

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 4th APRIL, 2022

**DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

MAC App. No.10 of 2018

Appellant : The Branch Manager,
Shriram General Insurance Company Limited

versus

Respondents : Dilu Rai and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Rahul Rathi, Advocate for the Appellant.

Mr. Tarun Choudhury, Advocate for the Respondents No.1 to 5.

Mr. Dilli Bahadur Pradhan, Advocate for the Respondent No.6.

Mr. Sudesh Joshi, Advocate with Mr. Yadev Sharma and Mr. Sujan Sunwar, Advocates for the Bar Association of Sikkim.

None present for the Sikkim High Court Bar Association.

J U D G M E N T

Meenakshi Madan Rai, J.

1(i). This matter has wound its way to this Court on account of the differing opinions expressed, on the aspect of addition of Future prospects to compensation on a Claim Petition filed under Section 163A of the Motor Vehicles Act, 1988 (for short, "M. V. Act"), by two Benches of coordinate strength, comprising of the then Hon'ble Chief Justices, sitting singly, at different points in time.

(ii) A Single Bench of the then Hon'ble Chief Justice (Jain, C.J.), in ***The Branch Manager, Bajaj Allianz General Insurance***

Co. Ltd. vs. Rita Thapa (Manger) and Others¹, decided an Appeal impugning the award of the Learned Motor Accidents Claims Tribunal which *inter alia* computed "Future prospects" and "Taxi fare" in the compensation in a Claim Petition filed under Section 163A of the M. V. Act. The Single Bench in Appeal allowed compensation under the said heads but reduced the amount under the head "Future prospects" while the amount for "Taxi fare" remained unchanged.

(iii) Contrarily, in **The Branch Manager, National Insurance Co. Ltd. vs. Smt. Sujita Newar and Others²**, another Bench comprising of the then Hon'ble Chief Justice (Sinha, CJ.) while considering the award granted by the Learned Motor Accidents Claims Tribunal in a Claim Petition under Section 163A of the M. V. Act, which included "loss of non-pecuniary damages" computed at Rs.1,00,000/- (Rupees one lakh) only, opined that compensation was to be paid strictly as per the Second Schedule to the Act and set aside the amount granted under the head of non-pecuniary damages.

(iv) Reiterating this position, in **The Branch Manager, National Insurance Company Ltd. vs. Thinlay Chewang Lachenpa and Others³**, the Single Bench of the then Chief Justice (Sinha, CJ.), held that heads like "Future prospects and Transportation" do not find place in the Second Schedule and setting aside the amounts granted under the said heads, held that in a Claim under Section 163A of the M. V. Act the amount awarded under such heads is incorrect.

¹ MAC App. No.02 of 2014 decided on 01-05-2014 : MANU/SI/0014/2014 (Sikkim)

² Mac App. No.21 of 2014 decided on 07-04-2015 : 2015 SCC OnLine Sikk 69 (Sikkim)

³ MAC App No.19 of 2014 decided on 21-04-2015 : 2015 (2) TAC 714 (Sikkim)

2. In view of the differing opinions of two Benches of coordinate strength of this Court, as reflected hereinabove, a Single Bench of this Court dealing with an Appeal where the Learned Motor Accidents Claims Tribunal in a Claim Petition under Section 163A of the M. V. Act deviated from the structured formula of the Second Schedule to the Act and included Future prospects, compensation for Love and affection and Litigation costs to the total compensation, deemed it apposite to refer this matter to a larger Bench, for determination of the question, viz.,

(i) *Whether in a Claim Petition under Section 163A of the Motor Vehicles Act, 1988 this Court is to strictly adhere to the structured formula in the Second Schedule of the Motor Vehicles Act, 1988, as held in the decisions of **Sujita Newar** (supra) and **Thinlay Chewang Lachenpa** (supra) or whether it can venture beyond the structured formula as held in the decision of **Rita Thapa** (supra) for the purposes of computing compensation in a motor vehicle accident in which the victim meets fatality?*

3. Briefly summarized, the factual background of the instant matter is that on 22-05-2017 a Claim Petition under Section 163A of the M. V. Act was filed before the Learned Motor Accidents Claims Tribunal, South Sikkim, at Namchi, by the widow, two minor children, widowed mother and a physically challenged brother of the victim driver Roshan Rai, aged about 32 years, who passed away in a motor vehicle accident. The deceased driver was driving a Tipper Truck on 21-05-2016 from Namchi to Tingley, South Sikkim, when the accident occurred and he succumbed to his injuries on the spot. The vehicle was insured with the Appellant herein from 14-06-2015 to 13-06-

2016. The total compensation sought was Rs.14,57,840/- (Rupees fourteen lakhs, fifty seven thousand, eight hundred and forty) only, as the victim was earning a monthly salary of Rs.3,300/- (Rupees three thousand and three hundred) only.

