2025:AHC:187154

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 2220 of 2025

National Insurance Company Limited, Through Its Branch Manager

.....Appellant(s)

Versus

Smt. Sudha Kumari And 6 Others

.....Respondent(s)

Counsel for Appellant(s) : Shrey Singh
Counsel for Respondent(s) :

AFR

Court No. - 38

HON'BLE SANDEEP JAIN, J.

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the insurance company of the offending Loader No.UP-75K-9134 against the impugned judgment and award dated 16.06.2025 passed by the Motor Accident Claims Tribunal, Etawah in MACP No. 14 of 2019, Smt. Sudha Kumari & others Vs. Sarvesh Kumar & another, whereby, compensation of Rs.5,70,000/- alongwith interest at the rate of 7% per annum has been awarded to the claimants for the untimely death of Nand Kishore (deceased) in a motor accident which occured on 12.11.2018, which was ordered to be indemnified by the appellant insurance company.

2. Factual matrix is that on 12.11.2018 at about 01.00 PM between village Killi and Ritauli, within the jurisdiction of police station Basrehar, District Etawah, the deceased Nand Kishore was waiting for a conveyance to go to his village by the roadside, then suddenly a herd of 4-5 cows came in front of the offending vehicle Loader No.UP-75K-9134 and in order to save them, the driver of the loader lost control of the vehicle, which hit the deceased, who was standing by the roadside and thereafter, the offending Loader overturned. The deceased was taken to the District Hospital, Etawah and from there he was taken to PGI Safai, where he died during treatment. Regarding the accident, a G.D. entry No.31 was recorded on 29.11.2018 in Police Station Basrehar, but the matter was not investigated.

3. The deceased was aged about 34 years at the time of the accident. He

used to sell vegetables and was earning Rs.3,300/- per month. The claimant filed claim petition under Section 163A of the Motor Vehicles Act, 1988 claiming compensation of Rs.7,42,000/-. The tribunal has awarded a fixed compensation of Rs.5 lacs towards loss of dependency, besides Rs.40,000/- towards loss of consortium and Rs.15,000/- each for loss of estate and funeral expenses. In all, the tribunal awarded Rs.5,70,000/-compensation alongwith interest @ 7% per annum, which has been ordered to be indemnified by the insurer of the offending vehicle.

4. In view of the above factual matrix, learned counsel for the appellant insurance company submitted that the accident was wholly doubtful because no FIR was registered and the information of the accident was given belatedly at police station Basrehar, as such, the tribunal could not have awarded any compensation to the claimants. He further submitted that under Section 164 of the Motor Vehicle Act, 1988 for no-fault liability, a maximum compensation of Rs.5 lacs is payable in death cases, but in addition to that, the tribunal has awarded Rs.70,000/- towards conventional heads, which is erroneous. With these submissions, it was prayed that the appeal be admitted and decided on merits.

5. I have heard learned counsel for the appellant and perused the impugned judgment and documents submitted with the appeal.

6. The appellant has annexed the copy of G.D. entry No.31 dated 29.11.2018 at 18.35 hours of P.S. Basrehar, District Etawah, which discloses that at the time of the accident the deceased was waiting by the roadside for the conveyance to go to his village and then, suddenly a herd of 4-5 cows emerged, who were trying to cross the road and in order to save them, the driver of the offending Loader lost control of the vehicle which hit the deceased and overturned, causing grievous injuries to the deceased, who was taken to the District Hospital, Etawah, and from there to PGI, Safai, where he died during treatment. In the G.D. entry itself, it is mentioned that there was no fault of anyone in this accident. It is apparent that the matter was not investigated by the police and as such, no charge sheet was submitted in the criminal court. In the postmortem examination and *Panchayatnama* of the deceased, accidental injuries were found on his body and the doctor opined that the deceased died due to the injuries suffered in the accident.

7. The Apex Court in the case of ***Ravi vs. Badrinarayan & Others (2011) 4 SCC 693***, while analyzing the delay in registering FIR in motor accident cases, held as under:-

"17. It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

18. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so the contents of the FIR should also be scrutinised more carefully. If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences.

