GAHC010200772004

2026:GAU-AS:11594

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./146/2004

NATIONAL INSURANCE CO LTD
HAVING ITS REGISTERED OFFICE AT MIDDLETON STREET, KOLKATA AND ONE OF THE REGIONAL OFFICES KNOWN AS GUWAHATI REGIONAL OFFICE, G.S. ROAD, BHANGAGARH, GUWAHATI AND A DIVISIONAL OFFICE AT TINSUKIA

VERSUS

ON THE DEATH OF ASMA BEGUM HER LEGAL HEIRS
CARE OF MD ALAUDDIN RESIDENT OF APO COLONY PO AND PS MARGHERITA DISTRICT TINSUKIA ASSAM

1.1:MD. NIZAM UDDIN
S/O LATE ASMA BEGUM
RESIDING AT APO COLONY
P.O. AND P.S. MARGHERITA
DIST. TINSUKIA
ASSAM.

1.2:MD. ANAM UDDIN
S/O LATE ASMA BEGUM
RESIDING AT APO COLONY
P.O. AND P.S. MARGHERITA
DIST. TINSUKIA
ASSAM.

1.3:MD. BURHAN UDDIN
S/O LATE ASMA BEGUM
RESIDING AT APO COLONY
P.O. AND P.S. MARGHERITA
DIST. TINSUKIA
ASSAM.

2:MD. ALAUDDIN
SON OF LATE KHURSID ALI
RESIDENT OF APO COLONY
P.O. AND P.S. MARGHERITA
DISTRICT TINSUKIA
ASSA

Linked Case : MACApp./160/2004

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SON OF LATE KHURSID ALI

RESIDENT OF APO COLONY
P.O. AND P.S. MARGHERITA
DISTRICT TINSUKIA
ASSAM

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the petitioner : Mr. R. K. Bhatra, Advocate

For the respondents : Mr. G. N. Sahewalla, Sr. Advocate
Ms. T. More, Advocate

Date on which judgment is reserved : NA

Date of pronouncement of judgment : 13.08.2026

Whether the pronouncement is of the Operative part of the judgment? : Yes

Whether the full judgment has been Pronounced? : No.

JUDGMENT AND ORDER (ORAL)

Heard Mr. R. K. Bhatra, the learned counsel appearing on behalf of the Appellant. Mr. G. N. Sahewalla, the learned Senior Counsel assisted by Ms. T. More, the learned counsel appearing on behalf of the Respondents/Claimants.

PREFACE

2. Both the Appeals are taken up for disposal by this common

judgment and order taking into account that both the Appeals arise out of the same accident.

BRIEF FACTS OF THE CASE

3. A Maruti car bearing registration No.AS-23A-5170 which belonged to one Md. Alauddin, the Respondent No.2 in the present proceedings was insured with the Appellant Insurance Company. The Respondent No.2's son, namely, Md. Anamuddin while driving the said vehicle along with the Claimant, i.e. his mother and the Respondent No.2 met with an accident at 11:30 AM on 24.03.2002. It is claimed that the said accident happened on account of a mechanical defect in the car for which the bearing of the wheel of the vehicle broke down suddenly. On account of the accident, Md. Anamuddin suffered grievous injuries in his skull and was hospitalized. It is also claimed that Md. Anamuddin has become permanently disabled and he is in the custodial care of his parents, brothers and relatives for day-to-day activities.

4. The Claimant, i.e. the mother of Md. Anamuddin filed a claim petition before the Motor Accidents Claims Tribunal, Tinsukia wherein her husband and the Appellant Insurance Company were arrayed as Opposite Parties. In the said claim petition, the Claimant filed the claim proceedings on behalf of her son and claimed compensation to the tune of Rs.33,68,103/-. The said claim proceedings was registered

and numbered as MAC Case No.75/2002.

5. The Claimant further in view of the injury sustained by her in the same accident filed a separate claim application which was registered and numbered as MAC Case No.80/2002. In this proceedings, the Claimant sought for compensation to the tune of Rs.2,08,659/-. In the said claim proceedings which was filed by the Claimant being MAC Case No.80/2002, her husband, i.e. Md. Alauddin and the Appellant Insurance Company were arrayed as Opposite Parties.

6. The husband of the Claimant in spite of receipt of the notice did not participate in both the proceedings, i.e. MAC Case No.75/2002 as well as MAC Case No.80/2002 for which both the proceedings were proceeded ex-parte against the husband of the Claimant.

7. The Appellant Insurance Company filed its written statement in both the proceedings wherein amongst the various defenses which are taken, challenged the maintainability of the said claim proceedings.