4(i). The Learned Motor Accidents Claims Tribunal, vide the impugned Judgment, dated 27-04-2018, in MACT Case No.05 of 2017 (*Smt. Dilu Rai and Others vs. The Branch Manager, Shriram General Insurance Company and Another*), granted a total compensation of Rs.10,16,860/- (Rupees ten lakhs, sixteen thousand, eight hundred and sixty) only, calculated under the following heads;

(i)	Loss of earnings	:	Rs.7,06,860/-
(ii)	Funeral expenses	:	Rs. 15,000/-
(iii)	Loss of estate	:	Rs. 15,000/-
(iv)	Love and affection	:	Rs.2,50,000/-
(v)	Litigation Costs	:	Rs. 25,000/-
(vi)	Loss of Consortium:		<u>Rs. 5,000/-</u>

Total Rs.10,16,860/-

(ii) While calculating Loss of earnings, the Learned Motor Accidents Claims Tribunal also added 40 per cent of the monthly income as Future prospects of the deceased to the compensation besides computing Litigation costs of Rs.25,000/- (Rupees twenty five thousand) only, and compensation for Loss of love and affection calculated at Rs.2,50,000/- (Rupees two lakhs and fifty thousand) only, *supra*.

5. Aggrieved by the impugned Judgment and Award, the Branch Manager, Shriram General Insurance Company was before this Court in Appeal before a Single Judge in MAC App. No.10 of 2018.

6(i). The arguments advanced by Learned Counsel for the Appellant in the MAC Appeal *supra*, before the Single Bench *inter alia* were that in a Claim Petition under Section 163A the Learned Motor Accidents Claims Tribunal is required to determine and limit the amount of compensation as specified in the Second Schedule of the M. V. Act as held by this Court in ***Sujita Newar (supra), Thinlay Chewang Lachenpa (supra) and The Branch Manager, National Insurance Co. Ltd. vs. Karma Bhutia and Others***⁴. That, the Second Schedule of the M. V. Act made no provision for compensation under non-pecuniary heads. That, in view of the above settled position of law, the quantum of compensation be modified exempting the heads aforesaid in the impugned Judgment, which are not envisaged under the Second Schedule of the M. V. Act.

(ii) Repelling the contentions advanced by the Learned Counsel for the Appellant, Learned Counsel for the Respondent Nos.1 to 5, contended that the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and Others***⁵ has formulated a standardised calculation of compensation for Claim Petitions both under Section 163A and Section 166 of the M. V. Act. That, in view of this position, Future prospects granted by the Learned Motor Accidents Claims Tribunal in the impugned Judgment does not suffer from any infirmity. Further, that in view of Section 168 of the M. V. Act the compensation should be 'just' and 'reasonable' and the award of Rs.10,16,860/- (Rupees ten lakhs, sixteen thousand, eight

⁴ MAC App No.11 of 2015 decided on 03-03-2016 : 2016 (2) TAC 812 (Sikkim)

⁵ (2017) 16 SCC 680

hundred and sixty) only, granted to the Claimants fulfilled this criteria. That, the Hon'ble Supreme Court in **R. K. Malik and Another vs. Kiran Pal and Others**⁶ granted Future prospects in a Claim filed under Section 163A of the M. V. Act, in consonance whereof this Court in **Rita Thapa (supra)** similarly awarded Future prospects in a Claim Petition filed under Section 163A of the M. V. Act. Strength was also garnered from the decision in **Reshma Kumari and Others vs. Madan Mohan and Another**⁷. That, no infirmity arises in the Litigation costs and Future prospects correctly computed and granted by the Learned Motor Accidents Claims Tribunal in the impugned Judgment.

(iii) Learned Counsel for the Appellant in rebuttal contended that the Judgment relied on by the Respondent Nos.1 to 5 in **R. K. Malik (supra)** is not applicable to the facts and circumstances of the present case as the issue involved therein was with regard to the notional income of children who were victims of a motor vehicle accident.

(iv) After giving due consideration to the submissions, the Single Bench in MAC App. No.10 of 2018 referred to the Second Schedule of the M. V. Act and the previous Judgments of the Court on Section 163A of the M. V. Act as discussed *supra* in **Rita Thapa, Sujita Newar and Thinlay Chewang Lachenpa** and in view of the differing opinions thereof, referred the matter to a larger Bench. Vide Order dated 26-06-2021, the Division Bench issued notice to the Members of the Bar, who were requested to

⁶ AIR 2009 SC 2506

⁷ (2013) 9 SCC 65

address the Court on the issue, if they so desired. The matter was taken up for hearing on 09-03-2022.