19. Lodging of FIR certainly proves the factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be a variety of reasons in genuine cases for delayed lodgement of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."

8. The claimants examined the widow of the deceased Smt. Sudha Kumari as PW-1 and eye witness Bhagwan Das as PW-2. PW-1 very fairly admitted that she was not an eye witness of the accident. PW-2

deposed that he saw the accident which occurred on 12.11.2018 at 01:00 PM when the deceased was waiting by the roadside for conveyance to go to his village, then from the side of the village Killi, Loader No.UP-75-K-9134 came and at the same time some cows came in front of the offending Loader, and in order to save them, the driver of the loader lost control of the vehicle, which hit the deceased by the roadside and overturned. He deposed that he gave information to the police on number 100. The police came and took the deceased to District Hospital Etawah, from there he was referred to PGI Safai, where he died during treatment.

9. It is apparent that neither the owner nor the driver of the offending loader have appeared in the witness box to contradict the claim. No independent evidence has been led by the insurance company to dispute the factum of accident. Since this petition has been filed under Section 163-A of the Motor Vehicles Act, the claimants are not required to prove the negligence of the offending vehicle.

10. In view of the above evidence, the tribunal has not erred in concluding that the accident took place involving Loader No.UP-75K-9134 in which the deceased Nand Kishore died, due to the injuries suffered in the accident. According to the claimants there was no negligence of any person, as such, the FIR was not registered and only an information was given to the police station Basrehar on the basis of which G.D. Entry No.31 was recorded on 29.11.2018. In these facts, the claimants successfully proved the factum of accident and accordingly, the tribunal has not erred in fastening the liability on the insurer of the offending vehicle.

11. It is also apparent that the claim petition was filed under Section 163-A of the Motor Vehicles Act on 09.01.2019, the accident occurred on 12.11.2018. The tribunal considered that there is a notification No.S.O. 2022(E) of the Ministry of Road Transport and Highways dated 22.05.2018 which has amended the Second Schedule of the Act, which mandates that in a claim petition under Section 163A, in death cases, compensation of Rs.5 lacs is to be awarded and on the basis of this notification, in the instant case, the tribunal has awarded compensation of Rs.5 lacs. Besides this, the tribunal has awarded Rs.40,000/- towards loss of consortium and Rs.15,000/- each for loss of estate and funeral expenses. In this way, the tribunal has awarded a total compensation of

Rs.5,70,000/- to the claimants alongwith interest @ 7% per annum.

12. Learned counsel for the appellant insurance company has challenged the above compensation on the ground that the tribunal has erred in granting Rs.70,000/- under conventional heads and this could not have been granted to the claimants.

13. It is apparent that after an amendment by notification dated 22.05.2018 in Second Schedule of the Act, for death cases under Section 163A of the Motor Vehicles Act in no fault cases, the amount of compensation which is to be paid is Rs.5 lacs, but this section as well as the Second Schedule is silent as to whether compensation under other conventional heads can be granted or not. Subsequently, the Second Schedule was omitted w.e.f. 01.09.2019.

14. Rule 220-A of the Uttar Pradesh Motor Vehicles Rules, 1998(amended w.e.f 26.09.2011) reads as under:-

220-A. Determination of compensation.-*(1) The multiplier for determination of loss of income payable as compensation in all the claim cases shall be applied as per Second Schedule provided in the Act.*

(2) Deduction for personal and living expenses of a deceased, shall be as follows—

(i) The deduction towards personal expenses of a deceased unmarried shall be 50%. Where the family of a bachelor is large and dependent on the income of the deceased, the deduction shall be 1/3 (33.33%).

(ii) The deduction towards personal and living expenses of a married person deceased shall be 1 /3rd where dependent family members are 2 to 3 in number, l/4th where dependent family members are 4 to 6 in number and l/5th where dependent family members are more than 6 in number.

(iii) For the purpose of calculation of number of family members in clause (ii) a minor dependent will be counted as half.

(3) The future prospects of a deceased, shall be added in the actual salary or minimum wages of the deceased as under—

(i) Below 40 years of age : 50% of the salary.

