

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 17th April, 2025

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No.10 of 2024

Appellant : Chandra Maya Sunwar

versus

Respondents : Geeta Mukhia and Another

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Tshewang Namgyal, Advocate for the Appellant.

Mr. K. B. Chettri, Advocate for the Respondent No.1.

Mr. Dipayan Roy, Advocate for the Respondent No.2.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The instant Appeal arises out of the grievance of the Claimant/Appellant, on account of the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim (hereinafter, "MACT"), disposing of the matter as one under Section 163A of the Motor Vehicles Act, 1988 (hereinafter, the "MV Act"), instead of Section 166 of the MV Act, while contrarily granting compensation of ₹ 5,00,000/- to the Appellant/Claimant under Section 164 of the MV Act (as amended in 2019).

2. Learned Counsel for the Appellant, opening his arguments, contended that, not only was the Learned MACT in error in disposing of the Petition as mentioned above but also in observing erroneously in the impugned Judgment that, as compensation under Section 163A of the MV Act, would be much less than that under Section 164 of the Amended Act, hence the latter provision was being invoked as favourable to the Claimant. Compensation of ₹

5,00,000/- (Rupees five lakhs) only, was accordingly granted. Admitting the error committed by the Appellant in filing the Application, before the Learned MACT, by inadvertently mentioning the provision in the Petition as "Section 166A" of the MV Act, instead of Section 166 as provided by the Act, it was urged by Learned Counsel for the Appellant that, the Learned MACT ought to have taken into consideration that a Petition under Section 163A of the MV Act would not be countenanced if the income of the deceased was above ₹ 40,000/- (Rupees forty thousand) only, per annum, as in the instant case, where the deceased was earning ₹ 15,000/- (Rupees fifteen thousand) only, per month, and thereby much above ₹ 40,000/- (Rupees forty thousand) only, per annum. The responses/written objection, of the Respondents also makes it evident that they considered the Claim Petition to be one under Section 166 of the MV Act and not under Section 163A of the MV Act. That, the error committed by the Learned MACT, Gangtok, Sikkim, may be rectified by setting aside the impugned Judgment, dated 27-02-2024, in MACT Case No.34 of 2022 and compensation may be granted to the Appellant in terms of Section 166 of the MV Act computed at ₹ 23,55,000/- (Rupees twenty three lakhs and fifty five thousand) only.

3. Learned Counsel for the Respondent No.1, the owner of the vehicle in accident, while conceding that, the Claim Petition is indeed one under Section 166 of the MV Act and not under Section 163A of the MV Act, in view of the projected income per annum of the deceased, added that, all documents pertaining to the vehicle, including the Insurance Policy Exbt-12, were valid and effective at the time of the accident and were furnished before the Learned

MACT. In the given circumstance, the Respondent No.2 had the responsibility of indemnifying the Appellant.

4. Learned Counsel for the Respondent No.2, while also conceding on the same grounds as Respondent No.1 that, the Claim Petition was one under Section 166 of the MV Act, however contended that, the age of the deceased was mentioned as forty-six years in the Claim Petition, when in fact all documents pertaining to the deceased, establish that, he was aged fifty-two at the time of the accident. That, the Claimant failed to file any documentary evidence to indicate that, the deceased, prior to his death was earning ₹ 15,000/- (Rupees fifteen thousand) only, per month. That, the salary certificate Exbt 7, submitted by the Claimant, was issued only after the fatality in the accident, and therefore deserves to be disregarded as unreliable. That, as per the Sikkim Government Gazette No.440, dated 15-09-2017, the wages of the deceased may be computed at ₹ 335/- per day, therefore around ₹ 10,000/- (Rupees ten thousand) only, per month, instead of ₹ 15,000/- (Rupees fifteen thousand) only, as claimed. It was further urged that, as the deceased was a bachelor and only one person, his mother (Claimant), was dependant on him, hence 50% ought to be deducted from his income, towards expenses he would have incurred on maintaining himself. That, in view of the deceased's age at the time of the accident, only 10% can be added as future prospects to his income. That, the compensation may be computed on the above terms.

