.O.P till deposit and also costs.

6. Neither the claimants nor the owner of the vehicle chose to prefer any appeal. The insurer alone has chosen to prefer the appeal on various grounds set out in the memorandum of grounds of Civil Miscellaneous Appeal. The point that arises for consideration in this appeal is "whether the amount awarded by the Tribunal as compensation is excessive and exorbitant requiring downward revision"?

7. The arguments advanced on both sides were heard. The Judgment and award of the Tribunal and other materials available on record were also perused. This Court paid its anxious considerations to the submissions made on both sides and the materials available on record.

8. Mr. M.Krishnamurthy, learned counsel for the appellant contended that the fixation of Rs. 3,000/- as monthly contribution made by the deceased to his family was totally against the scheme provided in the second schedule of the Motor Vehicles Act, which provides only a maximum annual income of Rs. 40,000/- from which also 1/3rd shall be deducted towards personal and living expenses and balance 2/3rd alone shall be taken as loss of pecuniary benefits

caused to the dependents of the deceased in calculating compensation u/s 163A of the Motor Vehicles Act. The learned counsel for the appellant argued further that, besides committing an error in not deducting 1/3rd of the annual income to fix the quantum of pecuniary benefits derived by the dependents of the deceased from the income of the deceased, the Tribunal also committed a grave error in awarding more amounts than the amounts provided under the schedule towards loss of consortium, loss of love and affection and funeral expenses and that hence the amount awarded by the Tribunal as compensation should be reduced drastically to bring it in tune with the second Schedule of the Motor Vehicles Act.

9. Mr. M.Sriram, learned counsel for the respondents 1 to 6/claimants was not in a position to advance any argument to discredit the submissions made by the learned counsel for the appellant.

10. The factum of accident leading to the death of Narayanappa, the husband of the first respondent herein and the relationship of the respondents 1 to 6 herein/claimants with the deceased are not in dispute. Though they might have made an averment in the claim petition that the accident took place due to the rash and negligent driving of the car bearing Registration No. KA-02-MA-8291 belonging to the 7th respondent herein/first respondent in the M.C.O.P by its driver, since they chose to make the claim for compensation based on the "No fault liability clause" in Section 163A of the Motor Vehicles Act, 1968, the said plea became unnecessary, as a person entitled to claim compensation on the basis of the structured formula by filing the claim petition u/s 163A of the Act shall not be required to either plead or establish that the death in respect of which the claim has been made was due to any wrongful act, negligence or fault of the owner of the vehicle or vehicles concerned or of any other person. Since the claimants have chosen to make an averment in their petition that the accident took place due to the rash and negligent driving of the car belonging to the 7th respondent/first respondent in the M.C.O.P by its driver, the appellant herein/second respondent in the M.C.O.P (insurer) had to take a plea that there was no negligence on the part of the driver of the said car and that on the other hand, it was due to the negligence on the part of the deceased he met with the accident and died. The fact that such unnecessary pleadings came to be made alleging and denying rashness and negligence on the part of the driver of the car belonging to the 7th respondent herein/second respondent in the M.C.O.P made the Tribunal to formulate the first point for determination as follows:

Whether the accident had happened due to rash and negligent driving of the drive of car?

11. Though such an unnecessary point for determination had been formulated by the Tribunal, it correctly held that the negligence on the part of the driver of the car did not need to be established, since the claimants had made their claim u/s 163A of the Motor Vehicles Act, 1988 for the death of Narayanappa in the accident. However, while calculating the compensation u/s 163A of the Motor Vehicles Act, the Tribunal has committed an error in not deducting 1/3rd from

the income of the deceased for fixing the multiplicand to find out the quantum of compensation for the loss of dependency to the family members of the deceased. Respondents 1 to 6 herein/ claimants, in their pleading, have averred that the deceased was aged about 32 years and was earning a sum of Rs. 3,300/- per month as a milk vendor. Excepting the interested testimony of PW1, the sole witness examined on the side of the claimants, who is none other than the widow of the deceased, there is no oral or documentary evidence to prove the avocation of the deceased Narayanappa. Even for the fixation of age, there is no other document except the copy of the postmortem certificate marked as Ex.P2. Hence, the Tribunal cannot be found fault with for fixing the age of the deceased at 32 years based on Ex.P2. The Tribunal also held that the claim of the respondents 1 to 6 herein/claimants that the deceased was a milk vendor and he was earning a monthly income of Rs. 3,300/- was not established by reliable evidence. However, relying on the observations made in Premkumari and Others Vs. Prahlad Dev and Others, , the Tribunal chose to hold that the monthly contribution of the deceased to his family could be fixed at Rs. 3000/-. The observation made in the said judgment of the Supreme Court reads as follows:

..Even though there is no evidence, regarding employment, the monthly contribution of the deceased to the family after 1/3rd deduction, can be fixed at Rs. 3,000/- per month...

The above said observation was made in a case where the claim was made u/s 166 of the Motor Vehicles Act. The 2nd Schedule to the Act provides the maximum annual income of Rs. 40,000/-. While interpreting Section 163A, the Hon"ble Apex Court in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, has held that the benevolent provision was intended to benefit a clause of people whose income was not more than Rs. 40,000/- per annum and that in respect of the death or permanent disablement caused to a person who was having annual income more than Rs. 40,000/- claim u/s 163A could not be made. It was further clarified therein that the maximum amount of annual income found in the table provided in the second schedule was not a cap on the income for making a claim u/s 163A and on the other hand, it was a condition precedent for maintaining a claim as per the structured formula u/s 163A of the Motor Vehicles Act.

12. The Tribunal seems to have made confusing observations regarding the income of the deceased and his contribution from his income to the family members. After making an observation that a man of good health at the age of 32 could earn Rs. 3000/- per month, the Tribunal chose to fix the monthly contribution of the deceased to his family at Rs. 3,000/- per month, without deducting any amount towards personal and living expenses as contemplated in the second schedule. If the amount of Rs. 3,000/- fixed as the monthly contribution could be construed as the 2/3rd remainder after deducting 1/3rd from the income of the deceased, then the actual income of the deceased would have to be fixed at a higher rate than Rs. 40,000/- per annum, in which event

the respondents 1 to 6 / claimants would be held incapable of invoking the benevolent provision of section 163A of the Motor Vehicles Act. If the contribution after deducting 1/3rd from the income is to be taken as Rs. 3000/- per month, the income should be fixed at Rs. 4500/- per month, which shall be equivalent to Rs. 54,000/- per annum. The respondents 1 to 6/claimants themselves claimed that the income of the deceased was only Rs. 3,300/- per month. Hence, this Court holds the fixation of the income of the deceased at Rs. 54,000/- per annum and the monthly contribution of the deceased to his family at Rs. 3,000/- per month to be totally erroneous.

13. As contended by the learned counsel for the appellant the fixation of the contribution by the deceased to his family at Rs. 3,000/- per month was not correct and proper and that on the other hand, the deceased, who was aged about 32 years, having wife and three minor children, could be expected to have earned Rs. 3,300/- per month as contended in the petition. Hence, the income of the deceased is fixed at Rs. 3,300/- per month, which is equivalent to Rs. 39,600/- per annum. The second schedule contemplates deduction of 1/3rd towards personal and living expenses of the deceased. If 1/3rd is deducted, the balance shall be Rs. 26,400/-, which shall be the multiplicand. Section 163A of the Motor Vehicles Act contains a special provision as to the payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. The Second Schedule contains a Table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income ranging from Rs. 3,000/- to Rs. 40,000/-. It contains columns for the annual income Rs. 3,000/-, Rs. 4,200/-, Rs. 5,400/-, Rs. 6,600/-, Rs. 7,800/-, Rs. 9,000/-, Rs. 10,200/-, Rs. 11,400/-, Rs. 12,000/- Rs. 18,000/-, Rs. 24,000, Rs. 36,000/- and Rs. 40,000/-. The table progresses from Rs. 3,000/- to Rs. 11,400 with a difference of Rs. 1,200/- between two consecutive entries. The entry after Rs. 11,400/- namely Rs. 12,000/- makes a difference of Rs. 600/- alone. Then the table progresses with a difference of Rs. 6000/- till it reaches Rs. 36000/-. The last entry is Rs. 40,000/- and the difference between the same and the previous entry is Rs. 4000/-. There is no specific clause in the second schedule that the multipliers indicated against the age groups shall be used if the annual income falls in between two columns. The table does not specify the quantum of compensation in case the annual income of the deceased is more than Rs. 40,000/-. But, it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes upto 18 and then steadily comes down to 5. It also provides the standard deduction as 1/3rd on account of personal and living expenses of the deceased. Therefore, where the application is u/s 163A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased by applying the formula : $(\frac{2}{3} \times AI \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation.