(ii) Between 40-50 years of age : 30% of the salary.

(iii) More than 50 years of age : 20% of the salary.

(iv) When wages not sufficiently proved : 50% towards inflation and price index.

(4) The non-pecuniary damages shall also be payable in the compensation as follows-

(i) Compensation for loss of estate: Rs. 5000 to Rs. 10,000.

(ii) Compensation for loss of consortium: Rs. 5000 to 10,000.

(ii) Compensation for loss of love and affection: Rs. 5000 to Rs. 15,000.

(iv) Funeral expenses, costs of transportation of body; Rs. 5000 or actual expenses whichever is less.

(v) Medical expenses : actual expenses proved to the satisfaction of the Claims Tribunal.

(5) For determination of compensation in case of injuries, partial or permanent disability provisions of Second Schedule of the Act shall apply:

Provided that the Claims Tribunal may also award compensation for future prospects according to sub-rule (3) in case of permanent disability depending upon the nature, extent and its effect on the future of disabled claimants.

(6) The rate of interest shall be 7%pendente lite and future till the actual payment.

15. It is apparent that as per Rule 220-A(4) of the above Rules, in all cases, non pecuniary damages shall also be payable in the compensation, as follows-

(i) Compensation for loss of estate: Rs. 5000 to Rs. 10,000.

(ii) Compensation for loss of consortium: Rs. 5000 to 10,000.

(iii) Compensation for loss of love and affection: Rs. 5000 to Rs. 15,000.

(iv) Funeral expenses, costs of transportation of body; Rs. 5000 or actual expenses whichever is less.

(v) Medical expenses : actual expenses proved to the satisfaction of the Claims Tribunal.

16. There is no differentiation insofar as the payment of non pecuniary damages is concerned in claim cases filed u/s 166 or 163A or 164 of the Motor Vehicles Act, 1988. There is no specific bar that non pecuniary damages are not to be awarded in claim cases filed u/s 163A or 164 of the Motor Vehicles Act,1988.

17. The Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.(2018) 18 SCC 130*** has awarded

Rs.40,000/- each towards loss of spousal consortium, parental consortium and filial consortium, following the Constitutional Bench decision of the Apex Court in ***National Insurance Co. Ltd. vs. Pranay Sethi (2017) 16 SCC 680***.

18. When the above legal provisions and precedents are applied to the instant case, then, in accordance with Rule 220-A(4) of the above Rules, the claimants are entitled to the following compensation, as non pecuniary damages-

S.No.	**Heads**	**Compensation Awarded(in Rs.)**
1.	Compensation for loss of estate.	10,000/-
2.	Compensation for loss of spousal consortium @ Rs.10,000/- to the widow.	10,000/-
3.	Compensation for loss of parental consortium to five minor children of deceased @ Rs.10,000/- each.	50,000/-
4.	Compensation for loss of love and affection.	15,000/-
5.	Funeral expenses and costs of transportation of body.	5,000/-
	Total	90,000/-

19. In the instant case, the tribunal has only awarded Rs.70,000/- to the claimants towards non pecuniary damages, which is less than the amount of Rs. 90,000/- to which they are entitled, which cannot be reduced any further and cannot be said to be erroneous.

20. The Division Bench of this Court in the case of ***United India Insurance Co.Ltd. vs. Smt. Sawari & Ors.. FAFO No.614 of 2019*** decided on 20.09.2022 has held as under:-

15. The issue was further examined by Hon'ble the Supreme Court in ***National Insurance Company Limited v. Gurumallamma and others (2009) 16 SCC 43*** *wherein it was opined that in a proceeding under Section 163A of the Act the amount of compensation has to be assessed in terms of*

Second Schedule attached to the Act. Relevant paragraph 8 thereof is extracted below:-

"8. ..... 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 under Section 166 would not arise. The Tribunals in a proceeding under Section 163-A 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." (emphasis supplied)