7(i). Learned Counsel for the Appellant, while reiterating the arguments placed earlier before the Single Bench of this Court (extracted *supra*) walked this Court through the ratio in ***Deepal Girishbhai Soni and Others vs. United India Insurance Co. Ltd., Baroda***⁸ with specific attention to the legislative intent and history of Section 163A of the M. V. Act. It was argued that the matter of insertion of Section 163A by the Act 54 of 1994 has been discussed elaborately as also the objects and reasons of the Motor Vehicles (Amendment) Act, 1994. That, Paragraph 51 of the said Judgment in no uncertain terms elucidates the scheme envisaged under Section 163A, and leaves no doubt that in terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs.40,000/- (Rupees forty thousand) only, or less is covered thereunder, whereas Sections 140 and 166 cater to all sections of society. That, it was further observed that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the Court should not expand the scope of the Statute on the pretext of extending the statutory benefit to those who are not covered thereby. That, the object underlying the statute is required to be given effect by applying the principles of purposive construction.

(ii) That, the decision in ***Reshma Kumari*** (*supra*) relied on by Learned Counsel for the Respondents No.1 to 5 before the

⁸ (2004) 5 SCC 385

Learned Single Bench, was one under Section 166 of the M. V. Act wherein Future prospects were indeed admissible for computation of compensation. That, the ratio clarifies that Claimants are given an option of selecting two remedies provided under the Motor Vehicles Act either under Section 163A or under Section 166. That, by incorporating Section 163A in the 1988 Act the Claimants are not required to establish wrongful act of the owner of a motor vehicle. That, the insurer shall be liable to pay compensation on a structured formula basis as indicated in the Second Schedule of the Act. That, an award under Section 163A is to be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. To drive home this point, Learned Counsel for the Appellant also averred to the decision of ***National Insurance Company Ltd. vs. Gurumallamma and Another***⁹. That, in light of the observations of the Hon'ble Supreme Court in the various Judgments *supra* the question of addition of Future prospects in a claim petition under Section 163A does not arise.

(iii) Learned Counsel for the Respondents-Claimants No.1 to 5 while repudiating the arguments *supra* and reiterating the arguments advanced before the Learned Single Judge in MAC App. No.10 of 2018 contended that in ***Puttamma and Others vs. L. K. Narayana Reddy and Another***¹⁰ the Supreme Court has specifically held that the Second Schedule, enacted in 1994, has now become redundant, irrational and unworkable due to the

⁹ 2009 (9) Scale 764

¹⁰ (2013) 15 SCC 45

changed scenario including the present cost of living, current rate of inflation and increased life expectancy. Hence, based on these observations it can safely be assumed that the Second Schedule is no longer required to be strictly adhered to and that "just compensation" would also be applicable to the Second Schedule and "Future prospects" ought to be included while computing compensation under Section 163A of the M. V. Act. The attention of this Court was also invited to the decision in **R. K. Malik** (*supra*) on the basis of which the decision in **Rita Thapa** (*supra*) was arrived at.

8. Learned Advocate appearing for Respondent No.6 submitted that no reliefs were sought from him, hence he had no submissions to put forth.

9. Mr. Sudesh Joshi, Learned Counsel appearing for the Bar Association of Sikkim, in his argument contended that Section 166 arises out of a "Fault Liability" while Section 163A deals with "Strict Liability". Learned Counsel would elucidate that when Claimants opt for compensation under Section 163A there is no requirement for them to establish who the fault lay with, whereas proof of the rash and negligent act is required under Section 166. Section 168 of the M. V. Act which deals with "Just Compensation" falls into place only on a petition being filed under Section 166, while clothing the Court with discretion to compute "just compensation" adding Future prospects. That, invoking Section 168 in a Petition under Section 163A as urged by Counsel for the Respondents would require an amendment to the Act. While referring to the ratio in **Pranay Sethi** (*supra*) it was

contended that the Supreme Court referred specifically to Section 168 in the decision thereby indicating that it was dealing with a Petition under Section 166 of the Act and not one under Section 163A. That, compensation in a Claim Petition under Section 163A cannot be awarded over and above the Schedule provided in the Act.

10. Learned Counsel for the parties were heard at length and their submissions duly considered. The Judgments cited at the Bar have been keenly perused.