5. I have given due consideration to the submissions advanced, I have also perused the evidence and all documents on record as also the impugned Judgment.

6. Pertinently, before proceeding further, the facts merit a brief narration. On 25-06-2022, the deceased, an employee of Respondent No.1 was driving her private Maruti Suzuki "Swift" vehicle. Two other occupants accompanied him in the car. The vehicle veered 17 feet of the road, downhill at Peshok, Rongli Rangliot, District Darjeeling. On account of the accident, the driver, aged about fifty-two years, the son of the Claimant/Appellant, succumbed to his injuries *en route* to the hospital. The mother lodged the Claim Petition before the Learned MACT under Section "166A" (sic) of the MV Act (a non-existent provision in the said Act).

7. The Learned MACT on consideration of the matter granted compensation of ₹ 5,00,000/- (Rupees five lakhs) only, observing in Paragraph 20 of the impugned Judgment *inter alia* as follows;

"20. **Further, compensation under Section 163A would be much less than what the present Section 164 provides.** Being a benevolent legislation, I have preferred to invoke the provision which is more favourable to the petitioner/claimant." [emphasis supplied]

(i) While considering the rationale of the Learned Member MACT as extracted (*supra*), it is necessary to point out that as the accident occurred on 25-06-2022 the Learned MACT did not have the luxury of declaring magnanimously, that, he preferred to invoke Section 164 of the MV Act (as amended) as against Section 163A of the MV Act, for the reason that, Section 163A of the MV Act is non-existent post the 2019 amendment of the MV Act, 1988. Section 163A of the MV Act has been done away with by the amendment of 2019. Section 164 as per the amended Act deals with payment of compensation in case of death or grievous hurt instead of Section 163A of the MV Act, which provided for compensation in road traffic

accidents on the principle of “no fault liability”. Nonetheless, as the impugned Judgment commences with the erroneous observation that the Claimant had filed the application under Section 163A of the MV Act, it becomes imperative to discuss this Section.

(ii) Section 163A of the MV Act reads as follows;

“163A. Special provisions as to payment of compensation on structured formula basis.—(1)Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

*Explanation—*For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

(iii) Section 163A of the MV Act 1988 was enacted notwithstanding the provisions of Section 166 of the MV Act. The two provisions are distinguishable from each other, for the reason that, under Section 163A of the MV Act, the applicant is not required to prove the negligence of the driver of the offending vehicle, but in a proceeding under Section 166 of the MV Act, the proof of rash and negligent act of the driver of the vehicle is essential. That apart, under Section 163A of the MV Act, the entire income of the victim, involved in the accident, must not be more than ₹ 40,000/- (Rupees forty thousand) only, per annum. The provision allows the victim of a motor vehicle accident to obtain a final award of compensation

based on the structured formula detailed in the Second Schedule to the unamended MV Act. Such compensation may be obtained without the claimant averring or establishing that the injuries sustained or death caused was due to any wrongful act or negligence or default of the driver and vicariously therefore, by the owner of the vehicle or vehicles concerned. In other words, compensation is granted on the principle of "strict liability". The origin of the theory of strict liability as envisaged under Section 163A of the MV Act can be traced to the Judgment of Blackburn, J., in ***Rylands vs. Fletcher***¹ where it was held that a person who for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief, if it escapes, must keep it in at his peril, and if he does not do so, is *prima facie* answerable for all the damage which is a natural consequence of its escape. By inserting Section 163A of the MV Act, Parliament intended to provide for the making of an award, without insisting on a long drawn trial or without proof of negligence in causing the accident. It was for the purpose of granting a quick and efficacious relief to victims falling within the specified category. The compensation payable under Section 163A of the MV Act is however materially different from the minimum compensation prescribed under Section 140 of the MV Act. The MV Act provides an option to the claimant to obtain interim compensation under Section 140 of the MV Act, being the minimum prescribed compensation, until final adjudication of his claim, under Section 166 of the MV Act based on "fault liability". Section 163A of the MV Act does not incorporate a provision, such as the one as detailed in Section 140 of the MV

