

**HIGH COURT OF TRIPURA  
AGARTALA**

**MAC App. 107 of 2024**

**Smt. Shumi Majumder (Debnath) and another**

**.....Appellants**

**VERSUS**

**Sri Sukbindar Singh and another**

**.....Respondents**

|                                                       |                                                                                               |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| For Appellant(s)                                      | : Mr. Sankar Lodh, Advocate.<br>Mr. Subham Majumder, Advocate.<br>Mr. Kishalay Roy, Advocate. |
| For Respondent(s)                                     | : Mr. Asim Kumar Deb, Advocate.                                                               |
| Date of hearing and delivery<br>of judgment and order | : 23.04.2025                                                                                  |
| Whether fit for reporting                             | : Yes                                                                                         |

**HON'BLE MR. JUSTICE T. AMARNATH GOUD**

**JUDGMENT & ORDER (ORAL)**

This is an appeal under Section under Section 173 of the Motor Vehicles Act, 1988, (M.V. Act for short) against the impugned Judgment & Award dated 25.07.2024, passed by the learned Member, Motor Accident Claims Tribunal, North Tripura, Dharmanagar, in T.S.(MAC) 1 of 2020, whereby learned Tribunal below dismissed the claim petition.

**[2]** The case of the appellants in brief is that on 06.12.2012, the deceased Parimal Debnath was proceeding from Sutanga by driving a truck loaded with coal towards Beltala, Guwahati, and in the road he was abducted along with the truck and coal and lastly he was murdered by the miscreants. Thereafter, a claim petition was filed by his widow and minor son (appellants No.1 & 2 herein respectively) under Section 166 of the MV Act, and the same was registered and marked as T.S. (MAC) 53 of 2013. Thereafter, the said claim petition was dismissed by the learned Tribunal vide Judgment & Award

dated 11.03.2016. An appeal was preferred against the said order dated 11.03.2016 before this Court, and the same was registered as MAC App.41/2016. Thereafter, during the time of hearing of the appeal on 12.9.2016, the same as well as the claim petition was withdrawn with a liberty to file afresh claim petition. Subsequently, the appellant filed fresh claim petition under Section 163-A, and the same was registered as TS(MAC) 1 of 2020, and the said claim petition was also dismissed by impugned Judgment & Award dated 25.07.2024 in the following manner:

".....ORDER

10. In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act is made against the owner and insurance company of the vehicle which was being driven by the deceased himself as the employee of the owner of the vehicle is not maintainable in its present form and nature.

Since the suit is found not maintainable in its present form and nature, the other issues are also decided in negative.

Accordingly this tribunal find that the claimant-petitioners are not entitled to get any compensation under Section 163A of the M. V. Act. So, this claim is disposed of with nil award on contest....."

**[3]** Aggrieved by the afore-quoted impugned Judgment and award dated 25.07.2024, the instant appeal has been filed seeking the following reliefs:

"Under the circumstances stated above it is most humbly prayed that Your Lordships would be kind enough to admit the appeal, call for the records and after hearing the parties set aside the impugned Judgment & Award dated 25.07.2024, passed by the Ld. Member, Motor Accident Claims Tribunal, North Tripura, Dharmanagar, in T.S.(MAC) 1 of 2020, and pass an adequate award, in terms of the claim petition....."

**[4]** Mr. Sankar Lodh, learned counsel for the appellants submits that the learned tribunal below committed error in appreciating that in a claim petition under Section 163A of the M.V. Act, there is no necessity to prove the negligence of driver/owner and the same is guided by no fault liability. As the appellants qualify all requirements of Section 163A of the M.V. Act, their claim petition ought to have been allowed in accordance with law and the impugned

judgment and award passed by the learned trial Court below is liable to be interfered with.

**[5]** It is further contended by Mr. Lodh, learned counsel for the appellants that learned Tribunal below committed serious mistake in appreciating the scope and ambit of claim petition under Section 163-A of the Motor Vehicles Act since in the alleged incident, the deceased was abducted and murdered by the miscreants with an intention to rob the vehicle alongwith the coal and in that circumstances, the deceased being the employee cannot say that he is representing the owner and for his death owner is not liable to pay compensation. He submits that the present case is squarely covered by a decision rendered by the Hon'ble Supreme Court in ***Smt. Rita Devi and ors. vs. New India Assurance Company Limited and ors***, reported in **2000 (5) SCC 113** and therefore, he has placed reliance on the same.

