

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

C.R.P.No.2549 of 2015

Between:

M/s.Reliance General Insurance Co.Ltd., rep. by its Branch Manager,
Nizamabad.

.. Petitioner

and

Allapoor Gangadhar Rao and another

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 24.7.2015

SUBMITTED FOR APPROVAL:

-

-

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
--	--------

2. Whether the copies of judgment may be marked to Law Reporters/Journals?	Yes/No
---	--------

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No
--	--------

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.2549 of 2015

ORDER:

This Civil Revision Petition is filed aggrieved by the order, dated 01.6.2015, in I.A.No.302 of 2015 in O.P.No.772 of 2012 on the file of the Motor Accident Claims Tribunal-cum-VIII Additional District and Sessions Judge at Nizamabad (for short, “the Tribunal”).

2. Respondent No.1 herein filed claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short, “the Act”) before the Tribunal claiming compensation of Rs.6,00,000/- against respondent No.2 herein and the revision petitioner without impleading the owner of auto bearing No.AP-25-W-0388. On coming to know about the same, the petitioner filed the above mentioned interlocutory application to implead the said proposed party – insurer of the auto as respondent No.3 in the O.P., but the trial Court dismissed the petition only on the ground that the claim of the petitioner therein is under Section 163-A of the Act filed against the owner and driver of the auto bearing No.AP-25-X-0507 and rash and negligence need not be proved under this section. This finding is challenged on various grounds in this revision.

3. During arguments, Sri A.Rama Krishna Reddy, learned Standing Counsel for the petitioner, while reiterating the contentions raised by the petitioner, submitted that even in a petition filed under Section 163-A of the Act, the burden of proof lies initially on the respondent and not on the petitioner, but still it is based upon the principle of fault liability.

4. None appeared for respondent No.1 though notice was served on the counsel before the Tribunal, as ordered by this Court.

5. Undisputedly, the claim petition is filed under Section 163-A of the Act where respondent No.1 herein is required to prove occurrence of accident due to use of motor vehicle. However, in a judgment reported in **National Insurance Company Ltd., vs. Sinitha**^[1], the Apex Court, after reviewing the case law under Section 166 and 163-A

of the Act, held that a claim under Section 163-A of the Act (as also wrongful act or default) can be established by owner or the insurance company to defeat the claim under Section 163-A of the Act. Even otherwise, according to the principle laid down in the above judgment, the variation between the claims under Section 163-A and 166 of the Act is burden of proof. In case of claims made under Section 163-A of the Act, the initial burden is on the respondent to prove that the accident was not occurred due to rash and negligent driving of the vehicle, but when the respondent discharged his initial onus of proof, the burden will shift to the petitioner. Therefore, the claim made under Sections 163-A and Section 166 of the Act are totally based on fault liability. In such a case, the proposed party, who is the insurer, is also entitled to come on record as respondent No.3 to defend the claim of respondent No.1 herein though it is filed under Section 163-A of the Act.

6. The Tribunal failed to draw a distinction between the claims made under Sections 163-A and 166 of the Act properly and without adverting to the law laid down by the Apex Court in the judgment referred above, erroneously dismissed the above mentioned interlocutory application.

7. The above mentioned interlocutory application was filed under Order I Rule 10 C.P.C. for effective adjudication of the claim before the Tribunal. The proposed party - the insurer of the vehicle, who has undertaken to indemnify the loss under the contract of insurance, is entitled to come on record to defend the claim though it is under Section 163-A of the Act, as held in the judgment referred supra. The proposed party is a proper and necessary party. Accordingly, the proposed party can come on record under Order I Rule 10 C.P.C., as he is interested in the claim, but the Tribunal, on erroneous appreciation, dismissed the said petition and the same is liable to be set aside. Accordingly, the finding of the Tribunal is hereby set aside

holding that the proposed party is a proper and necessary party.

8. Accordingly, the Civil Revision Petition is allowed at the stage of admission. There shall be no order as to costs. Miscellaneous Petitions pending, if any, in this Civil Revision Petition shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 24.7.2015
AMD

—

—

—

100

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

—

—

—

—

—

—

—

—

—

—

—

—

—

—

—

—

—

—

-
-
-

C.R.P.No.2549 of 2015

-

DATE: 24.7.2015

AMD

[\[1\]](#) A.I.R. 2012 S.C.797