¹ (1866) LR 1 Ex 265

Act. It is also worthwhile noticing that Section 163A of the MV Act commences with a *non-obstante* clause, which is a clear indication of the intention of the legislature, to provide a mechanism for awarding compensation based on a pre-determined formula, without insisting on proof of negligence. The provision is clearly a social security scheme, the purpose being to grant relief to a specified section of the society, whose income range is limited to ₹ 40,000/- (Rupees forty thousand) only, per annum. The compensation under Section 163A of the MV Act is thus to be paid by applying the multiplier method, under the Second Schedule, along with other relevant factors, including reduction of $\frac{1}{3}^{\text{rd}}$, in consideration of the expenses which the victim would have incurred towards maintaining himself and other non-pecuniary losses.

(iv) The evidence of the Claimant before the Learned MACT clearly indicates that the income of the deceased was claimed to be ₹ 15,000/- (Rupees fifteen thousand) only, per month, vide Exbt-7, the salary certificate of the deceased, Chitra Bahadur Sunwar. Pausing here momentarily, it was canvassed by Learned Counsel for the Respondent No.1 that, the income certificate did not indicate the income of the deceased prior to the accident. Exbt-7 proves otherwise. A bare perusal of the document reveals that the deceased was earning ₹ 15,000/- (Rupees fifteen thousand) only, per month, for five years prior to the accident. His annual income therefore would amount to ₹ 1,80,000/- (Rupees one lakh and eighty thousand) only, per annum, hence clearly eliminating the Claim Petition from the ambit of Section 163A of the MV Act, if it was applicable.

(v) In view of the amendment in 2019 to the MV Act, there is no question of Section 163A of the Act being invoked and it is unfathomable as to why the Learned MACT commenced its Judgment with the observation that the Petition was one under Section 163A of the MV Act. Had the Learned MACT been cautious and perused the pleadings, this error could have been corrected at the inception, instead of making a choice of legal provisions sans legal sanction.

(vi) Apparently, application of judicial mind of the Learned MACT was lacking, as the error in the Claim Petition filed under Section "166A" of the MV Act was not taken note of and an erroneous observation made that the application was filed under Section 163A of the MV Act. There is no such provision in the MV Act, 1988 now. In such a circumstance, the Learned MACT cannot without seeking clarity from the party concerned, opt for the invocation and application of any section of the MV Act devoid of legal basis and decide to treat the Petition as one under Section 163A of the MV Act but strangely grant relief under Section 164 of the amended Act. The Learned MACT also failed to consider that, regardless of the error committed by the Appellant by filing the Claim Petition under a non-existent Section i.e., "Section 166A", nonetheless the Respondents had admittedly filed their responses, taking the Petition to be one under Section 166 of the MV Act. It appears that the Learned MACT failed to take stock of this situation and thereby was not in control of the proceedings before it.

(vii) Even if the observation of the Learned MACT that compensation under Section 163A of the MV Act would be much less than the amended Section 164 of the MV Act is to be considered it is

patently erroneous. Compensation under Section 163A of the MV Act is payable, as per the structured formula, in the Second Schedule of the unamended MV Act. In such circumstances, considering that the income of the deceased amounts to ₹ 1,80,000/- (Rupees one lakh and eighty thousand) only, per annum, the multiplier to be adopted would be "11" in view of the deceased being fifty-two years of age. The compensation so calculated, obviously without the non-pecuniary losses, would definitely not be less than that under Section 164 of the amended MV Act, which provides for ₹ 5,00,000/- (Rupees five lakhs) only, in case of fatality in the accident. The Learned MACT has clearly misdirected itself also in interpreting the provision of Section 163A.

(viii) That having been said, Section 164 of the MV Act (vide Amendment Act 2019) provides thus;

"164. Payment of compensation in case of death or grievous hurt, etc.-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, **a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.**

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section."

