IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jyotirmay Bhattacharya
and
The Hon'ble Justice Tapash Mookherjee

F.M.A. No.49 of 2014
With
CAN 11105 of 2013
With
COT 89 of 2014

United India Insurance Co. Ltd.
Vs.
Shri Buro Mahara & Ors.

For the Appellant : Mr. Kamal Krishna Das, Adv.
: Mr. Parimal Kumar Pahari, Adv.
: Mr. Rajesh Singh, Adv.

For the Claimants/respondent Nos.1 & 2 : Mr. Santosh Kumar Das, Adv.
: Ms. Sima Ghosh, Adv.

Heard on : 29.01.2015, 09.02.2015 & 19.02.2015

Judgement on : 13th March, 2015.

JYOTIRMAY BHATTACHARYA,J:

This First Miscellaneous Appeal is directed against the judgement and/or award passed by the learned Additional District Judge/Motor Accident Claim Tribunal Judge, Birbhum at Rampurhat on 21st August, 2013 in Motor Accident Claim Case No.32 of 2012 at the instance of the Insurance Company. A cross-objection has also been filed by the claimants praying for enhancement of the compensation and for grant of interest under Section 171 of the Motor Vehicles Act.

The claimants are the parents of the victim who died in a motor accident which occurred on 22nd May, 2010 due to rash and negligent driving of the offending vehicle being No.WB02Z3357. The offending vehicle was insured at the relevant time under a policy of insurance issued by the United India Insurance Company Ltd. The claimants filed an application under Section 163A of the Motor Vehicles Act, 1988 claiming compensation on account of accidental death of their only son. As per the post-mortem report, the victim was aged about 21 years at the time of his death. He was unmarried. He was a Khalasi under Khurshid Alam. He used to receive salary @ Rs.3,000/- per month. The claimants estimated the loss of dependency on account of the accidental death of their son at Rs.5 lakhs. Accordingly, they claimed a sum of Rs.5 lakhs on account of compensation due to accidental death of their only son.

The Insurance Company contested the said proceeding by filing written objection denying the material allegations. The Insurance Company also questioned the maintainability of the said application in its present form and law.

The owner of the offending vehicle did not contest the said proceeding. As a result, the said proceeding was decided ex parte against the owner of the offending vehicle.

The learned Tribunal after considering the materials on record and the evidence of the parties came to the conclusion that the victim was aged about 21 years at the time of the accident. Considering the fact that even a daily labourer now a days can earn Rs.100/- per day, the learned Tribunal assessed the compensation payable to the claimants by accepting the monthly income of the deceased as Rs.3,000/- per month. Since the victim died bachelor, the average age of his parents was taken into consideration for the purpose of selection of the multiplier. The average age of the parents was 44 years at the time of the said accident, as such, 15 multiplier was selected by the learned Tribunal. While assessing the compensation payable to the claimants, 1/3rd of the annual income of the deceased was deducted from his total annual income on account of his

personal expenses which he had to spend had he been alive and thus a sum of Rs.3,60,000/-was held to be payable to the claimants on account of compensation. The learned Tribunal also held that in addition to the said sum of Rs.3,60,000/-, a further sum of Rs.4,500/- being statutory compensation, is payable to the claimants. Accordingly, the learned Tribunal directed the Insurance Company to pay a sum of Rs.3,64,500/- to the claimants on account of compensation due to accidental death of their son. Such payment was directed to be made to the claimants by issuing a joint Account Payee cheque within 60 days from the date of the award with a rider that in default of making such payment within the stipulated time, the said compensation amount will carry interest @8% p.a. from the date of filing of the claim petition till realisation thereof. The legality of the said judgement and award of the learned Tribunal is under challenge before us in this appeal as well as in the cross objection.

Basically two questions are raised before us in this appeal for our answer. Those are as follows:-

(1) While assessing compensation in a fatal accident case under Section 163A of the Motor Vehicles Act arising out of death of a bachelor, whether the age of the victim as on the date of his death or the average age of his parents being the claimants will be the relevant consideration for determining the multiplier?