**[6]** On the contrary, Mr. Asim Kumar Deb, learned counsel appearing for the respondent insurance company opposes the submissions made by the learned counsel for the appellants. He submits that the appellants had earlier filed a claim petition under Section 166 of the MV Act and the same was dismissed by the learned Tribunal vide Judgment & Award dated 11.03.2016. An appeal was preferred against the said order dated 11.03.2016 before this Court, and the same was withdrawn by the appellants with a liberty to file afresh claim petition. Thereafter, the appellant filed fresh claim petition under Section 163-A, and the same was registered as TS(MAC) 1 of 2020, and the said claim petition was also dismissed by the impugned Judgment & Award dated 25.07.2024. Learned counsel contends that the dependants of the deceased had an option either to proceed under Section 166 of the M.V. Act or under Section 163-A of the Act. Once they approached the tribunal under Section 166 of the Act, they had to take the burden of establishing the

negligence of the driver/owner of the vehicle concerned. To support his contention, learned counsel has placed reliance on the following judgments of the Hon'ble Apex Court:

**1. *Surinder Kumar Arora & another v. Dr. Manoj Bisla & others*** reported in ***AIR 2012 Supreme Court 1918***

**2. *Valsamma Chacko and another v. M.A. Titto & others*** in ***case No. Special Leave Petition (C) No.27621 of 2019.***

**[7]** Heard learned counsel appearing for the parties. Perused the material evidence on record.

**[8]** Admittedly, the vehicle(Truck) bearing No. AS-01-CC-2135 which is the subject-matter of the Title Suit (MAC) 01 of 2020 was duly ensured and the driver was having valid driving license. According to the respondent, there was no reason on paper as per records to deny the benefits except on the ground that the driver was abducted and killed by the miscreants with an intention to rob the vehicle alongwith the coal. For a minute, it can be reasonably construed that the claimants are having an option to exercise the option either under the Motor Vehicles Act or under the Workmen's Compensation Act since the deceased was killed while performing his duty. In view of the settled principle, the claimants opted for making their respective claims under the M.V. Act before the MACT Court. Moreover, this Court is of the considered view that though the claimants have two options, they have exercised the M.V. Act, which was just and reasonable and their case was considerable under the said Act as the vehicle was plied with all valid documents and in the process, crime has taken place. Subsequently, the deceased was abducted and killed by the miscreants.

[9] Hon'ble Apex Court vide its judgment passed in ***Smt. Rita Devi and ors. vs. New India Assurance Company Limited and ors*** reported in ***2000 (5) SCC 113*** has categorically held that the claimants are entitled for compensation under the M.V. Act. For the purpose of reference, the relevant contents of the said judgment, are quoted hereunder:

".....6. On behalf of the appellants, Shri Anurabh Chowdhury contends that the deceased was employed to drive the autorickshaw for ferrying passengers on hire and on the fateful day the autorickshaw was parked at the rickshaw-stand at Dimapur and at about 5 to 6 p.m some unknown passengers had engaged the said autorickshaw for their journey towards Singrijan area and thereafter nothing was known of the driver or rickshaw. It is only on the next day that the authorities were able to recover the body of the deceased and the autorickshaw in question was never traced till date. The owner of the autorickshaw has, therefore, been compensated by the Insurance Company for the loss of the said autorickshaw, therefore, the murder of the deceased Dasarath Singh squarely comes within the word "death" due to accident arising out of the use of motor vehicle found in Section 163-A(1) of the Act. Consequently the Tribunal was justified in awarding the compensation claimed by the appellants. He contended that the word "accident" has not been defined under the Motor Vehicles Act and the said Act being a beneficial legislation, a liberal interpretation should be given so as to achieve the objects of the Act. He contended that the deceased being an employee was entitled for compensation both under the Motor Vehicles Act and also under the Workmen's Compensation Act, 1923. However, under Section 167 of the Motor Vehicles Act, the heirs of the deceased had a choice either to claim compensation under that Act or under the Workmen's Compensation Act. The appellants having chosen to invoke the provisions of the Motor Vehicles Act, the Tribunal was wholly justified in awarding the compensation, while the High Court, according to him, without properly appreciating the reasonings adopted by the Tribunal has interfered with the just order of the Tribunal. He also contends that the appeal filed by the Insurance Company was not maintainable for not having obtained the leave of the Tribunal as required under Section 170 of the Act. He relies on a judgment of this Court in the case of *Shankarayya ve United India Insurance e Co. Ltd*(1998 3 SCC 140). Ms Pankaj Bala Verma, appearing for the respondent Insurance Company does not in fact dispute the maintainability of the petition filed by the appellants under Section 163-A of the

