2025 INSC 919

Non-reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(CIVIL) NOS.15447-48 OF 2024

WAKIA AFRIN (MINOR)

...PETITIONER

VERSUS

M/S NATIONAL INSURANCE CO. LTD.

...RESPONDENT

O R D E R

1. The petitioner, a minor, was before the Motor Accident Claims Tribunal[1], Cuttack claiming compensation under Section 163A of the Motor Vehicles Act, 1988[2] for the death of both her parents in a motor-vehicle accident. The unfortunate accident occurred when the vehicle dashed against a road side building, it

[1] "the MACT, for brevity"
[2] "the Act"

having gone out of control due to a tyre burst, Four persons travelling in the vehicle, two of whom were the parents of the petitioner, died in the accident. The petitioner who was two years old then, was represented by her aunt in the claim petition. The MACT allowed the claim and awarded a compensation of Rs.4,08,000/- for the death of the petitioner's mother and Rs.4,53,339/- for the death of the petitioner's father. The owner of the vehicle was the petitioner's father and before the Tribunal as also the High Court, he was shown as the first respondent with the clear recital that he was dead. The second respondent was the Insurance Company. The High Court found that a dead person cannot be made a defendant and hence, the claim petitions were not maintainable. However it was also categorically found that there was no dispute about the validity of the insurance policy and it has to be stated that the vehicle was driven by a person who held a valid licence.

2. Insofar as the ground on which the claim petitions were found to be not maintainable by the High Court, useful reference can be made to Section 155 of the Act. Section 155 provides that even if the insured dies after the happening of an event which gave rise to a claim, it shall not be a bar to the survival of any cause of action arising out of the said event, against the insurer. The event which gave rise to the claim is the accident and the death occurred after the event; albeit a direct result of the accident. A third party claim for compensation would definitely survive since, on the death of the insured it would lie against his estate, which the insurer has an obligation to indemnify. The insurer, hence, can defend any claim against the insured, which the insurer has the liability to indemnify in accordance with the policy issued. The ground stated by the High Court definitely is not tenable. However, herein the question arises as to whether the petitioner, who is the daughter of the owner

of the vehicle has the right to claim compensation for the death of the owner of the vehicle, when the claim is raised under Section 163A of the Act, requiring no proof of negligence leading to the accident, resulting in the death or injury suffered.

3. The compelling contention of the Insurance Company is that the petitioner who is the sole heir of the owner, having succeeded to the estate of the owner of the vehicle who died in the accident cannot at the same time, be the person who has the liability and the recipient of the compensation. The liability to compensate on the death of the owner falls on his estate; which the claimant succeeds to and there cannot be any further compensation on the loss of dependency, is the argument.

4. We have already found that Section 155 enables the claim to be filed and prosecuted even after the death of the owner of the vehicle, if there is a valid insurance

policy, which would put the insurer in the shoes of the owner who would be able to take all contentions available to the insured, to defend the claim; in addition to any dispute on the validity or enforceability of the policy. Insofar as the claim raised against the mother is concerned, we are clear in our minds that it has to be admitted and the award under Section 163A passed by the Tribunal has to be restored. What remains is the liability with respect to the death of the owner which we see from the insurance policy produced as Annexure P-1, is limited for the owner-driver to Rs.2 lakhs. Whether the liability of the insurer can be confined to that provided in the policy or it can be determined under Section 163A would also be an issue before us.

5. On the liability under Sections 163A & 166, in the absence of a third party claim, a number of decisions were placed before us, which we will have to refer to.

Dhanraj v. New India Assurance Co. Ltd.[3], found that an Insurance Policy under Section 147 of the Act does not require the insurer to assume the risk of death or injury on the body of the owner of the vehicle, since the policy issued only indemnifies the insured against liabilities incurred towards a third person or in respect of damages to property. That was a case in which the appellant was travelling in his own jeep and suffered injuries in pursuance to an accident. The driver of the jeep was held responsible for the accident by the Tribunal and the challenge was against the direction to the insurer to pay compensation to the owner/claimant. Extracting Section 147 and referring to ***Oriental Insurance Co. Ltd. v. Sunita Rathi***[4], it was held that Section 147 covers only the liability towards a third person or in respect of damages to property. When the owner of the vehicle, the insured, has no liability to a third party, the Insurance Company

[3] (2004) 8 SCC 553
[4] (1998) 1 SCC 365

also does not have any liability. A premium paid under the head "own damage" was held to be a premium on the vehicle and the non-electrical accessories not relatable to the personal injury of the owner/injured.

6. Immediately we have to notice that ***Sunita Rathi***[4] relied on in ***Dhanraj***[3] only considered whether the insurer had any liability to indemnify the owner when the motor accident occurred prior to the issuance of the insurance policy; in that case a few minutes before. The observation that the liability of the insurer arises, only when the liability of the owner is proved, to indemnify the insured under the contract of insurance, was in the context of there existing no valid policy at the time of accident, and not under Section 163A.