(2) While assessing the compensation payable under Section 163A of the Motor Vehicles Act in a case where the victim was a bachelor, whether 1/3rd should be deducted from the total income of the victim on account of his personal expenses or ½ of his total income should be deducted from his total income on account of his personal expenses?

We are required to answer these two questions in the instant appeal.

We have heard the learned counsel appearing for the parties. By placing strong reliance upon the decision of the Hon'ble Supreme Court in the case of U.P State Road Transport Corpn –Vs- Trilok Chandra reported in 1996 (4) SC 362, Mr. K.K. Das submitted that selection of multiplier cannot in all cases be solely dependent on the age of

the deceased. He submitted that if a bachelor dies at the age of 45 years and his parents are aged about more than 70 years then the age of the parents would be the relevant consideration for choosing the multipliers. The life expectancy of the parents would be the real consideration for giving financial protection to them for the remaining period of their respective lives. In support of such submission he has also relied upon the following decisions of the Hon'ble Supreme Court as well as of this Hon'ble Court

(1) (2007)10 S.C.C 1 the New India Assurance Co. Ltd. –Vs- Shanti Pathak & Ors.

(2) (2007) 11 S.C.C 512 Oriental Insurance Co. Ltd. –Vs- Syed Ibrahim & Ors.

(3) (2008) 2 S.C.C 667 Ramesh Singh & Anr. –Vs- Satbir Singh & Anr.

(4) 2011 (1) TAC 4 (S.C) Shakti Devi –Vs- The New India Assurance Co. Ltd. –Vs-

(5) 2011 (3) TAC 625 (S.C) National Assurance Co. Ltd. –Vs- Shyam Singh

(6) 2014(2) TAC 932 (CAL) National Insurance Co. Ltd. –Vs- Mohini Kamila.

(7) 2013(2) TAC 439 CAL Fatema Bibi –Vs- Mohini Kamila.

(8) 2013 (2) TAC 451 (CAL) Renuka Sen @ Renu Sen & Anr. –Vs- Jagdish Pandey

(9) 2014(1) TAC 837 Chhaya Sarkar & Anr. –Vs- Oriental Insurance Co. Ltd.

By relying upon the decisions of the Hon'ble Supreme Court in the case of Sarala Verma –Vs- Delhi State Road Transport Corporation reported in 2009(6) SCC 121, Mr. K.K Das submitted that in case of a bachelor's death, half should be deducted from the total income on account of the personal expenses of the bachelor as the bachelor normally spends more for his livelihood and comforts than the married persons. In support of such submission Mr. Das also relied upon the following decisions.

(1) (2006) 3 SCC 242 (S.C) Bijoy KumarDugar –Vs- Bidyahar Dutta & Ors.

(2) 2011 (3) TAC 625 (S.C) National Insurance Co. Ltd. –Vs- Shyam Singh

(3) 2011(1) TAC 4 (S.C) Shakti Devi –Vs- the New India Assurance Co. Ltd.

(4) 2009(1) TAC 794 (S.C) Syed Baser Ahmed –Vs- Md. Jameel

(5) 2013 ACJ 1253 (S.C) Reshma Kumari & Ors. –Vs- Madan Mohan

(6) 2014(20 TAC 932 (CAL) National Insurance Co. Ltd. –Vs- Mohini Kamila

(7) 2013 (2) TAC 451(CAL) Smt. Renuka Sen –Vs- Jagdish Pandey.

Mr. K.K. Das by placing reliance upon the decision of the Hon'ble Supreme Court in Trilok Chandra's case (supra) submitted that when three Judges Bench of the Hon'ble supreme Court declared that the Second Schedule under Section 163A of the said Act is a defective one, the structured formula cannot be accepted as a ready reckoner for assessment of compensation payable to the claimants under 163 A of the said Act.

He thus, invited us to interfere with the impugned order.

We have considered the materials on record including the impugned order. Several judgements were cited at the Bar on the issues involved in this appeal. We have perused those judgements. Unfortunately, we find that the decisions of the Hon'ble Supreme Court as well as of different High Courts on these two issues are not uniform. Divergent conflicting views were expressed by Benches of equal strength of the Hon'ble Supreme Court creating problem for us to decide these issues. Still then let us try to solve the present problem in our humble way.