Motor Vehicles Act but contends that the meaning, ascribed to the word "accident" in the Workmen's Compensation Act by judicial pronouncements cannot be applied to the word "accident" in the Motor Vehicles Act because the object of the two Acts are different. She supported the judgment of the High Court by contending that on the facts of the present appeal, the death of the driver of the autorickshaw was caused by felonious acts of certain unknown persons and the same is not caused by an accident arising out of the use of the vehicle. Regarding the maintainability of the appeal, she submits that the judgment of this Court was reported subsequent to the High Court judgment, hence no fault could be found with the impugned judgment on that score and no such objection was taken in regard to the maintainability before the High Court.\*\*\*\*\*

18. In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

19. This leaves us to consider the second point raised before us by the counsel for the appellant. It is argued on behalf of the appellants that the appeal preferred by the Insurance Company purported to be under Section 173 of the Motor Vehicles Act was not maintainable because prior permission of the Court as required was not obtained by the appellants. In support of this contention of the appellants, reliance is placed on a judgment of this Court in the case of *Shankarayya v. United India Insurance Co. Ltd.* In the said judgment a Division Bench of this Court held: (SCC Headnote)

"The Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in Section 170 are found to be satisfied and for that purpose, the Insurance Company has to obtain an order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined Respondent 1 Insurance Company in the claim petition but that

was done with a view to thrust the statutory liability on the Insurance Company on account of the contract of the insurance. That was not an order of the Court itself permitting the Insurance Company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the facts of the present case, Respondent 1 Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal."

20. We respectfully agree with the ratio laid down in the above case and in view of the fact that admittedly the Insurance Company had not obtained leave from the Tribunal before filing the above appeal, we are of the opinion that the appeal filed by the Insurance Company before the High Court was not maintainable in law.

21. For the reasons mentioned above, this appeal succeeds, the judgment and order of the High Court dated 9-3-1998, is set aside and that of the Tribunal dated 24-6-1996 is restored. The appellants are entitled to costs in all the counts."

**[10]** The arguments advanced by Mr. Deb, learned counsel for the respondent insurance company for consideration of the matter either under Section 166 or Section 163 of the M.V. Act will not fall for consideration in the matter of this nature and accordingly, the judgments placed by him are not relevant.

**[11]** In view of the same, the matter needs reconsideration by the trial Court as per procedure and this Court force that the claimants are entitled for compensation unlike any other cases. Therefore, the claim under M.V. Act by the claimants is maintainable and the same needs to be remanded back to the concerned tribunal Court.

**[12]** Accordingly, the appeal is allowed to the extent as indicated above and the matter is remanded back for consideration as per procedure. Learned Court below shall decide the case as expeditiously as possible in the light of

the afore-noted judgment of the Hon'ble Apex Court placed by the learned counsel for the appellants. The appellants shall be at liberty to place all material evidence in support of their claim before the concerned Court below.

With the above observations and directions, the instant appeal is partly allowed and the present case is remanded back for fresh adjudication. Thus, the appeal is hereby disposed of. Resultantly, the impugned judgment and order dated 25.07.2024 passed by the learned trial Court is set aside. Miscellaneous application(s) pending if any, shall also stand closed.

**JUDGE**



सत्यमेव जयते

Sabyasachi. G.

SABYASACHI GHOSH

Digitally signed by SABYASACHI  
GHOSH  
Date: 2025.04.25 11:17:28 +05'30'