16. In ***United India Insurance Co. Ltd. v. Sunil Kumar and others 2017 SCC Online SC 1443****, Hon'ble the Supreme Court while considering the question whether in a claim proceeding under Section 163A of the Act, it is open for the Insurer to raise the defence/plea of negligence, held following in paragraphs 7 and 8 which read as under:-*

7. As observed in Hansrajbhai V. Kodala (supra) one of the suggestions made by the Transport Development Council was "to provide adequate compensation to victims of road accidents without going into long drawn procedure." As a sequel to the recommendations made by the Committee and the Council, Section 140 was enacted in the present Act in place of Section 92A to 92E of the Old Act. Compensation payable thereunder, as under the repealed provisions, continued to be on the basis of no fault liability though at an enhanced rate which was further enhanced by subsequent amendments. Sections 140 and 141 of the present Act makes it clear that compensation payable thereunder does not foreclose the liability to pay or the right to receive compensation under any other provision of the Act or any other law in force except compensation awarded under Section 163A of the Act. Compensation under Section 140 of the Act was thus understood to be in the nature of an interim payment pending the final award under Section 166 of the Act. Section 163-A, on the other hand, was introduced in the New Act for the first time to remedy the situation where determination of final compensation on fault basis under Section 166 of the Act was progressively getting protracted. The Legislative intent and purpose was to provide for payment of final compensation to a class of claimants (whose income was below Rs.40,000/- per annum) on the basis of a structured

formula without any reference to fault liability. In fact, in Hansrajbhai V. Kodala (supra) the bench had occasion to observe that:

"Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever-increasing motor vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured-formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles."

8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

17. Again Hon'ble the Supreme Court in ***Ramkhiladi and others v. The United India Insurance Company and others (2020)2 SCC 550*** *has in*

paragraph 5.8 held as under:-

"5.8. ..... However, it is the case on behalf of the original claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. ..."

18. Similar view was expressed by the Division Bench of Calcutta High Court in ***The New India Assurance Company v. Jasmin Bibi FMAT No.769 of 2015****, decided on 2.3.2016 and Sikkim High Court in* ***The Branch Manager, Shriram General Insurance Company Limited v. Dilurai MAC Application No.10 of 2018,*** *decided on 4.4.2022 and Division Bench of this Court in* ***Oriental Insurance Company Limited v. Smt. Maya 2017(8) ADJ 92****.*

19. A perusal of the judgment of learned Single Judge in ***Smt. Jagdish Kumari's case*** *(supra), which has taken a different view than what has been taken by Hon'ble the Supreme Court in* ***Hansrajbhai V. Kodala's, Deepal Girishbhai Soni's, Gurumallamma's and Sunil Kumar's*** *cases (supra), shows that it had not considered the aforesaid judgments and held even for assessment of compensation under Section 163A, instead of structured formula, normal assessment is to be made. Whereas in* ***Asif's case*** *(supra), the learned Single Judge, after placing reliance on the aforesaid judgments of Hon'ble the Supreme Court, had granted compensation on the basis of structured formula as provided in Second Schedule attached to the Act.*

21. It is apparent that in the above judgment of the Division Bench, the effect of Rule 220-A of the Rules of 1998, the Constitutional Bench judgment of the Apex Court in the case of ***Pranay Sethi***(supra) and ***Magma General Insurance Co.Ltd.***(supra) has not been considered. The judgment also does not deal with grant of compensation under non pecuniary heads in claim petition filed u/s 163A of 164 of the Motor Vehicles Act,1988.

22. For the aforesaid reasons, the tribunal has not erred in awarding total compensation of Rs.5,70,000/- alongwith interest @ 7% per annum to the claimants, warranting interference from this Court in exercise of it's appellate jurisdiction.

23. **Accordingly, this appeal is meritless and is dismissed at the admission stage**. The impugned judgment and award of the tribunal dated 16.06.2025 is affirmed.

24. Office is directed to remit back the statutory deposit of Rs.25,000/- to the tribunal concerned, forthwith.

(Sandeep Jain,J.)

October 17, 2025
Himanshu

Digitally signed by :-
HIMANSHU YADAV
High Court of Judicature at Allahabad