Prior to 14th November, 1994, the special provision as to payment of compensation on structured formula basis was unknown to the Motor Vehicles Act. In those days compensation used to be assessed by the Tribunal as per the provisions contained in Section 168 of the Motor Vehicles Act. Section 168 of the Motor Vehicles Act recognises payment of "just compensation" to the claimants who are entitled to receive such compensation as per Section 166 of the said Act on proof of the cause of death due to rash and negligent driving of the offending motor vehicle. In those days, there was no definite formula as to how such just compensation should be assessed. Two English decisions viz. Davies and Nance provided the guidelines for assessing the loss occasioned to the dependant heirs of the victim. Under the formula advocated by Lord Wright in Davies, the loss has to be ascertained by first determining the monthly income of the deceased and then deducting therefrom the amount spent on the deceased and then assessing the loss

to the dependents of the deceased. The annual dependency assessed in this manner is then to be multiplied by use of an appropriate multiplier. This method of assessment of compensation payable to the claimant was recognised in the Davies theory. Slightly different process was recognised by Viscount Simon in the case of Nance. According to the Nance theory, first the annual dependency is worked out and then multiplied by the estimated useful lifespan of the deceased. This is generally determined on the basis of longevity but then proper discounting on various factors having a bearing on the uncertainty of life, such as pre-mature death of the deceased or the dependants' re-marriage, accelerated payment and increased earning by wise and prudent investment, etc. would become necessary.

This method was generally felt to be complicated and cumbersome and as such very often by way of rough and ready measure, 1/3rd to ½ of the dependency was reduced depending on the life span taken. These were the reasons why the Courts in India as well as in England preferred the Davies formula as being simple and more realistic. Courts in India followed the same pattern till recently when Tribunals/Courts began to use a hybrid method of using Nance method without making deduction of imponderables.

This process of calculation of compensation has undergone a drastic change with the amendment of Motor Vehicles Act, 1988 whereby Section 163A was introduced making special provisions as to payment of compensation on structured formula basis. The said provision was introduced in the said Act of 1988 by way of amendment of the said Act with effect from 14th November, 1994. Since the present issue before us by and large depends upon interpretation of the provisions contained in Section 163A of the said Act, we feel that for proper understanding of the purports of the said Act, the provisions should be set out hereunder. Accordingly, we do so.

"**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.

(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.

163B. Option to file claim in certain cases.___Where a person is entitled to claim compensation under section 140 and section 163A, he shall file the claim under either of the said sections and not under both."

The provisions contained in section 163A of the said Act starts with a non obstante clause which provides that notwithstanding anything contained in this Act or in 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. The Hon'ble Supreme Court in the case of Deepal Girishbhai Soni and Ors. Vs. United India Insurance Co. Ltd., Baroda reported in 2004 SAR (Civil) 596 has described the said provision as a self contained code introduced in the Act by way of social security measure. The said provision can thus be construed as a self contained Code which is operative within its own frame without being controlled and/or guided by any other provision contained in the said Act or in any other law or instrument.

Let us now first of all consider as to whether assessment of compensation can be made comprehensively on the basis of the structured formula without taking aid of any other provision of the said Act or any other law or instrument. If it is found that such assessment is possible on the basis of the structured formula alone, then we should calculate such compensation on the basis of the structured formula by keeping our eyes shut to the other provisions of the said Act and the pronouncement thereon either by the Hon'ble Apex Court or by the different High Courts.

In order to get compensation under the said special provision, the claimants are not required to prove that death was caused or injury was suffered by the victim due to