8. In MAC Case No.75/2002 on 12.12.2003, the following three Issues were framed:-

(1) Whether the accident took place due to rash and negligent driving?;

(2) Has the Claimant suffered mental disability, if so, to what

extent? and

(3) Is the Claimant entitled to the relief, if so, to what extent and against whom?

9. The learned Tribunal vide the impugned judgment and award dated 25.03.2004 held that the injured, i.e. Md. Anamuddin for whose benefit the claim proceedings were initiated, had driven the Maruti car bearing registration No.AS-23A-5170 in a rash and negligent manner. While deciding the Issue No.2, the learned Tribunal arrived at a conclusion on the basis of the medical evidence that the injured, i.e. Md. Anamuddin had suffered permanent disability. In respect to the third Issue, the learned Tribunal held that the Claimant was entitled to an amount of Rs.12,56,103/- along with interest at the rate of 9% from the date of filing of the claim application.

10. Before further proceeding, this Court now finds it relevant to take note of as to how the learned Tribunal decided the claim proceedings being MAC Case No.80/2002. In the said proceedings as stated above, the Claimant, i.e. the mother of Md. Anamuddin on account of the injuries suffered by her, had filed the said claim proceedings claiming compensation for herself. In the said claim proceedings, the learned Tribunal also formulated three Issues as follows:-

(1) Whether the accident took place due to rash and negligent

driving?;

(2) Has the Claimant suffered permanent disability, if so, to what extent? and

(3) Is the Claimant entitled to the relief, if so, to what extent and against whom?

11. The learned Tribunal vide the judgment and award dated 25.03.2004 held that the vehicle bearing registration No.AS-23A-5170 was driven by Md. Anamuddin in a rash and negligent manner. While deciding the Issue No.2, the learned Tribunal came to a finding that the Claimant did not suffer from any kind of permanent disability. In so far as the Issue No.3, the learned Tribunal, based upon the various documents, came to a finding that the Claimant was entitled to a total sum of Rs.50,659.60p and directed the Appellant Insurance Company to make payment of the said amount of Rs.50,659.60p along with interest at the rate of 9% per annum from the date of filing of the claim petition till realization of the amount.

12. The records reveal that in pursuance to the Awards passed in both the claim proceedings, the present two Appeals were filed. In MAC App. No.146/2004 which arises out of the award passed in MAC Case No.75/2002, this Court vide an order dated 30.09.2004 admitted the Appeal. Similarly, in the other Appeal being MAC App. No.160/2004 arising out of the Award passed in MAC Case

No.80/2002, this Court vide an order dated 30.09.2004 admitted the Appeal.

SUBMISSIONS MADE BY THE LEARNED COUNSELS FOR THE PARTIES

13. Mr. R. K. Bhatra, the learned counsel appearing on behalf of the Appellant in both the Appeals submitted that the Award dated 25.03.2004 in MAC Case No.75/2002 cannot be sustained in law in as much as the learned Tribunal adjudicated the said proceedings as the proceedings under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988"). The learned counsel submitted that in MAC Case No.75/2002, the injured was the driver of the vehicle and he had taken the said vehicle from his father who is the Respondent No.2 in the present proceedings. Under such circumstances, the injured, i.e. Md. Anamuddin had stepped into the shoes of his father who was the owner of the vehicle, and as such, could not have maintained the proceedings through his mother, i.e. the Claimant under Section 166 of the Act of 1988. The learned counsel further submitted that even a proceedings under Section 163A also could not have been maintained taking into account that the injured Md. Anamuddin had taken the vehicle from his father and had stepped into the shoes of his father while driving the vehicle. The learned counsel therefore submitted that the law in this aspect is well settled by the Supreme Court in the case of ***Ramkhiladi and Another vs. United India Insurance Company and***

Another, reported in ***(2020) 2 SCC 550*** and referred to Paragraph Nos.9 and 9.5 of the said judgment.

14. The learned counsel for the Petitioner further submitted that though subsequently in the case of ***Wakia Afrin (Minor) vs. National Insurance Company Limited***, reported in ***(2026) 3 SCC 418***, the issue as to whether the family of vehicle owners who die in self-accident can be allowed compensation under the no fault liability provision under Section 163A of the Act of 1988 or whether such claims are limited solely to third party liability have been referred to a Larger Bench, but such reference would not impact the case of the present proceedings in as much as the judgment in the case of ***Ramkhiladi and Another (supra)*** already holds the field in that regard.