14. In U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , a three Judge Bench of the Supreme Court made the following observations:

The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act 54 of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Sections 163A and 163B in Chapter XI entitled "Insurance of Motor Vehicles against Third Party Risks". Section 163A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in Susamma Thomas case (Susamma Thomas case).

We must at once point out that the calculation of compensation and the amount worked out in the schedule suffer from several defects. For example, in item No. 1 for a victim aged 15 years, the multiplier is shown to be 15 years" and the multiplicand is shown to be Rs. 3000/-. The total should be $3000 \times 15 = 45,000$, but the same is worked out at Rs. 60,000/-. Similarly, in the second item the multiplier is 16 and the annual income is Rs. 9000; the total should have been Rs. 1,44,000, but is shown to be Rs. 1,71,000/-. To put it briefly, the table abounds in such mistakes. Neither the Tribunals nor the courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased.

....But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasis is that the multiplier cannot exceed 18 years" purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state that correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies" case.

15. Though the Hon"ble Supreme Court, in the said case, made a reference to Section 163A and made an observation that the table found in the second Schedule contains several mistakes and that the same could not be used as a ready reckoner and it should be used only as a guide, the decision made therein was not in respect of a claim made u/s 163A of the Motor Vehicles Act,1988.

However, the language used therein is capable of meaning that the table found to be abounding in mistakes could be used only as a guide and not as a ready reckoner even if a claim is made u/s 163A of the Act.

16. The Hon''ble Supreme Court again considered the said issue regarding the mistakes found in the table in the second Schedule in *Sarla Verma & Ors vs Delhi Transport Corp.& Anr* cited above and made the following observations:

17. The Motor Vehicle Act, 1988 was amended by Act 54 of 1994, inter alia inserting Section 163A and the Second Schedule with effect from 14.11.1994. Section 163A of the MV Act contains a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. The Second Schedule contains a Table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs. 3,000/- to Rs. 40,000/-. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs. 40,000/-. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes upto 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is u/s 163A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs. 40,000/-, by applying the formula : $(\frac{2}{3} \times AI \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is u/s 163A of MV Act. There are however discrepancies/errors in the multiplier scale given in the Second Schedule Table. It prescribes a lesser compensation for cases where a higher multiplier of 18 is applicable and a larger compensation with reference to cases where a lesser multiplier of 15, 16, or 17 is applicable. From the quantum of compensation specified in the table, it is possible to infer that a clerical error has crept in the Schedule and the 'multiplier' figures got wrongly typed as 15, 16, 17, 18, 17, 16, 15, 13, 11, 8, 5 & 5 instead of 20, 19, 18, 17, 16, 15, 14, 12, 10, 8, 6 and 5. Another noticeable incongruity is, having prescribed the notional minimum income of non-earning persons as Rs. 15,000/- per annum, the table prescribes the compensation payable even in cases where the annual income ranges between Rs. 3000/- and Rs. 12000/-. This leads to an anomalous position in regard to applications u/s 163A of MV Act, as the compensation will be higher in cases where the deceased was idle and not having any income, than in cases where the deceased was honestly earning an income ranging between Rs. 3000/- and Rs. 12,000/- per annum. Be that as it may.

18. The principles relating to determination of liability and quantum of compensation are different for claims made u/s 163A of MV Act and claims u/s 166 of MV Act. Section 163A and Second Schedule in terms do not apply to

determination of compensation in applications u/s 166. In Trilok Chandra, this Court, after reiterating the principles stated in Susamma Thomas, however, held that the operative (maximum) multiplier, should be increased as 18 (instead of 16 indicated in Susamma Thomas), even in cases u/s 166 of MV Act, by borrowing the principle underlying section 163A and the Second Schedule.