rash and negligent driving of the motor vehicle. Payment of "just compensation" to the claimant is not contemplated under the special provision. Method of calculation of compensation in case of non-fatal accidental injury is provided in the structured formula introduced in the Second Schedule prepared under section 163A of the said Act. Payment of worked out compensation to the claimants of the victim in fatal accident cases is provided in the structured formula. Benefit under section 163A of the said Act was extended to the claimants of the victim whose income does not exceed Rs.40,000/- per year. In case of fatal accident, the mode of assessment of compensation is specified under Column Nos.1, 2 and 3 in the Second Schedule. In case of non-fatal accident, the mode of computation of assessment is provided in Column Nos.4, 5 and 6. Confusion was created by mentioning different multipliers corresponding to different age and income group of the victim, as the compensation payable to the claimants in case of fatal accident as mentioned in different horizontal columns corresponding to different age and income group of the victim does not match with the amount of compensation payable to the claimants as per the table, if the mode of calculation as prescribed in the said Schedule is applied with reference to the extant multiplier. This discrepancy and/or defect in the Second Schedule was noticed by the Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation and others Vs. Trilok Chandra and others reported in (1996)4 Supreme Court Cases 362. The Hon'ble Supreme Court thus held that though for maintaining uniformity in the assessment of compensation, the multipliers which are mentioned in the second column of the said Schedule corresponding to different age and income group of the victims can be accepted as a safe guide but the table cannot be accepted as a ready reckoner for assessment of compensation payable to the claimants. The Hon'ble Supreme Court also held that selection of multiplier cannot in all cases be solely dependent on the age of the deceased. An example was also given therein by way of clarification. It was mentioned therein that if the deceased being a bachelor dies at the age of 45 years and his dependents are his parents, age of the parents would also be relevant in the choice of multiplier. Thus the Hon'ble Supreme Court in the said decision held that

the age of the victim is and/or cannot be the sole guiding factor for determination of the multiplier. The principles as laid down in the said decision was followed in a number of cases cited by Mr. K.K. Das, learned advocate appearing for the Appellant, which are as follows:-

(1) In the case of Smt. Renuka Sen @ Renu Sen and Another Vs. Jagdish Pandey and Another reported in 2013 (2) T.A.C. 451 (Cal);

(2) In the case of Chhaya Sarkar and Another Vs. Branch Manager, Oriental Insurance Co. Ltd. and Another reported in 2014 (1) T.A.C. 837 (Cal.);

(3) In the case of National Insurance Company Ltd. Vs. Smt. Mohini Kamila and Others reported in 2014(2) T.A.C. 932 (Cal.);

(4) In the case of National Insurance Co. Ltd. Vs. Shyam Singh and Others reported in 2011 (3) T.A.C. 625 (S.C.);

(5) In the case of Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and Others reported in (2007) 11 Supreme Court Cases 512;

(6) In the case of New India Assurance Company Limited Vs. Smt. Shanti Pathak and Ors. reported in 2007 SAR (Civil) 748;

(7) In the case of Fatema Bibi and Another Vs. Oriental Insurance Co. Ltd. and Another reported in 2013 (2) T.A.C. 439 (Cal.);

(8) In the case of Bijoy Kumar Dugar V. Bidyadhar Dutta and others reported in 2006 ACJ 1058;

(9) In the case of Shakti Devi Vs. New India Insurance Co. Ltd. and Another reported in 2011 (1) T.A.C. 4 (S.C.) and

(10) In the case of Syed Basheer Ahamed & Ors. Vs. Mohd. Jameel & Anr. reported in 2009(1) Supreme 266.

We have considered all those decisions of the Hon'ble Supreme Court as well as of different High Courts very carefully. We have seen that those are the cases under Section 166 of the Motor Vehicles Act, which provides for grant of "Just Compensation" as per section 168 of the Motor Vehicles Act. Neither the Hon'ble Supreme Court nor the High Courts dealt with the claimant's claim for compensation under section 163A of the said Act in any of those cases. Of course, while deciding those cases, the Hon'ble Supreme Court as well as the High Courts held that for maintaining uniformity in the assessment of

"Just Compensation", the multipliers mentioned in the second column of the Second Schedule under section 163A of the said Act corresponding to different age groups of the victims can be accepted as a safe guide, but in none of those cases it was held that the mode of determination of quantum of compensation under section 163A and under Section 168 of the Motor Vehicles Act are same. In fact, in the case of Oriental Insurance Co. Ltd. Versus Meena Variyal and Others reported in (2007) 5 Supreme Court Cases 428, it was held by the Hon'ble Supreme Court that the mode of determination of the quantum of compensation under section 163A of the Motor Vehicles Act is different from the mode of computation of compensation payable under section 168 of the Motor Vehicles Act. It was further held therein that the Second Schedule in terms do not apply to the determination of compensation under section 168 of the said Act.