7. In ***National Insurance Co. Ltd. v. Laxmi Narain Dhut***[5], the question considered was whether principles

[5] (2007) 3 SCC 700

laid down in ***National Insurance Co. Ltd. v. Swaran Singh***[6], with reference to fake licenses were applicable even to third party claims. While finding that Section 149 applies only to third party risks, the principles in ***Swaran Singh***[6] that any condition taking away the rights of third parties are void, was reaffirmed; not really relevant for the issue arising herein.

8. ***Oriental Insurance Co. Ltd. v. Jhuma Saha***[7]***,*** was a case in which the owner, while driving an insured vehicle swerved the vehicle to save a goat and dashed against a tree causing injuries *inter-alia* to the owner-driver. The claim under Section 166 of the Act was held to be not maintainable, relying on ***Dhanraj***[3]***.***

9. ***Oriental Insurance Co. Ltd. v. Rajni Devi***[8] was concerned with an application under Section 163-A of the Act. Two persons were riding in a motorcycle which went

[6] (2004) 3 SCC 297
[7] (2007) 9 SCC 263
[8] (2008) 5 SCC 736

out of control resulting in an accident in which one of the riders was killed. There was no evidence as to who was in the driver's seat and the claim was resisted by the insurer on the ground that the cover of personal insurance cannot be invoked in the case of a pillion rider and in any event the owner of the vehicle is not a third party within the meaning of Section 147 of the Act; into whose shoes the driver steps in. Though Section 163A was noticed, reliance was placed on ***Dhanraj***[3] and ***Jhuma Saha***[7] which dealt with claims under Section 166 of the Act. It was held that under Section 163A of the Act the liability is on the owner of the vehicle and a person cannot be both *'the claimant and also a recipient'* (sic); presumably meaning the same individual who has the liability cannot be the recipient of the compensation.

10. ***New India Assurance Co. Ltd. v. Sadanand Mukhi***[9] considered the claim of the owner of the vehicle

[9] (2009) 2 SCC 417

arising from the death of his son while riding the vehicle, which was insured in the father's name. The specific contention taken by the insurer was that given the relationship of the owner and the deceased, the latter was not a third party. The claim petition was under Section 166 of the Act and it was specifically observed by the Court that it is not a case of invocation of Section 163A (sic - para 12); leading to an inference that then, the decision would have been otherwise. Relying on ***Jhuma Saha***[7] and ***Oriental Insurance Co. Ltd. v. Meena Variyal***[10] the claim under Section 166 was disallowed.

11. ***Meena Variyal***[10] was a case in which a Regional Manager was driving the vehicle owned by his employer-company which met with an accident leading to his death. The claimants though alleged that another person was driving the vehicle, failed to implead the said

[10] (2007) 5 SCC 428

person; who in fact was the first informant which information was also to the effect that the accident occurred while the deceased was driving the vehicle. The Tribunal absolved the Insurance Company on the ground that the policy did not cover an employee driving the vehicle and directed the owner of the car to pay the compensation. The claimants filed an appeal in which this Court found that the application under Section 166 would not be maintainable since the deceased was not a third party and an Insurance Policy under Section 147(1), in addition to a third party would not cover the liability in respect of death or injury arising out and in the course of the employment of an employee of the insured unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver or a conductor in the case of a public service vehicle or otherwise the owner of the goods carried in a goods vehicle or his representative. It was found that under

Section 166, the claimants would not have a case, in both instances of the deceased being an employee, having driven the vehicle or having travelled in the vehicle; the deceased being an employee not covered by the Workmen's Compensation Act. It was held that the liability of the insured owner could be indemnified by the insurer only if there is a special contract bringing such person under the coverage of the policy. In fact this Court has specifically referred to a three-Judge Bench of this Court in ***Minu B. Mehta v. Balkrishna Ramchandra Nayan***[11] wherein it was categorically held that proof of negligence was necessary before the owner or the Insurance Company could be held to be liable for the payment of compensation in a motor accident claim case. It was in recognition of the principle laid down in ***Minu B. Mehta***[11] that the provision for no-fault liability came to be incorporated, was the finding.

[11] (1977) 2 SCC 441

12. ***Ningamma v. United India Insurance Co. Ltd.***[12], considered the claim of the wife and son, legal heirs of the person who was driving a vehicle, which he borrowed from the real owner. The accident occurred while a bullock cart proceeding in front of the motorcycle abruptly stopped, leading to a collision and the rider of the motorcycle succumbing to the injuries sustained. While noticing the beneficial provision under Section 163A, it was held that Section 163A will not have any application when the claim is for the owner of the vehicle who cannot be the recipient of the compensation and the person who has the liability. Quite surprisingly this Court remanded the matter to the Tribunal for consideration under Section 166 of the Act.