11. It is no longer *res integra* that compensation to be granted under Section 166 and Section 163A of the M. V. Act differ from each other and the remedies under Section 163A and Section 166 are distinct based on different legal regimes. Section 163A deals with payment of compensation on a structured formula basis, on the principle of 'strict liability' where the Claimant is not required to plead or establish that the death or permanent disablement in respect of which the Claim was 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. While on this point, it would be worthwhile to refer to the background of the insertion of Section 163A into the Act.

12. In the Eighty-Fifth Report on Claims for Compensation under Chapter 8 of the Motor Vehicles Act, 1939, of the Law Commission of India, May, 1980, in Chapter 3, Liability without fault, two new measures were proposed (i) introduction of Section 92A in the Motor Vehicles, Act, 1939, by which the doctrine of no fault liability was to be introduced and

(ii) imposition of strict liability on death or bodily injury caused by an accident as specified in Section 110(1) of the same Act. Section 92A and 92B whereby "no fault liability" was inserted in the M. V. Act of 1982 with provision of Rs.15,000/- (Rupees fifteen thousand) only, in case of death and a sum of Rs.75,000/- (Rupees seventy five thousand) only, in respect of permanent disablement. Section 92A to Section 92E of the 1939 Act were replaced by Section 140 to Section 144 of the M. V. Act of 1988. The amount of compensation in case of death was raised to Rs.50,000/- (Rupees fifty thousand) only, and for permanent disablement to Rs.25,000/- (Rupees twenty five thousand) only. A Review Committee was constituted by the Government of India in 1990 and in view of the recommendations of the Review Committee and the Transport Development Council, the Act was amended in 1994 whereby Section 163A came to be inserted for payment of compensation on no fault basis or strict liability on a structured formula. At this juncture, it is clarified that there is no necessity for this Court to enter into a prolix discussion on Section 166 and Section 140 of the M. V. Act or its insertion by way of amendment and its consequent implications. We will confine ourselves to the provisions of Section 163A of the M.V. Act and the reference made to this Court.

13. The origin of the theory of strict liability as envisaged under Section 163A of the M. V. Act, for hazardous activities can be traced to the Judgment of Blackburn J., in **Rylands** vs.

Fletcher¹¹. In November, 1861, Fletcher brought an action against Rylands and Horrocks, to recover damages for an injury caused to his mines by water overflowing into them from a reservoir which the Defendants had constructed. Blackburn J., held the Defendant owner to be liable holding that the 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 the natural consequence of its escape.

14. In *Union of India vs. Prabhakaran Vijaya Kumar and Others*¹² the Supreme Court observed that strict liability focuses on the nature of the Defendant's activity rather than, as in negligence, the way in which it is carried on. That, there are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. That, in cases where the principle of strict liability applies, the Defendant has to pay damages for injury caused to the Plaintiff even though the Defendant may not have been at any fault. It was further held that the basis of the doctrine of strict liability is twofold; (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate (ii) it operates as a loss distribution mechanism, the person who does such

¹¹ (1866) LR 1 Ex 265

¹² (2008) 9 SCC 527

hazardous activity being in the best position to spread the loss via insurance and higher prices of its products.

15. In *Deepal Girishbhai Soni (supra)* the question that arose before the Hon'ble Supreme Court on appeal was whether a proceeding under Section 163A of the M. V. Act is a final proceeding and the Claimant who is granted compensation thereunder is debarred from making a Claim under Section 166 of the Act as well. The Supreme Court *inter alia* held that the provisions of Section 163A of the M. V. Act was inserted by way of a social security scheme and is a Code by itself. It was elucidated therein that it appears from the Objects and Reasons of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act, several representations and suggestions were made by the State Governments, transport operators and members of the public in relation to certain provisions thereof. Taking note of the observations made by the various Courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a Review Committee. The Review Committee in its report made the following recommendations *inter alia* that the 1988 Act provides for enhanced compensation for hit-and-run cases as well as for no-fault-liability cases. It also provides for payment of compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. That, proposals had been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the

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claimant, the vehicle-owner as well as the insurance company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different classes of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb, etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels. That, the recommendations of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their views pursuant whereunto several sections were amended. Section 163A was inserted in the Act to provide for payment of compensation in motor accident cases in accordance with the Second Schedule providing for the structured formula which may be amended by the Central Government from time to time. That, Section 140 of the Act dealt with interim compensation but by inserting Section 163A, Parliament intended to provide for the making of an award consisting of a predetermined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The amendment was, thus, a deviation from the common law liability under the law of torts and was also in derogation of the provisions of the Fatal Accidents Act. That, the Act in no uncertain terms suggested that a new device was sought to be evolved so as to grant a quick and efficacious relief