15. The learned counsel further submitted that in respect to the Award dated 25.03.2004 in MAC Case No.80/2002, the learned Tribunal has again committed a gross error in adjudicating the said proceedings in a manner similar to a proceedings under Section 166 of the Act of 1988. The learned counsel submitted that at best the case would come under Section 163A of the Act of 1988 and taking into account that there has been injury caused to the claimant in MAC Case No.80/2002, the liability would be limited to the extent mentioned in the Second Schedule to the Act of 1988.

16. Mr. G. N. Sahewalla, the learned Senior Counsel submitted most

fairly that the learned Tribunal, in both the cases, could not have proceeded to decide the proceedings in the manner stipulated under Section 166 of the Act of 1988. However, the learned Senior Counsel submitted that the Claimant in both the proceedings is entitled to compensation for herself as well as her son in terms with Section 163A of the Act of 1988 read with the Second Schedule to the Act of 1988. The learned Senior Counsel further referring to the judgment in the case of ***Wakia Afrin (Minor) (supra)*** submitted that the issue has been referred to the Larger Bench by the two Judges Bench of the Supreme Court.

ANALYSIS AND DETERMINATION

17. This Court has perused the impugned Awards dated 25.03.2004 passed in both the claim proceedings being MAC Case No.75/2002 and MAC Case No.80/2002.

18. Let this Court analyze as to whether the learned Tribunal was justified in passing the Awards in both the claim proceedings, one by one.

MAC Case No.75/2002

19. In these proceedings, the mother of the injured had filed the claim proceedings stating *inter alia* that the vehicle in question belonged to her husband, i.e. Md. Alauddin and her son, i.e. Md.

Anamuddin was driving the said vehicle along with the claimant as well as the owner of the vehicle. Unfortunately, the vehicle met with an accident on account of a mechanical failure resulting in injuries to her son who even after treatment being provided, had sustained permanent disability.

20. In the backdrop of the above, if this Court takes note of the Issues which were framed by the learned Tribunal and the manner in which the Issues were decided by the learned Tribunal, it would show that the learned Tribunal was deciding the Issues as if it were a proceedings under Section 166 of the Act of 1988 without acknowledging that it was the son of the owner who was driving the vehicle and an accident occurred without the intervention of any third party. Under such circumstances, the manner in which the learned Tribunal proceeded to decide the instant claim proceedings is contrary to the provisions of the Act of 1988 for which the impugned order dated 25.03.2004 passed in MAC Case No.75/2002 cannot be sustained in law.

21. It is relevant now to take note of that de hors Section 166 of the Act of 1988 as to whether the Claimant in MAC Case No.75/2002 would have been entitled to any compensation for and on behalf of her son who had sustained permanent disability. In this regard, this Court finds it relevant to take note of Section 163A of the Act of 1988

which is reproduced herein under:-

> "*163-A.* ***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 of 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.*
>
> *Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923*
>
> *(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."*

22. A perusal of the above quoted Section would show that on the basis of the said provision, payment of compensation on structured formula basis is permissible whereby the owner of a motor vehicle or

the authorized insurer would be liable to pay compensation as indicated in the Second Schedule to the Act of 1988 in case of death or permanent disability occurring due to the accident arising out of the use of the motor vehicle to the legal heirs or the victim as the case may be. It further stipulates that in order to prove a claim of this nature, the Claimant would not be required to plead or establish that the death or permanent disability in respect of which the claim was made was due to a wrongful act or neglect or default of the owner of the vehicle concerned.

23. Be that as it may, the question arises as to whether in MAC Case No.75/2002, the Claimant on behalf of her son would be entitled to the compensation in terms with Section 163A of the Act of 1988?

24. The injured who was the son of the owner was driving the vehicle. In doing so, the injured stepped into the shoes of the owner. The question referred to hereinabove seems to be no longer res integra in view of the judgment of the Supreme Court in the case of ***Ramkhiladi and Another (supra).*** Paragraph Nos.9, 9.4, 9.5 and 9.6 of the said judgment duly answers the question. Taking into account the relevance, the said Paragraph Nos.9, 9.4, 9.5 and 9.6 are reproduced herein under:-

> "***9.*** *Heard the learned counsel appearing on behalf of the respective parties at length. We have also perused and considered the judgment and*

award passed by the learned Tribunal as well as the impugned judgment and order passed by the High Court and the evidence on record. The short question which is posed for consideration of this Court is whether, in the facts and circumstances of the case and in a case where the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was negligent are not joined as parties to the claim petition, meaning thereby that no claim petition is filed against them and the claim petition is filed only against the owner and the insurance company of another vehicle which was driven by the deceased himself and the deceased being in the shoes of the owner of the vehicle driven by himself, whether the insurance company of the vehicle driven by the deceased himself would be liable to pay the compensation under Section 163-A of the Act? Whether the deceased not being a third party to Vehicle No. RJ 02 SA 7811 being in the shoes of the owner can maintain the claim under Section 163-A of the Act from the owner of the said vehicle?