13. ***Ramkhiladi v. United India Insurance Co.***[13] was again with respect to a vehicular accident involving two

[12] (2009) 13 SCC 710
[13] (2020) 2 SCC 550

motorbikes. The legal representatives of the deceased, who was driving one of the motor cycles, filed an application under Section 163A; impleading only the owner and the Insurance Company of the motorcycle driven by the deceased. Even the Insurance Company had a contention that the rash and negligent driving of the other motorcycle resulted in the accident; giving rise to a valid claim under Section 166 against the owner and insurer of the other vehicle. It was held that though in a claim under Section 163A of the Act, there was no requirement to plead or prove the negligence or default of the driver or owner of the vehicle since a claim under Section 163A is based on the principle of "no fault liability"; still only if the deceased is a third party, the claim can be maintained.

14. We have to observe that all the cases referred to above are with respect to the claims raised by the legal representatives of the deceased or the injured owner

who was either the driver of the vehicle involved in the accident or its passenger. While ***Dhanraj***[3]***, Jhuma Saha***[7] and ***Sadanand Mukhi***[9] dealt with claim petitions under Section 166 of the Act, ***Rajni Devi***[8], ***Ningamma***[12] and ***Ramkhiladi***[13] dealt with claims under Section 163A. In ***Sadanand Mukhi***[9] while the Court rejected the application filed under Section 166, the learned Judges also made an observation that Section 163A was not invoked. Insofar as ***Ningamma***[12] is concerned while the claim under Section 163A was found to be not maintainable there was a direction to the Tribunal to examine whether the claim could have been sustained under Section 166. There is considerable variance in the observations made in the decisions but however as a principle, statutory liability was held to be not applicable in case of the owner/insured, since the coverage was confined to third party risks or those specified in Section 147 read with Section 149.

15. We cannot but notice that Section 163A is a special provision brought in, which is a non-obstante clause which overrides not only the entire provisions of the Motor Vehicles Act, 1988 but also any other law for the time being in force and any instrument having the force of law. We cannot but understand the non-obstante clause having a superseding effect over the laws of insurance or even the terms in the policy, which definitely is an instrument having the force of law. It has also to be noticed that Section 163A makes liable the owner of the vehicle or the authorized insurer to pay in accordance with the IInd Schedule in the case of death or permanent disablement due to the accident arising out of the use of a motor vehicle.

16. Trite is the principle that the liability with respect to an accident is on the tortfeasor and in the case of a motor vehicle accident if the tortfeasor is the driver, the owner has the vicarious liability, which liability is

indemnified by the insurer, when there is a valid policy. The liability is essentially of the owner but the provision, in addition to the insured/owner makes liable the authorized insurer too. Hence, when there is a valid policy issued in the name of the vehicle involved in the accident, a claim under Section 163A, as per the words employed in the provision, according to us covers every claim and is not restricted to a third party claim; without any requirement of establishing the negligence, if death or permanent disability is caused by reason of the motor accident. This would also take in the liability with respect to the death of an owner or a driver who stepped into the shoes of the owner, if the claim is made under Section 163A *dehors* the statutory liability under Section 147 or the contractual liability as reduced to writing in an insurance policy. It would override the provisions under Sections 147 & 149 along with the other provisions of the M.V. Act and the law regulating insurance as also the

terms of the policy confining the claim with respect to an owner-driver to a fixed sum. This according to us is the intention of incorporating the non-obstante clause under Section 163A providing for no-fault liability claims, the compensation for which is restricted to the structured formula under the IInd Schedule. It is a beneficial piece of legislation brought in, keeping in mind the enhanced chances of an accident, resulting from the prevalence of vehicles in the overcrowded roads of today. It was a social security scheme, brought about considering the need for a more comprehensive scheme of 'no-fault' liability for reason of the ever-increasing instances of motor vehicle accidents and the difficulty in proving rash and negligent driving.

17. We are of the opinion that this issue concerning the liability of the insurer in a claim under Section 163A *qua* the owner/insured requires an authoritative pronouncement. The dictum arising from the various

decisions of different benches of two Judges is that the claim under Section 163A is restricted to third party risks, which, with all the respect at our command, we are unable to agree with. We are conscious that the provision, Section 163A, appears under the Chapter with the heading '*Insurance of Vehicles Against Third Party* Risks', but, as we observed the non-obstante clause is in suppression of the entire Act, the other laws in force and any instrument valid in law. We have to notice that the three Judge Bench in ***Sunita Rathi***[4] did not consider the issue arising hereunder. We perfectly agree with the three Judge Bench decision in ***Minu B. Mehta***[11] which held that under Section 166 the claimants have to prove the negligence of the driver to sustain a claim with respect to compensation arising from the death or injury in a motor vehicle accident and the statutory liability arises only with respect to third parties or those specified

[11] (1977) 2 SCC 441

under Section 147. We have, herein above doubted, with due respect, the decisions of co-ordinate Benches of two Judges which now will have to be placed before a larger Bench. We direct the Registry to place the matter before the Hon'ble the Chief Justice of India for appropriate orders.

..... J.
(SUDHANSHU DHULIA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
AUGUST 01, 2025.