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to the victims falling within the specified category. The heirs of the deceased or the victim in terms of the said provisions were assured of a speedy and effective remedy which was not available to the claimants under Section 166 of the Act. That, Section 163A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs.40,000/- (Rupees forty thousand) only, having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, would be in full and final settlement of the claim as shall appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any

other fault arising out of use of a motor vehicle. The Judgment went on to explain that under Section 163A the compensation is required to be determined on the basis of a structured formula whereas in terms of Section 140 only a fixed amount is to be given. That, the scheme envisaged under Section 163A left no doubt that by reason thereof the rights and obligations of the parties were to be determined finally. The amount of compensation payable under the aforementioned provisions was not to be altered or varied in any other proceedings neither did it contain any provision providing for set-off against a higher compensation, unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs.40,000/- (Rupees forty thousand) only, or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society. It was opined that the remedy for payment of compensation both under Sections 163A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163A or under Section 166 of the Act, but not under both.

16. Later in time in 2009, *Gurumallamma (supra)* a two Judge Bench opined that;

"5. 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 the 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.

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6. 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.

7. The Second Schedule furthermore provides that in a case of fatal accident, the amount of claim shall be reduced by one-third 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 Note 3 thereof.

8.

9. The 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.”

17. In *Puttamma (supra)* a two Judge Bench while dealing with a claim petition under Section 166 of the M.V. Act in Appeal observed that the Second Schedule was redundant, irrational and unworkable and suggested that the Central Government amend the Second Schedule.

18. In *Reshma Kumari (supra)* the Supreme Court again reiterated what had been held in *Deepal Girishbhai Soni (supra)* and observed that;

“**13.** The 1988 Act gives a choice to the claimants to seek compensation on structured formula basis as provided in Section 163-A or make an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 under Section 166:

.....

13.2. By incorporating Section 163-A in the 1988 Act, Parliament has provided the remedy for payment of compensation notwithstanding anything contained in the 1988 Act or in any other law for the time being in force or instrument having the force of law, that the owner of a motor vehicle or authorised insurer shall be liable to pay

compensation on structured formula basis as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of motor vehicle.

13.3. The peculiar feature of Section 163-A is that for a claim made thereunder, the claimants are not 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 or owners of the vehicle concerned. The scheme of Section 163-A is a departure from the general principle of law of tort that the liability of the owner of the vehicle to compensate the victim or his heirs in a motor accident arises only on the proof of negligence on the part of the driver. Section 163-A has done away with the requirement of the proof of negligence on the part of the driver of the vehicle where the victim of an accident or his dependants elect to apply for compensation under Section 163-A. When an application for compensation is made under Section 163-A the compensation is paid as indicated in the Second Schedule. The Table in the Second Schedule has been found by this Court to be defective to which we shall refer at a little later stage."

19. These observations unequivocally clarify that compensation under Section 163A is based on strict liability, in other words the requirement of proof of negligence on the part of the driver is done away with under Section 163A. So far as reliance on **Pranay Sethi** (*supra*) by Learned Counsel for Respondents No.1 to 5 is concerned, we are in agreement with Learned Counsel appearing on behalf of the Bar Association of Sikkim and reliance by Learned Counsel for the Respondents No.1 to 5 on the ratio is a misconception of the law. The ratio observes *inter alia* that the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the M. V. Act. It needs no reiteration that the Supreme Court has clearly spelt out as evident from the decisions cited *supra* that compensation

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to be computed under Section 163 of the M. V. Act is on the structured formula as it is based on no fault liability. Once a person invokes the provisions of Section 163A, the question of inclusion of pecuniary compensation for non-tangibles and future prospects does not arise. The ratio in **R.K. Malik (supra)** which adverts to the decision in **Lata Wadhwa and Others vs. State of Bihar and Others**¹³ holds no relevance herein as those matters were concerned with deaths of minors who were non-earning members.

20. In light of all the foregoing discussions, we hold that under Section 163A Future prospects or any other additional non-pecuniary heads find no place and compensation in a Claim Petition under Section 163A of the M. V. Act is to be strictly computed on the structured formula provided in the Second Schedule to the Act. The reference stands answered accordingly.

21. The matter be sent back to the Court of the Learned Single Judge for disposal as per law.

(**Bhaskar Raj Pradhan**)
Judge
04-04-2022

(**Meenakshi Madan Rai**)
Judge
04-04-2022

Approved for reporting : **Yes**

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¹³ (2001) 8 SCC 197