9.4. *An identical question came to be considered by this Court in Ningamma. In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163-A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163-A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation*

under Section 163-A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163-A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing Registration No. RJ 29 2M 9223, being a third party with respect to the offending vehicle. However, no claim under Section 163-A was filed against the driver, owner and/or insurance company of the motorcycle bearing Registration No. RJ 29 2M 9223. It is an admitted position that the claim under Section 163-A of the Act was only against the owner and the insurance company of the motorcycle bearing Registration No. RJ 02 SA 7811 which was borrowed by the deceased from the opponent-owner Bhagwan Sahay. Therefore, applying the law laid down by this Court in Ningamma, and as the deceased has stepped into the shoes of the owner of the vehicle bearing Registration No. RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 163-A of the Act against the owner and insurance company of the vehicle bearing Registration No. RJ 02 SA 7811 shall not be maintainable.

9.5. *It is true that, in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the principle of no-fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he*

cannot maintain a claim under Section 163-A of the Act against the owner and insurer of the vehicle bearing Registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing Registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in Dhanraj, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9.6. *In view of the above and for the reasons stated above, in the present case, as the claim under Section 163-A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163-A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle."*

25. From the above quoted Paragraphs, more particularly what is observed at Paragraph Nos.9.4, 9.5 and 9.6, it is clear as a noon day that when a vehicle is borrowed by a person, he steps into the shoes of the owner and he cannot maintain a claim under Section 163A of the Act of 1988. Under such circumstances, it is therefore the opinion of this Court that the Claimant in MAC Case No.75/2002 even cannot maintain a proceedings under Section 163A of the Act of 1988. In that view of the matter, the impugned judgment and award dated 25.03.2004 passed in MAC Case No.75/2002 is required to be interfered with.

MAC Case No.80/2002.

26. In the instant case, the Claimant had sought for compensation of an amount of Rs.2,08,569.60p on account of the injury suffered by her to her hand on account of the accident. The learned Tribunal also adjudicated the instant proceedings as if it was a proceedings under Section 166 of the Act of 1988.

27. In this regard, this Court now finds it relevant to take note of the judgment of the Supreme Court in the case of ***Wakia Afrin (Minor) (supra)*** and what was referred to by a Two Judges Bench of the Supreme Court to a Larger Bench. The question which was referred is as to whether the family members of the vehicle owner who die in self-accident can be allowed compensation under the no-fault liability

provision under Section 163A of the Act of 1988. This Court had duly perused the observations made by the Supreme Court in the case of ***Wakia Afrin (Minor) (supra)***, more particularly, at Paragraph Nos.17 and 18 which are reproduced herein under:-

> "***17.*** *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 authorised insurer too. Hence, when there is a valid policy issued in the name of the vehicle involved in the accident, a claim under Section 163-A, 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 163-A 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 and 149 along with the other provisions of the MV 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 163-A providing for no-fault liability claims, the compensation for which*

is restricted to the structured formula under the Second 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.

18. *We are of the opinion that this issue concerning the liability of the insurer in a claim under Section 163-A 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 163-A 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 163-A, 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."*

28. The question arises before this Court in view of the submission made by the learned Senior Counsel appearing for the Respondents as to whether this Court should decide the issue as to the entitlement of the Claimant in view of the reference to a larger Bench by the Two Judges Bench of the Supreme Court in the case of ***Wakia Afrin (Minor) (supra)***. It is also relevant to take note of that the present claim proceedings have been pending since 2002 i.e. for more than two

decades. It is the opinion of this Court that the dispute requires a resolution. Apart from that it is no longer res integra as to what course of action is to be taken when a reference is made to the larger Bench of the Supreme Court on any question of law. The Supreme Court in the case of ***Union Territory of Ladakh and Others vs. Jammu and Kashmir National Conference & Another***, reported in ***2023 SCC OnLine SC 1140*** observed that the High Courts shall proceed to decide the matter on the basis of the law as it stands. It was also observed that unless specifically directed by the Supreme Court to await for the outcome of the reference or review petition, it is not open to the High Courts to refuse to follow a judgment merely on the ground that a later Coordinate Bench of the Supreme Court had doubted. Paragraphs Nos.32, 33, 34 and 35 of the said judgment being relevant are reproduced herein below:-

> "*32. In Harbhajan Singh v State of Punjab, a 2-Judge Bench said:*
>
> > "*15. Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction under Section 319 of the Code was made out. Only because the correctness of a portion of the judgment in Mohd. Shafi has been doubted by another Bench, the same would not mean that we should wait for the decision of the larger Bench, particularly when*

the same instead of assisting the appellants runs counter to their contention."