Following such findings of the Hon'ble Supreme Court, we have no hesitation to hold that the principles which were laid down by the Hon'ble Supreme Court as well as by the High Courts in those decisions cited by Mr. K.K. Das, learned advocate, have no application in the present case which is one under section 163A of the said Act. Section 163A of the said Act starts with a non obstante clause. It is a special provision for grant of compensation to a specified class of claimants where the income of the victim does not exceed Rs.40,000/- per annum, so that compensation can be paid to those claimants as quickly as possible without going through the complicated process of assessment of compensation as provided under section 168 of the said Act. In fact, a table was framed under section 163A of the said Act so that compensation can be paid to the claimants with reference to the various entries made in the table without going through the complicated process of computation of compensation. The said table provides for grant of worked out compensation in fatal accident cases on the basis of income group of the victim and their age group. Thus in the cases of fatal accident, computation of compensation by the Court is not necessary as the table itself provides for payment of worked out compensation with reference to different age group of the victims and their corresponding income group.

However, in case of non-fatal accident, compensation is required to be computed by finding out suitable multiplicant with reference to the provisions contained in Sl. Nos.4 to 6 in the Second Schedule and by multiplying the same with the multiplier mentioned in the second column of Second Schedule appropriate to the income and the age group of the victim. In this regard, reference may be made to the decision of the Hon'ble Supreme Court in the case of Reshma Kumari & Ors. v. Madan Mohan & Anr. reported in 2009 AIR SCW 6999 wherein the Hon'ble Supreme Court, after taking note of the earlier decisions of the Hon'ble Supreme Court including Trilok Chandra's case, held that though in Trilok Chandra's case the Hon'ble Supreme Court pointed out certain purported calculation mistake in the Second Schedule but in fact there is no mistake in the Second Schedule. The Hon'ble Supreme Court held in the said decision that amount of compensation specified in the Second Schedule only is required to be paid even if a higher or lower amount can be said to be the quantum of compensation upon applying the multiplier system. In Para 41 of the said decision it was held as follows:-

> "41. Section 163-A of the 1988 Act does not speak of application of any multiplier. Even the Second Schedule, so far as the same applies to fatal accident, does not say so. The multiplier, in terms of the Second Schedule, is required to be applied in a case of disability in non fatal accident. Consideration for payment of compensation in the case of death in a 'no fault liability' case vis-à-vis the amount of compensation payable in a case of permanent total disability and permanent partial disability in terms of the Second Schedule is to be applied by different norms. Whereas in the case of fatal accident the amount specified in the Second Schedule depending upon the age and income of deceased is required to be paid wherefor the multiplier is not to be applied at all but in a case involving permanent total disability or permanent partial disability the amount of compensation payable is required to be arrived at by multiplying the annual loss of income by the multiplier applicable to the age of the injured as on the date of determining the compensation and in the case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) of the Second Schedule."

Similarly, in another decision of the Hon'ble Supreme Court, in the case of National Insurance Co. Ltd. V. Gurumallamma and another reported in 2009 ACJ 2660 the Hon'ble Supreme Court held as follows:-

> "7. Section 163-A was inserted by Act 54 of 1994 as a special measure to ameliorate the difficulties of the family members of a deceased who died in use of a motor vehicle. It contains a *non obstante* clause. It makes the owner of a motor

vehicle or the authorised insurer liable to pay in the case of death, the amount of compensation as indicated in the Second Schedule to his legal heirs. The Second Schedule provides for the amount of compensation for third party fatal accident/injury cases claims. It provides for the age of the victim and also provides for the multiplier for arriving at the amount of compensation which became payable to the heirs and legal representatives of the deceased depending upon his annual income. The Second Schedule furthermore provides that in a case of fatal accident, the amount of claim shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred upon himself, had he been alive. It provides for the amount of minimum compensation of Rs.50,000/-. It furthermore provides for payment of general damages as specified in serial No. 3 thereof.

