West Bengal Form No. 3701.

HIGH COURT FORM NO. (J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE.

DISTRICT : MALDA.

IN THE COURT OF THE MOTOR ACCIDENT CLAIM TRIBUNAL, MALDA.

Present : **Shri Bhawani Shanker Sharma**
Additional District & Sessions Judge,
4th Court, Malda, (M.A.C. Tribunal),

M.A.C. Case/Suit No. 01/2018
U/S 163(A) M.V. Act

1. Uday Ghosh (Father of the deceased)
2. Mona Ghosh (Mother of the deceased) .... Claimants.

-Vs-

1. Marfat Sk (Owner of the offending vehicle)
3. New India Assurance Co. Ltd. (OP Insurance) ....Opposite Parties

Date of delivery of Judgment :- 15/02/2019.

J U D G M E N T

This is a case arising out of an application U/S 163(A) M.V. Act filed by Petitioners/Claimants against the Opposite Parties praying for compensation of Rs. 2,00,000/- (Rupees Two Lacs) due to the accidental death of their minor son namely Ankit Ghosh.

BRIEF FACTS

In brief, the petitioners' case is that on 07/02/2016 when the victim Ankit Ghosh was returning towards his house at that time one Maximo Van being No. WB-66N/7996 which came from behind with excessive speed and with rash and negligent manner and while the said vehicle reached near Naluka stand then the driver of the said vehicle could not control over his vehicle and dashed the victim.

It is the further case of the petitioners' that as a result of the said accident, victim Ankit Ghosh sustained multiple fracture and bleeding injuries on his person and immediately he was taken to Bhaluka Health Center and from there he was shifted to Malda Medical College and Hospital where he died.

It is the further case of the petitioners' that the Postmortem examination over the dead body of their son was held by the doctor of the Malda Medical College & Hospital.

According to the petitioners', the victim was a minor and all expectation of his family members nipped in the bud. The petitioners' have suffered from both pecuniary and non pecuniary loss for the unfortunate death of their minor son.

The petitioners' have prayed for compensation to the tune of Rs.2,00,000/-(Rupees Two Lacs) with 12 per cent interest from the date of application till realization.

<u>CASE OF OPPOSITE PARTIES</u>

The record reveals that OP No.1, owner of the offending vehicle namely Marfat Sk appeared in this case and filed his Written Statement, but latter on he did not contest the case as a result of which the case was heard exparte against him.

On the other hand OP No.2/New India Assurance company Ltd contested the case by filing written statement thereby denying each and every allegation as made in the claim petition thereby stating, inter alia, that the claim petition is not maintainable in its present form and formation and the claim is barred by limitation. The OP insurance further stated that the opposite party neither wholly nor partly liable in regard of any quantum of liability or any awarded amount of compensation.

The OP No.2/New India Assurance company Ltd prays for dismissal of the claim case.

Following issues were framed on 08/06/2018 on the strength of the pleadings of the respective parties which are as follows:-

<u>I S S U E S</u>

1) Is the case maintainable in the eye of law ?
2) Was there an accident arising out of the use of a motor vehicle in a public place ?
3) Was there an accident resulted in any death to a person ?
4) Whether the offending vehicle was duly covered under a valid insurance policy or not ?
5) Are the petitioners' entitled to get any compensation as prayed for ?
6) To what other relief / reliefs the petitioners' are entitled ?

EVIDENCE LED BY PARTIES

Claimants/petitioners examined one witness namely Uday Ghosh as PW-1.

DOCUMENTARY EVIDENCE

Following documents have been produced in evidence and are marked as exhibits on behalf of the petitioners' such as :-

Sl No.	List of documents	Marked as Exbt.
1.	Certified copy of formal FIR	Exbt. 1
2.	Certified copy of written complaint	Exbt. 2
3.	Certified copy of seizure list	Exbt.3
4.	Certified copy of charge sheet	Ext.4
5.	Certified copy of Postmortem report	Ext.5
6.	Xerox copy of Insurance policy	Exbt. 6
7.	Xerox copy of birth certificate of deceased	Exbt. 7

On the other hand, OP/ Owner and OP No 2. Insurance company did not adduce any oral or documentary evidence.

