

IN THE SUPREME COURT OF INDIA**CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO OF 2025****(Arising out of SLP (C) No. 883 of 2020)****BHAGYA & ORS.****... APPELLANT****VERSUS****K.M. SURYA & ORS.****... RESPONDENTS****O R D E R**

1. Leave granted.

2. Present appeal is filed by the claimants being dependents of deceased-Krishna seeking compensation in a motor accident claim case. The deceased was working as a driver in Karnataka State Road Transport Corporation (hereinafter referred as 'KSRTC') and died while driving a KSRTC Bus.

3. It is not in dispute that initially claim petition was filed under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred as 'MV Act'), and on filing an application for amendment, the claim petition was converted under Section 163A of MV Act. After conversion, claimants could not incorporate necessary amendments

because it was decided on the same day. The Motor Accident Claims Tribunal (hereinafter referred as 'Tribunal') proceeded in the case and computation of compensation was made applying the principles of Section 166 of MV Act, and determined the amount of Rs. 6,05,112/- with interest @ 8% p.a. accepting his income as Rs. 5000/- per month.

4. Aggrieved against the award of Tribunal, the insurance company filed an appeal, in which the High Court vide impugned judgment set aside the award and compensation, firstly on the ground that after conversion of claim petition from Section 166 to Section 163A, the claimants failed to incorporate necessary amendment. Secondly, claimants have received compensation of Rs. 10,00,000/- as well as pension upon the death of the deceased. Thirdly, the FIR was lodged against the deceased himself and the record of criminal case indicated that accident was caused by his own negligence.

5. We have heard learned counsel for parties, and perused the record. It is no longer *res integra* that in a claim petition filed under Section 163A of MV Act, the issue of negligence of the deceased cannot be raised by

insurance company. [the judgments of ***United India Insurance Company Limited Vs. Sunil Kumar & Another*** (2017 SCC OnLine SC 1443) and ***Shivaji Vs. Divisional Manager, United India Insurance Company*** (2019) 12 SCC 395 can be looked up for said proposition]. Therefore, in the present case, when the Tribunal had allowed the conversion of claim petition from Section 166 to Section 163A of MV Act, insurance company cannot be permitted to raise a plea of negligence on the part of deceased being driver of the bus or the accident had occurred due to his negligence. Therefore, we are not in agreement with the findings recorded by the High Court in this regard.

6. On perusal of the record, it is also clear that the order in application for allowing the conversion of claim petition from Section 166 to Section 163A of MV Act and judgment by the Tribunal was pronounced on the same day. As per Order VI Rule 18 of Code of Civil Procedure, 1908, when an application of amendment is allowed, the same shall be incorporated within the time as specified in the order, or otherwise within 14 days. In the present case, the judgment was pronounced on the same day on which the amendment was allowed. Therefore, when time to

incorporate amendment has not been specified in the order allowing the amendment the applicant(s) having outer limit of 14 days to carry out the claim petition could not have been disposed of. In such circumstances, findings recorded by the High Court with respect to non-incorporation of amendment are not proper. Therefore, by setting aside the impugned judgment, and applying the formula as specified in Second Schedule of the MV Act, the amount of compensation requires to be computed treating the claim petition as having been filed under Section 163A of the MV Act.

7. From the above discussion, it is clear that the claim was converted from Section 166 to 163A of MV Act and in such a case, the factum of negligence is not required to be pleaded and proved. The compensation is required to be calculated based on the structured formula specified in the Second Schedule of the MV Act. Thus, applying the same, upon taking the maximum income of Rs.40,000/- per annum, ignoring the actual salary of the deceased employee and deducting $1/3^{\text{rd}}$ as personal expense, the loss of dependency would come to Rs. 26,667/- per annum. On the date of accident, the age of deceased was 45 years,

to which appropriate multiplier would be of 15, as such total loss of dependency comes to Rs.4,00,005/-. Further, if we add Rs.15,000/- under conventional heads, the total compensation payable comes to Rs.4,15,005/-.

8. Accordingly, substituting the award of the Tribunal, the compensation to the tune of Rs.4,15,005/- is awarded by setting aside the judgment of the High Court. The said amount shall carry interest @ 8% p.a., as awarded by the Tribunal, from the date of filing of the claim petition till realization, and same shall be paid within eight weeks from the date of communication of this order.

9. Accordingly, the appeal is allowed in part in above terms. Pending application(s), if any, shall stand disposed of.

....., J.
[J.K. MAHESHWARI]

....., J.
[ARAVIND KUMAR]

New Delhi;
April 28, 2025.

ITEM NO.48

COURT NO.6

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 883/2020

[Arising out of impugned final judgment and order dated 09-10-2015 in MFA No. 3620/2013 passed by the High Court of Karnataka at Bengaluru]

BHAGYA & ORS.

Petitioner(s)

VERSUS

K.M. SURYA & ORS.

Respondent(s)

Date : 28-04-2025 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Petitioner(s) : Mr. C.B. Gururaj, Adv.
Ms. Ilashree Gaur, Adv.
Mr. Prakash Ranjan Nayak, AOR

For Respondent(s) : Mr. Ashish Kumar Tiwari, AOR
Mr. Anurag Tiwari, Adv.
Mr. Sahib Patel, Adv.

Mr. Maibam Nabaghanashyam Singh, AOR

Mr. Hemant Kumar Sagar, Adv.
Mr. Shailendra Singh, Adv.
Mr. Subhash Chandra Sagar, Adv.
Mr. E. C. Vidya Sagar, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
 2. The appeal is allowed in terms of the signed order.
- Pending application(s), if any, shall stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(NAND KISHOR)
ASSISTANT REGISTRAR

(Signed order is placed on the file)