8. Multiplier *stricto sensu* is not applicable in the case of fatal accident. The multiplier would be applicable only in case of disability in non-fatal accidents as would appear from the serial No.5 of the Second Schedule. Thus, even if the application of multiplier is ignored in the present case and the income of the deceased is taken to be Rs.3,300/- per month, the amount of compensation payable would be somewhat between Rs.6,84,000/- and Rs.7,60,000/-. 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. Tribunal 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."

On perusal of those two decisions of the Hon'ble Supreme Court we find that those are the cases where the Hon'ble Supreme Court dealt with the application under section 163A of the said Act. The Hon'ble Supreme Court in those decisions uniformly held that there was no mistake in the Second Schedule framed under section 163A of the said Act. It was further held therein that in case of fatal accident, question of determination of payment of compensation by application of judicial mind is not necessary as the table itself is very much comprehensive and it provides for grant of worked out compensation to the claimants depending upon the age group and the income group of the victim. However, in case of non-fatal accident, application of judicial mind is necessary for calculation of compensation payable to the claimant. As such, in case of non-fatal accident, calculation is required to be made with reference to the multipliers mentioned in the second column of the table corresponding to the age group and income group of the victim with special reference to the provisions contained in Sl. Nos.4 to 6 of the Second Schedule. We feel that the views which were so expressed by the Hon'ble Supreme Court in those two decisions are sound, reasonable and acceptable as we have also verified the table provided in the

Second Schedule in the same line as it was done by the Hon'ble Supreme Court in those two decisions and found no mistake therein. Let us now elaborate as to how we have tested the correctness of the table. For example, in a case of fatal accident where a victim was aged about 15 years and his income was Rs.3,000 p.a then as per the worked out compensation provided in the table, a sum of Rs.60,000/- is payable to the claimants. Thus, we find that in such cases appropriate multiplier would be 20. Thus if this multiplier of 20 is applied for working out the compensation payable to the claimants, where the victim was aged about 15 years and had his income of Rs.4,200/- p.a. as mentioned in the next horizontal column then we find that Rs.84,000/- was payable to the claimants. Similarly, we find that by using 20 multiplier, compensation payable to the claimants of 15 years old victim having annual income of Rs.5,400/- will be Rs.1,80,000/- . In this way we have verified the correctness of the worked out compensation provided in the said table corresponding to different age groups and the income groups of the victims and we find that there is no mistake at all in the worked out compensation payable to the claimants in case of fatal accident inasmuch as the computed amount of compensation arrived at, by applying a common multiplier appropriate to the age and income group of the victim exactly matches with the corresponding worked out compensation mentioned in the table. Thus after considering those two decisions of the Hon'ble Supreme Court it appears to us that there is no mistake in the Second Schedule and in view of the non-obstante clause contained in section 163A of the said Act, compensation payable to the claimants under section 163A of the said Act, in our considered view, can only be assessed with reference to the table mentioned in the Second Schedule strictly. In this regard we may refer to our earlier decision delivered on 6th January, 2015 in the case of F.M.A. 4444 of 2014 (National Insurance Co. Ltd. V. Smt. Chandi Banerjee & Anr.) wherein we held as follows:-

> "In the structure formula, we do not find any reference of selection of the multiplier with reference to the age of the claimant. As such, we hold that while assessing the compensation under Section 163A of the Motor Vehicles Act, multiplier should be selected with reference to the age of the victim and not with reference to the age of the claimant."

We still maintain the said view.