DECISION WITH REASON

It will be appropriate to discuss the findings on issues framed in this case and for the sake of convenience issue No. 1 is discussed hereunder :

Issue No.1:

This is a petition under section 163 A of the Motor Vehicle Act, 1988 wherein the owner or authorized insurer of motor vehicle is liable to pay compensation in an accident arising out of use of motor vehicle. The allegations as made in the petition and the documents filed viz FIR, charge sheet, Post Mortem report, seizure list makes it clear that the maintainability of the case goes undisputed. Nature of allegation, reliefs sought for and the contentions raised by the OP/ Owner and insurance company in their written statements and the evidence produced before the Tribunal in course of inquiry lead to me the conclusion that the case in the present form is maintainable.

The answer of Issue No. 1 is in affirmative form.

Issue No.2 to 6:

As the questions involved in the above issues are inseparable, connected with each other and also for the sake of convenience and brevity the above issues are taken up together for consideration and discussion.

Now, we have to see how far the petitioners have been able to prove that the alleged vehicle No. WB-66N/7996 was involved in such accident resulting into the death of the victim, from both oral and documentary evidences on record.

In order to discharge the burden, the petitioners have examined one witness namely Uday Ghosh, the petitioner No. 1 who is the father of the deceased. He stated in his evidence that on 07/02/2016 when his son namely Ankit Ghosh was returning towards his house at that time one Maximo Van being No. WB-66N/7996 which came from behind with excessive speed and with rash and negligent manner and while the said vehicle reached near Naluka stand then the driver of the vehicle could not control over his vehicle and dashed his son.

PW-1 further stated that as a result of the said accident his son namely Ankit Ghosh sustained multiple fracture and bleeding injuries on his person and immediately he was taken to Bhaluka health center and from there he was shifted to Malda Medical College and Hospital where he died.

PW-1 also stated in his evidence that the Post Mortem examination over the dead body of his son was held by the doctor of the Malda Medical College & Hospital.

He further stated that he and his wife are the only legal heirs and successors of their deceased son. He has claimed compensation to the tune of Rs. 2,00,000/- (Rupees Two Lacs) along with interest. PW-1 narrated the incident clearly before the court and corroborated the claim petition in toto.

During cross examination by the Ld. Advocate for the OP Insurance Company, he stated that the accident occurred in his presence and he saw the accident. He further stated that his child was six years old. He also stated in his cross examination that the driver of offending vehicle fled away. He also deposed that he could not file the case on the date of accident as he was under a severe trauma due to sudden unfortunate accidental death of his small kid as he was his youngest son. He further stated that he had two sons. He also stated he is a day labour.

He denied the suggestions put to him by the side of the ld. Lawyer for the OP Insurance.

PW1 has proved above documents, which are marked as Ext.1 to 7 respectively.

From the evidence of PW1 on oath, it is crystal clear that his son had died on account of road traffic accident which has been reinforced by way of production of the exhibited documents. In rebuttal thereof, contesting insurance company has declined to examine any witness on its behalf to prove that the death of Ankit Ghosh was natural, suicidal or homicidal in nature. OP/ Owner is ex parte and the prayer under section 170 of the Motor Vehicle Act was allowed in favour of OP/ Insurance.

Therefore, from the evidence of PW-1 and from the documentary evidences on record Ex 1 to Ex 7, it appears to me that the offending vehicle (Maximo Van) bearing no. WB-66N/7996 was involved in the said accident and due to such accident the victim Ankit Ghosh died.

This is the case of Section 163A MV Act. Hence, question of negligence or fault of the offending vehicle is not required to be proved by the claimants, but it is open to the owner or insurance company, as the case may be, to defeat a claim u/s 163A of the Act by pleading and establishing through cogent evidence a “fault” ground (“wrongful act” or “neglect” or “default”) in view of the observation of the Hon'ble Supreme Court of India as passed in **Civil Leave Petition (c) No. 6513 of 2007 (National Insurance Co. Ltd. Vs Sinitha & others) dated 23.11.2011.** In the aforesaid judgment the Hon'ble Supreme Court of India has been pleased to observe, inter alia, in para 16 of the said judgment which runs as follows :