[emphasis supplied]

(ix) This provision, as per the amended Act, does not require the Claimants to plead or establish any wrongful act or neglect or

default of the owners of the vehicle or of any other person for payment of compensation. The liability is limited to payment of compensation of an amount of in case of death and ₹ 2,50,000/- (Rupees two lakhs and fifty thousand) only, in case of grievous hurt to the legal heirs or to the victims, as the case may be. It is further made clear that the compensation if payable under any other law, is required to be reduced from the amount of compensation payable under this Section. Section 164 of the amended Act (2019) has done away with the structured formula which was provided in the Second Schedule of the unamended Act, under which compensation was to be computed.

(x) In Paragraph 16 of the impugned Judgment, it is noticed that the Learned MACT has observed *inter alia* “Non obstinate (sic.) clause of Section 164A dispenses with proof of fault of any person including the deceased driver”. However, Section 164A does not commence with a “non-obstante clause” and deals with a scheme of interim relief for Claimants. It is Section 164 of the amended Act that commences with a “non-obstante clause”. The error in the impugned Judgment is thus being flagged. No petition under Section 164 of the MV Act had been filed by the Appellant/Claimant.

(xi) It thus becomes imperative now to discuss the provisions of Section 166 of the MV Act which is extracted hereinbelow;

“166. Application for compensation.— (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under section 159 as an application for compensation under this Act.

(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not."

(xii) While discussing this provision, beneficial reference is made to the observation of the Supreme Court in ***Oriental Insurance Co. Ltd. vs. Meena Variyal and Others***² held as follows;

"10. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured,

² (2007) 5 SCC 428

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when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. **Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made.**
”

[emphasis supplied]

(xiii) On the edifice of this ruling, it is seen that under Section 166 of the MV Act, rash and negligent act of the driver must be proved. The Claimant, who was not an eye-witness to the incident, deposed that, *“The said vehicle fell off approx 17 feet down the hill slope at Peshok Chapleti, Rangli Rangliot, after that they were evacuated and rushed to the District Hospital Kalimpong, West Bengal.”* The Respondents No.1 and 2 have not questioned the Appellant under cross-examination as to whether rash and negligent driving of the deceased led to the accident, thereby indicating acceptance of such a circumstance. The legislature in Section 279 of the Indian Penal Code, 1860, (Section 281 of Bharatiya Nyaya Sanhita, 2023), has defined rash and negligent driving and has used the words *“in a manner so rash or negligent as to endanger human life”*. The conditions for rashness and negligence, are the manner in which the vehicle was driven, i.e., rashly or negligently, and such act should endanger human life. Negligence, means, omission to do something which a reasonable and prudent person, guided by considerations, which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is thus a relative term, there is no precise mathematical method by which negligence

or lack of it can be gauged. Appositely, we may now look at the doctrine of *res ipsa loquitur* for the reason that undoubtedly in an action for negligence the legal burden of proof rests on the claimant, but barring exceptional cases, it may not be possible for the Claimant to specify the reasons for the accident. This maxim suggests that in the circumstances of a given case, the *res* speaks and is eloquent. Because the facts stand unexplained, the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some person's negligent conduct. In ***Mohammed Aynuddin alias Miyam vs. State of A.P.***³ the Supreme Court held as follows;

“8. The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer.”

Accordingly, the attendant circumstances of the instant accident indicate that there was rashness and negligence on the part of the deceased driver, which led to the accident, based on the inference that there are certain incidents which do not occur normally, unless there is the existence of negligence.