We have also considered the decisions of the Hon'ble Supreme Court which were cited by Mr. K.K. Das, learned advocate, to support his submission that the average age of the parents should be taken into consideration for the purpose of assessment of compensation payable to the claimants when the victim was a bachelor. All the decisions which were cited by Mr. Das in this regard excepting one i.e. in the case of Ramesh Singh and another V. Satbir Singh and another reported in 2008 ACJ 814, were under section 168 of the said Act. We have already mentioned above that section 168 of the Motor Vehicles Act provides for payment of "just compensation". "Just compensation" means payment of an amount equivalent to the exact loss of dependency. Assessment of exact loss of dependency depends upon various factors. When a bachelor dies leaving his/her aged parents, loss of dependency can be assessed with reference to the year of expected longevity of the parents. Thus, in such cases multipliers are to be selected on the basis of average age of the parents. This is necessary for assessment of "just compensation" payable under section 168 of the said Act. However, the concept of payment of "just compensation" is absent in section 163A of the said Act. Section 163A of the said Act provides for payment of worked out compensation mentioned in the table itself under Second Schedule in cases of fatal accident. As such, in fatal accident cases no further assessment is necessary. The Court is only required to direct payment of worked out compensation to the claimants depending upon the age group of the victim and his corresponding income per annum. However, in case of non-fatal accident calculation of compensation payable to the claimant is necessary and such calculation is required to be made by following the method as mentioned above. If the table as mentioned in the Second Schedule is considered then also it goes without saying that in case of non-fatal accident, assessment of compensation payable to the claimant is required to be made with reference to the age of the victim irrespective of the ages of the dependant claimants as the said provision is totally silent on the age of the claimants and/or the dependent heirs of

the victim being a consideration for grant of compensation under section 163A of the said Act. As such, we conclude by holding that in case of non-fatal accident, compensation should be assessed by applying the multipliers as mentioned in the second column of the table with reference to the age group of the victim and his corresponding annual income and in case the victim had no income at the time of his death, then by accepting the notional income as provided in the Schedule itself.

Before parting with, we like to mention here that we have also perused the decision of the Hon'ble Supreme Court in the case of Ramesh Singh & Anr. V. Satbir Singh & Ors, cited by Mr. K.K. Das, learned Advocate. In fact, it is the solitary decision wherein the Hon'ble Supreme Court held that even in case of a claim under Section 163A of the Motor Vehicles Act, the average age of the parents is a relevant consideration for assessment of compensation when the victim dies bachelor. Such conclusion was drawn by the Hon'ble Supreme Court by following the law laid down in New India Assurance Company Ltd. Vs. Charlie reported in 2005 ACJ 1131(S.C.). We have examined Charlie's case. That was a case under Section 168 of the Motor Vehicles Act. That was not a case under Section 163A of the Motor Vehicles Act. We are still at a loss to understand as to how the principles laid down in Charlie's case were applied in Ramesh Singh's case which was a claim case under section 163A of the Motor Vehicles Act. We have already mentioned above that the method of computation of compensation under these two provisions of the said Act is different from each other. Under section 168, "just compensation" is payable, but under section 163A compensation is payable as per the structured formula. Since section 163A starts with a non-obstante clause, mode of assessment of compensation cannot be guided by the provisions of section 168. Section 163A is a self-contained code. As such, compensation should be computed as per the structured formula without being guided by any other provision contained in the said Act or any other law for the time being in operation. In our considered view, the principles laid down in Ramesh Singh's case, cannot be accepted as a law declared by the Hon'ble Apex Court, as such declaration is contrary to the provision of the Act itself.

Let us now consider the other issue which is raised before us i.e. whether 1/3rd or ½ will be deducted from the total annual income of the victim on account of his personal expenses in case the victim dies bachelor. Though a number of decisions were cited by Mr. Das, learned advocate, viz.

(1) Chhaya Sarkar and Another Vs. Branch Manager, Oriental Insurance Co. Ltd. and Another (Supra);

(2) National Insurance Company Ltd. Vs. Smt. Mohini Kamila and Others (Supra);

(3) Fatema Bibi and Another Vs. Oriental Insurance Co. Ltd. and Another (Supra); and