“16. At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that Section 163A of the Act has an overriding effect on all other provisions of the Motor Vehicles Act, 1988. Stated in other words, none of the provisions of the Motor Vehicles Act which is in conflict with Section 163A of the Act will negate the mandate contained therein (in Section 163A of the Act). Therefore, no matter what, Section 163A of the Act shall stand on its own, without being diluted by any provision. Furthermore, in the course of our determination including the inferences and conclusions drawn by us from the judgment of this Court in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra), as also, the statutory provisions dealt with by this Court in its aforesaid determination, we are of the view, that there is no basis for inferring that Section 163A of the Act is founded under the “no-fault” liability principle. Additionally, we have concluded herein above, that on the conjoint reading of Section 140 and 163A, the legislative intent is clear, namely, that a claim for compensation raised under Section 163A of the Act, need not be based on pleadings or proof at the hands of the claimants showing absence of “wrongful act”, being “neglect” or “default”. But that, is not sufficient to determine that the provision falls under the “fault” liability principle. To decide whether a provision is governed by the “fault” liability principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or insurance company) by pleading and providing “wrongful act”, “neglect” or “default”. From the preceding paragraphs (commencing from paragraph 12), we have no hesitation in concluding, that it is open to the owner or insurance company, as the case may be, to defeat a claim under Section 163A of the Act by pleading and establishing through cogent evidence a “fault” ground (“wrongful act” or “neglect” or “default”). It is, therefore, doubtless, that Section 163A of the Act is founded under the “fault” liability principle. To this effect, we accept the contention advanced at the hands of the learned counsel for the petitioner."

In the present case, the owner of the offending vehicle was proceeded ex-parte and the insurance company except filing separate written statements did not venture to defeat the claim of the claimants u/s 163A of the Act by establishing through cogent evidence a "fault" ground ("wrongful act" or "neglect" or "default") that the accident in question had occurred solely and exclusively on account of the negligence of the deceased Ankit Ghosh and that it will not just and appropriate to award compensation, wherein the claimants represented the person responsible for the accident.

In absence of any cogent evidence brought on record by the OP Owner or OP Insurance, I am constrained to hold that both the opposite parties have failed to establish the "fault liability" principle as laid down by the Hon'ble Supreme Court of India.

It appears from the case record that after thorough investigation, Investigating Officer of this case has submitted charge sheet (Ex 4) against the driver of the offending vehicle bearing No. WB-66N/7996. The OP No. 2/Insurance has not denied that on the date of accident the offending vehicle was insured with it. It is also not pleaded and proved by it that on the date of accident, the driver of offending vehicle was not holding a valid and effective driving license or the owner was not having a valid permit and registration. Further from Ex 6, policy of insurance, it is proved that the offending vehicle was insured with OP No. 2/Insurance vide policy No. 51300031150100008888 from 14/09/2015 to 13/09/2016 and the accident took place on 07/02/2016.

The accident in this case took place on 07/02/2016 and as per the claimants their son Ankit Ghosh died on 07/02/2016 itself as appear from postmortem report No. 122/16 dated 08/02/2016 whereby the doctor conducting by postmortem has narrated the injuries suffered by the deceased and the cause of death has been opined as due to the effect of injuries stated in the PM report and which are antemortem in nature. The complaint was lodged on 01/04/2016 by the petitioner No. 1 mentioning therein that on 07/02/2016 the accident of his son was caused by the vehicle No. WB - 66N/7996 and in the written complaint Exbt 2 petitioner No. 1 has explained the cause of delay in lodging the FIR as that due to the sudden death of his son in the accident, he was mentally disturbed and lodged the complaint accordingly.

Next question arises whether the offending vehicle was duly covered by the valid insurance policy at the time of accident or not.

Insurance company particularly did not challenge the validity of the insurance policy. From the seizure list (exbt. 3) it appears to me that the Investigating Officer seized one insurance certificate of New India Assurance Co. Ltd. It also appears from the xerox copy of insurance policy (Exbt. 6) vide policy No. 51300031150100008888 in respect of vehicle No. WB-66N/7996 which was valid from 14/09/2015 to 13/09/2016 and the accident took place on 07/02/2016.

From the above discussion, it is very much clear that the offending vehicle was duly covered under a valid insurance policy issued by the OP No.2/New India Assurance Company Ltd.

Thus, issue No. 4 is decided in favour of the petitioner.

So this point is set at rest.

QUANTUM OF COMPENSATION

Now, it is to be seen as to what should be the quantum of compensation which can be termed as reasonable in the facts and circumstances of this case.

According to the petitioners, the victim was aged about 6 yrs at the time of his death as it reveals from the examination-in-chief filed by PW-1 and from the claim petition.