(xiv) Now, addressing the arguments pertaining to the age and income of the deceased, during the course of hearing, Learned Counsel for the Appellant conceded that, the age of the deceased, as fortified by documentary evidence, was indeed fifty-two years and not forty-six. The argument raised by Learned Counsel for the Respondent No.2 that, the income of the deceased ought to be

³ (2000) 7 SCC 72

computed in terms of the Sikkim Government Gazette (*supra*) is not tenable, in the teeth of Exbt-7 and his income therein being established as ₹ 15,000/- (Rupees fifteen thousand) only, per month. However, as correctly pointed out by Learned Counsel for the Respondent No.2, the future prospects to be added to the income of the deceased would be 10%, in view of the age of the deceased and in terms of the decision in **National Insurance Company Limited vs. Pranay Sethi and Others**⁴ where it was laid down as follows;

"59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. **An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation.** The established income means the income minus the tax component."
[emphasis supplied]

Indubitably, 50% is to be deducted from loss of income in view of the fact that only his aged mother was dependant on him.

8. In light of the above discussions, the Learned MACT having made an error in granting compensation under Section 164 of the MV Act as amended in 2019, for the detailed foregoing reasons, the compensation which is found to be "just compensation" under Section 166 of the MV Act, by this Court is computed as follows;

Annual income of the deceased (₹ 15,000/- x 12)	₹	1,80,000.00
Add 10% of ₹ 1,80,000/- as Future Prospects	(+)	₹ 18,000.00
[in terms of Paragraph 59.4 of the Judgment of <i>Pranay Sethi (supra)</i>]		₹ 1,98,000.00
Less 50% of ₹ 1,98,000/-	(-)	₹ 99,000.00
[in terms of Paragraph 32 of the Judgment of <i>Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another : (2009) 6 SCC 121</i>]		
Net yearly income	₹	99,000.00

⁴ (2017) 16 SCC 680

Multiplier to be adopted '**11**' (**₹ 99,000/- x 11**) ₹ 10,89,000.00
 [The age of the deceased at the time of death was '52' and the relevant multiplier in terms of Paragraph 42 as per Judgment of *Sarla Verma (supra)* is '**11**']

Add Funeral Expenses @ ₹ 18,150/- **(+)** ₹ 18,150.00
 [in terms of Paragraph 52 of the Judgment of *Pranay Sethi (supra)* and enhancement @ 10% in every three years
 Therefore, the figure calculated is as follows;
 ₹ 15,000/- @ 10% = 16,500/- and ₹ 16,500/- @ 10% = 18,150/-]

Add Loss of Estate @ ₹ 18,150/- **(+)** ₹ 18,150.00
 [in terms of Paragraph 52 of the Judgment of *Pranay Sethi (supra)* and enhancement @ 10% in every three years
 Therefore, the figure calculated is as follows;
 ₹ 15,000/- @ 10% = 16,500/- and ₹ 16,500/- @ 10% = 18,150/-]

Add Loss of Filial Consortium **(+)** ₹ 48,400.00
 [₹ 40,000/-, payable to Appellant, in terms of Paragraphs 21 and 24 of the Judgment of *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others : (2018) 18 SCC 130*]

[also in terms of Paragraph 52 of the Judgment of *Pranay Sethi (supra)* and enhancement @ 10% in every three years

Therefore, the figure calculated is as follows;
 ₹ 40,000/- @ 10% = 44,000/- and ₹ 44,000/- @ 10% = 48,400/-]

Total = ₹ 11,73,700.00

(Rupees eleven lakhs, seventy three thousand and seven hundred) only.

9. The Respondent No.2-Insurance Company is directed to pay the awarded compensation to the Claimant/Appellant, within one month from today, with simple interest @ 9% per annum, failing which, it shall pay simple interest @ 12% per annum, from the date of filing of the Claim Petition, i.e., 23-12-2022, till final realization. Amounts, if any, already paid by the Respondent No.2-Insurance Company to the Claimant/Appellant, for the instant Claim Petition, shall be duly deducted from the awarded compensation.

10. The Judgment of the Learned MACT is set aside and quashed.

11. Appeal allowed and disposed of accordingly.

12. No order as to costs.

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13. Copy of this Judgment be sent forthwith to the Learned MACT for information.

14. Copy of this Judgment also be sent to all the Learned MACTs in the State for perusal and guidance.

(Meenakshi Madan Rai)
Judge
17-04-2025

Approved for reporting : **Yes**

ds/sdl