(emphasis supplied)

33. In Ashok Sadarangani v Union of India, another 2-Judge Bench indicated:

"29. As was indicated in Harbhajan Singh case, the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh case need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field."

(emphasis supplied)

34. On the other hand, when it was thought proper that other Benches of this Court, the High Courts and the courts/tribunals below stay their hands, the same was indicated in as many words, as was the case in State of Haryana v G D Goenka Tourism Corpn. Ltd.

"9. Taking all this into consideration, we are of the opinion that it would be appropriate if in the interim and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Secretary General will urgently communicate this order to the Registrar General of every High Court

so that our request is complied with.

10. Insofar as the cases pending in this Court are concerned, we request the Benches concerned dealing with similar matters to defer the hearing until a decision is rendered one way or the other on the issue whether the matter should be referred to a larger Bench or not. Apart from anything else, deferring the consideration would avoid inconvenience to the litigating parties, whether it is the State or individuals."

(emphasis supplied)

35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Co. Ltd. v. Pranay Sethi. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."

29. In the backdrop of the above, the question arises as to whether the Claimant in MAC Case No.80/2002 would be entitled to compensation in terms with Section 163A of the Act of 1988. The Claimant in MAC Case No.80/2002 though the wife of the owner, but when she was travelling in the car, she traveling as a gratuitous passenger. The identity of the Claimant under no circumstances can be said to be that of the owner or stepping into the shoes of the owner. This distinction is apparent as would be seen from the facts in MAC Case No.75/2002 with MAC Case No.80/2002. In MAC Case No.75/2002, the Claimant's son stepped into the shoes of the owner whereas the Claimant in MAC Case No.80/2002, status is that of a gratuitous passenger.

30. This Court has duly taken note of the Second Schedule and taking into account the findings so arrived at by the learned Tribunal as regards the Issue No.2 to the effect that there is no permanent disability, it is the opinion of this Court that the Claimant in the MAC Case No.80/2002 at best could have been entitled to an amount of Rs. 15,000/- on account of medical expenses and a further amount of Rs.5,000/- on account of pain and suffering due to grievous injury.

31. Accordingly, this Court therefore disposes of both the Appeals with the following observations and directions:-

(i) The impugned judgment and award dated 25.03.2004 passed

in MAC Case No.75/2002 is set aside and quashed. Accordingly, MAC App. No.146/2004 is allowed.

(ii) It is relevant to take note of that vide an order dated 01.07.2005 in MC Case No.1936/2005, this Court allowed the Claimant to withdraw the amount of Rs.25,000/-. Accordingly, the Claimant withdrew the said amount of Rs.25,000/- on 17.08.2005. It is the opinion of this Court that though the Judgment and Award dated 25.03.2004 passed in MAC Case No.75/2002 had been set aside, in the present facts of the case, there would be no necessity for the Respondents/Claimant to refund the said amount of Rs.25,000/-.

(iii) The impugned judgment and award dated 25.03.2004 passed in MAC Case No.80/2002 stands modified in terms with the observations made hereinabove thereby holding that the Claimant in MAC Case No.80/2002 would be only entitled to compensation in terms with Section 163A of the Act of 1988 read with the Second Schedule of the Act of 1988 and the compensation to which the Claimant would be entitled to is to the tune of Rs.20,000/- only along with interest at the rate of 9% from the date of filing of the claim proceedings till realization.

(iv) It is relevant to observe that at the time of filing the Appeal

being MAC App. No.160/2004, the Appellant deposited the amount of Rs.25,000/-. This Court vide an order dated 01.07.2005 in MC Case No.1937/2005, permitted the Claimant to withdraw the amount of Rs.25,000/-. Accordingly, by submitting an indemnity Bond, the amount of Rs.25,000/- was withdrawn on 17.08.2005. In view of the observation made at Clause (iii) of the instant Paragraph, the total entitlement of the Claimant along with interest as on 17.08.2005 would not be Rs.25,000/-. Under such circumstances, there would be no requirement of refund by the Claimant/Respondent nor there would be requirement for the Appellant to pay any further amount.

(v) The records be returned.

JUDGE

Pradip Kumar Kalita

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Comparing Assistant