(4) Shakti Devi Vs. New India Insurance Co. Ltd. and Another (Supra),

to support his contention that ½ of the income of the deceased should be deducted from his total income, when the deceased was a bachelor, on account of his personal expenses, but we find that those are the authorities under section 168 of the Motor Vehicles Act where there was ample scope of assessment of "just compensation" by the Court depending upon various circumstances. But in case of assessment of compensation payable to the claimants under section 163A of the said Act we cannot input those provisions as the Second Schedule itself provides for deduction of 1/3rd from the total income of the deceased on account of his personal expenses. Thus, deduction of 1/3rd from the total income of the victim on account of his personal expenses is statutorily approved in the section itself. As such, there is hardly any scope to hold that in case of death of a bachelor, 50% can be deducted from the total income of the deceased on account of his personal expenses, if the victim dies bachelor. We have drawn this conclusion as it is well settled that Court has no jurisdiction to legislate and/or to override the legislative provision. In this regard reference may be made to the following decisions of the Hon'ble Supreme Court which were cited by Mr. S.K. Das, learned Advocate of the Respondent/Cross-objector:-

(1) Prabhudas Damodar Kotecha & Ors. Vs. Manhabala Jeram Damodar & Anr. reported in 2013 SAR (Civil) 991;

(2) Union of India & Anr. Vs. Manik Lal Banerjee reported in (2007)1 WBLR (SC) 841;

(3) Union of India and another Vs. Deoki Nandan Aggarwal reported in AIR 1992 Supreme Court 96;

(4) Rohitash Kumar & Ors. Vs. Om Prakash Sharma & Ors. reported in 2012 SAR (Civil) 890.

Thus we conclude by holding that while assessing compensation payable to the claimants under section 163A of the said Act when a victim dies bachelor, 1/3rd should be deducted from his total income on account of his personal expenses, as deduction of 1/3rd from the total income of the victim is statutorily recognised.

We fully agree with the identical views expressed by the other Division Bench of this Hon'ble Court in the case of F.M.A. No.158 of 2007 National Insurance Company vs. Chhabirani Samanta & Anr. (unreported), wherein Their Lordships by referring to Paragraph 25 of Sarala Verma's case, expressed their inability to accept the contention of the Insurance Company that the Tribunal ought to have deducted 50% from the victim's income on account of his personal expenses, as he died bachelor. Their Lordships held that in such a case, the deduction cannot exceed the statutorily fixed one-third limit. The note appended to Column No.1 in the Second Schedule framed under Section 163A of the said Act, may be considered in this regard. When the law framing authority prescribes the deduction limit in the statute itself, the Courts cannot prescribe a different deduction limit by overriding the statutory provision. Thus we feel that re-calculation of the compensation payable to the claimants in the instant case is necessary in the following manner:-

Having regard to the fact that the victim was aged about 21 years at the time of his death and he had annual income of Rs.36,000/-, the claimants were entitled to get the

worked out compensation as per the table amounting to Rs.6,48,000/- and in addition thereto the claimants are also entitled to a sum of Rs.4,500/- on account of statutory compensation. Thus the claimants are entitled to get a sum of Rs.6,52,500/-. The Insurance Company is thus directed to pay the said compensation amounting to Rs.6,52,500/- together with interest @6% p.a. thereon from the date of filing of the claim petition till realisation thereof.

We are informed that the compensation awarded by the Tribunal amounting to Rs.3,64,500/- has already been deposited by the Insurance Company in Court and the said amount has been invested in fixed deposit with a nationalised bank and the invested amount together with accumulated interest thereon are still lying in the said deposit. We do not find anything on record as to whether any part of such deposit was allowed to be withdrawn by the claimants/respondents. Accordingly, we direct the Insurance Company to pay the entire compensation together with interest to the claimants within six weeks from date. In the event it is found that any part of the awarded compensation has already been paid to the claimants, then the Insurance Company will pay the said amount of compensation to the claimant minus the amount already paid to them and/or withdrawn by them within six weeks from date. Such payment should be made to the claimants by the Insurance Company by following the same mode as prescribed by the learned Tribunal in the impugned order. Liberty is given to the Insurance Company to withdraw the amount, if any, still lying in deposit in this Court in connection with this appeal after complying with the necessary formalities thereof. The impugned order is thus modified. Appeal stands dismissed. The cross-objection is allowed. Both the appeal and the cross-objection are disposed of accordingly.

Urgent Photostat copy of the judgement and order, if applied for, be given to the parties after compliance of usual formalities.

(Jyotirmay Bhattacharya, J.)

Tapash Mookherjee ,J:-

I agree.

(Tapash Mookherjee, J.)