It has provided a table indicating the multiplier scale adopted in Susamma Thomas case, Trilok Chandra and Charlie's case:

Age of the Deceased

Multiplier scale as envisaged in Susamma Thomas

Multiplier scale as adopted by Trilok Chandra

Multiplier scale in Trilok Chandra as clarified in Charlie

Multiplier specified in second column in the Table in II Schedule to MV Act

Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of Compensation)

(1)

(2)

(3)

(4)

(5)

(6)

Upto 15 yrs.

-

-

-

15

20

15 to 20 yrs.

16

18

18

16

19

21 to 25 yrs.

15

17

18

17

18

26 to 30 yrs.

14

16

17

18

17

31 to 35 yrs.

13

15

16

17

16

36 to 40 yrs.

12

14

15

16

15

41 to 45 yrs.

11

13

14

15

14

46 to 50 yrs.

10

12

13

13

12

51 to 55 yrs.

09

11

11

11

10

56 to 60 yrs.

08

10

09

08

08

61 to 65 yrs.

06

08

07

05

06

Above 65 yrs.

5

5

5

5

23

17. After pointing out the said mistakes, the Supreme Court held that it was not concerned with cases u/s 163A of the Motor Vehicles Act and on the other hand it was concerned with cases falling u/s 166 of the Motor Vehicles Act. Besides accepting the contention that the deduction towards multiplier method in cases not falling u/s 163A shall not be uniform at 1/3rd as indicated in the table, it provided guidelines for fixing the rate of deduction towards personal and living expenses of the deceased. However, after pointing out the clerical mistakes found in the second schedule, the Hon''ble Supreme Court has chosen to give another direction regarding the application of the multiplier to be applied in case of claims u/s 166 of the Motor Vehicles Act.

18. The matter was once again considered by a larger Bench consisting of three judges of the Supreme Court in Reshma Kumari and Others Vs. Madan Mohan and Another, . The larger Bench of the Hon''ble Supreme Court has approved the multiplier indicated in Column 4 of the table provided in the judgment in Sarla Verma case as the standard scale for selection of multiplier in fatal cases u/s 166 of the Motor Vehicles Act. So far as the claim regarding the death of persons upto the age of 15 years are concerned, irrespective of the section under which the claims have been made (Section 163A or Section 166 of the Motor Vehicles Act), 15 shall be taken as the multiplier for assessment as indicated in the second schedule subject to the correction pointed out in column 6 of the table in Sarla Verma case. The relevant portion of the judgment is extracted hereunder:

34. If the multiplier as indicated in Column (4) of the table read with paragraph 42 of the Report in Sarla Verma is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a criss-cross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the table in Sarla Verma for the selection of multiplier in claim applications made u/s 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the table in Sarla Verma is followed, there is no likelihood of the claimants who have chosen to apply u/s 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply u/s 163A. As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Section 163A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made u/s 166 of the 1988 Act. In all other cases of death where the application has been made u/s 166, the multiplier as indicated in Column (4) of the table in Sarla Verma should be followed.

19. Excepting the correction of the multiplier in respect of claims for the death of persons upto the age of 15 years, no correction in column 6 of the table provided in the Sarla verma case was recommended. A conjoint reading of the judgments of the Supreme Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Reshma Kumari and Others Vs. Madan Mohan and Another, , will make it clear that the Hon"ble Apex Court did not interfere with the table found in the second schedule except correctly reading the multiplier used in the table disregarding the multiplier found in column 2 of the table in the Second Schedule with the correction that the multiplier 20 for the age group of persons upto 15 years should be reduced to 15.

20. If the principles enunciated by the Supreme Court in the above said judgments are applied it will be obvious that the Tribunal committed an error in selecting "17" to be the multiplier and that the multiplier to be selected shall be 16 as the age of deceased is fixed at 32 years. As it is a case of claim u/s 163A, the deduction of 1/3rd from the annual income as contemplated under the table in the second schedule should be made to find out the multiplicand. Taking the income of the deceased at Rs. 39,600/- per annum, Rs. 13,200/- representing the 1/3rd of the said amount shall deducted towards personal and living expenses of the deceased and the balance Rs. 26,400/- shall be taken as the multiplicand for determining the compensation for the loss of dependency to the family members of the deceased. The product of the multiplicand, namely Rs. 26,400/- and the selected multiplier "16" shall be Rs. 4,22,400/-.