Per contra, ld. lawyer appearing for the claimants has contended that PW-1 has deposed in the court about the age of the victim on oath that he was 6 years old at the time of death. From the xerox copy of birth certificate of deceased (Ext.7), it will be evident that the date of birth of deceased Ankit Ghosh was 22/10/2010 and the accident occurred on 07/02/2016 and as per mathematical precession, the deceased was aged about 5 + years at the time of alleged accident and as such the petitioners will be entitled to get compensation as per second schedule and as such I accept the age of the victim falling up to 15 yrs and thereby accepting the appropriate multiplier. There is no documentary evidence regarding the point of income of the victim nor sufficient evidence is available to indicate that he was extra ordinary brilliant or had a special talent in a subject which is rarely found in a child of his age and hence, a bright future was assured. Similarly, there may be instances, where the victim is a precious child having regard to peculiar status of his parents, they occupy in their life there may also be cases, where the parents had invested huge amount of money for the upbringing of the victim or he was the only one to fall back upon in their old age. and there is no chance of having another child. As such in absence of such evidence on record this Tribunal has no other option but to arrive at a conclusion that the victim falls within the category of "non earning person" as he was minor at the time of accident and he was a student and the notional income of the deceased is assessed at Rs.15,000/- (Rupees Fifteen Thousand) p.a. which should be accepted as just and proper and accordingly the computation of income is gathered as follows:

After deducting Rs.5,000/- as 1/3 of his annual income of Rs.15,000/- the amount becomes Rs.10,000/- and in addition to that **as per decision of Hon'ble Apex Court reported in 2017 16 SCC 680, National Insurance Co. Ltd Vrs Pranay Sethi and Others** wherein the Hon'ble Apex Court has referred to various judgments and the constitution bench of Hon'ble Apex Court held in para 64 (VII) &(VIII) the age of the deceased should be the basis for applying the multiplier " reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs, 40,000/- and Rs. 15,000/- respectively. The aforesaid amount should be enhanced at the rate of 10 percent in every 3 years**.** Thus having regard to the law laid down by the constitution bench of Hon'ble Apex Court, the amount of compensation is to be calculated by taking the aforesaid figures as against funeral expenses, loss of estate in addition to the compensation to be awarded by applying the appropriate multiplier. The computation of income is arrived at in the following manner.

COMPUTATION OF COMPENSATION

Now, to ascertain the multiplier we should consider the age of the deceased who was about 5 + years old at the time of accident. Therefore, as per Second Schedule of the Act the multiplier will be 15.

So, the claimants are entitled to get compensation in the following manner :-

Income Per Year : Rs. 10,000/-

Multiplier i.e 15 as per schedule II.

Amount of compensation : Rs. 10,000 X 15 = Rs. 1,50,000/-

Funeral expenses : Rs. 15,000/-

Loss of Estate : Rs. 15,000/-

Total Amount of compensation : [Rs. 1,50,000/- + Rs. 15,000/-(Funeral expenses) + Rs. 15,000/- (Loss of estate)] = Rs. 1,80,000/- (One lacs eighty thousand only).

All the issues are disposed of accordingly in favour of the claimants.

In the result, the claim case succeeds.

Hence,

ORDERED

that the case be and the same is heard exparte against OP No. 1 the Owner of the offending vehicle bearing No. WB-66N/7996 namely Marfat Sk and allowed on contest against O.P. No.2/New India Assurance Co. Ltd being the insurer of the offending vehicle but without any order as to cost.

The petitioners are entitled to get compensation amounting to **Rs. 1,80,000/- (One lacs eighty thousand only)** along with interest @ 6 % per annum from the date of filing of the present case (02/01/2018) till realization.

OP No.2/New India Assurance Co. Ltd is directed to pay compensation to the tune of **Rs. 1,80,000/- (One lacs eighty thousand only) along with interest @ 6 % per annum from the date of filing of the present case ie (02/01/2018) by issuing 2 A/C payee cheques in equal share within ninety days from this date of order in default petitioners are at liberty to realize the awarded amount by way of filing execution.**

Deficit court fee be paid within seven days. The petitioners shall not be entitled to enforce this award until deficit court fee is paid.

Let a copy of this Judgment be supplied to the parties free of cost for information and necessary action.

B.C to note in the relevant register.

Record file be consigned to record room after necessary compliance.

Dict. & Corrt.
By me

(B.S.Sharma)
Judge, MACT
4th Court, Malda.

(Bhawani Shanker Sharma)
Judge, MACT
4thCourt, Malda.
15/02/2019