21. In a claim u/s 163A of the Motor Vehicles Act, general damages have to be awarded only in accordance with the table in the second schedule. In Item 3, general damages are fixed at the following rates:

1)

Funeral expenses

Rs. 2,000/-

2)

Loss of consortium if the pecuniary is spouse

Rs. 5,000/-

3)

Loss of Estate

Rs. 2,500/-

4)

Medical Expenses death supported

Actual expenses incurred before by bills/vouchers but not exceeding Rs. 15,000/-

Apart from the said amounts, no amount shall be awarded under conventional heads in case of death. In this case, since the death was on the spot, no claim was made for medical expenses. Claim for funeral expenses and loss of consortium for the first respondent alone could have been sustained subject to the limits specified above. This Court in "Metropolitan Transport Corporation Ltd., Vs. Zesha took the same view and observed that in a claim u/s 163A of the Act General damages should be awarded only in accordance with the second schedule.

22. The Tribunal committed an error in disregarding the second schedule in a case of compensation based on structured formula made u/s 163A and erroneously awarded a sum of Rs. 20,000/- towards loss of consortium and Rs. 5,000/- towards funeral expenses. To bring them in consonance with the table in the second schedule the compensation for loss of consortium to the first respondent / first claimant, should be reduced to Rs. 5000/- from Rs. 20,000/- and the compensation for funeral expenses should be reduced to Rs. 2000/- from Rs. 5,000/-. Apart from loss of consortium, the table does not provide for compensation on the ground of loss of love and affection to any person other than the spouse. Hence, a sum of Rs. 15,000/- awarded to each one of the claimants 2 to 4 and Rs. 10,000/- to each one of the claimants 5 and 6 towards loss of love and affection are liable to be disallowed. The second schedule provides for award of a compensation on the head of loss of estate at Rs. 2500/-. The Tribunal failed to award such amount towards loss of estate. Hence, the said amount should also be awarded as compensation. The Tribunal seems to have committed the error in totally ignoring the fact that the claim is one u/s 163A to which the table alone shall be applicable, subject to the corrections indicated in Sarla Verma and Reshma Kumari cases. Accordingly, the final tally of compensation shall be as follows:

Loss of dependency

Rs. 4,22,400.00

Funeral expenses

Rs. 2,000.00

Loss of consortium to the first respondent/ first claimant (wife of the deceased)

Rs. 5,000.00

Loss of Estate

Rs. 2,500.00

Rs. 4,31,900.00

23. For the reasons stated above, this Court comes to the conclusion that the amount awarded by the Tribunal is excessive and the same deserves to be

reduced to Rs. 4,31,900/-. In view of the reduction of the total amount of compensation, the apportionment is also modified as follows:

The first claimant shall be entitled to Rs. 1,56,900/-.

Claimants 2 to 4 shall be entitled to Rs. 75,000/-

Respondents 5 and 6 shall be entitled to Rs. 25,000/-

However, there is substance in the contention of the learned counsel for the respondents 1 to 6/claimants that the Tribunal committed an error in awarding interest at 6% per annum alone and that hence rate of interest should be increased. Though the claimants have not preferred any appeal or cross objection, in order to sustain the total amount awarded as compensation which includes the interest, they can take a plea that the issue regarding interest has been wrongly decided against them and it needs upward revision. Taking into account the market rate of interest and the bank rate of interest prevailing at the relevant point of time and also the various judgments of the High Courts and the Supreme Court regarding the rate of interest providing a guideline for fixing a rate of interest, this Court deems it appropriate to enhance the rate of interest from 6% to 7.5% per annum.

In the result, the Civil Miscellaneous Appeal is allowed in part and the award of the Tribunal is modified by reducing the compensation from Rs. 7,02,000/- to Rs. 4,31,900/- and at the same time increasing the rate of interest from 6% p.a and fixing it at 7.5% p.a. Out of the above said amount, the first respondent/first claimant shall be entitled to Rs. 1,56,900/-, respondents 2 to 4 shall be entitled to Rs. 75,000/- each and the respondents 5 and 6/claimants 5 and 6 shall be entitled to Rs. 25,000/- each together with corresponding interest. Subject to the above said modification, in all other respects, the award of the Tribunal shall stand confirmed. No costs.