

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO No. 2401 of 2013 (O&M)
Date of Decision:12.9.2022**

ICICI Lombard General Insurance Company Limited

---Appellant

versus

Ram Niwas

---Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Rajbir Singh, Advocate
for the appellant

Mr. S.K.Yadav, Advocate
for the respondent

JAGMOHAN BANSAL, J.

1. The appellant-insurance company through the instant appeal is seeking setting aside of award dated 5.3.2013 passed by Motor Accident Claims Tribunal, Narnaul (for short "Tribunal") whereby learned Tribunal has awarded a sum of Rs. 1,07,000/- to Ram Niwas alongwith interest @ 7.5% per annum.

2. The brief facts emerging from record are that Ram Niwas-respondent-claimant on 25.9.2011 was going from his village Chhapra to Nangal Chaudhary on his motorcycle bearing registration No. HR-35F-1828 and his son Hanuman Singh son of Banwari Lal

was pillion rider on the aforesaid motorcycle. A '*neel gai*' (wild cow) suddenly came on the road and struck against the aforesaid motorcycle. Resultantly, the respondent fell on the road and sustained injuries on his both legs.

3. The respondent preferred claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short "1988 Act") seeking compensation of Rs. 20 lakhs on account of injuries sustained by him. Learned Tribunal vide award dated 5.3.2013, after considering the fact that respondent has suffered permanent disability to the extent of 8% on account of the aforesaid accident, awarded a sum of Rs. 1,07,000/- alongwith interest @ 7.5% per annum.

4. Learned counsel for the appellant contended that it was respondent who was driving the aforesaid motorcycle and did not meet with accident with any other vehicle. He is owner of the vehicle. The insurance company is liable to make payment if a vehicle meets with an accident with any other vehicle. Section 163-A read with Section 147 of 1988 Act fastens liability on insurance company in case of accident with any other vehicle or in case of loss to third party. The respondent was not third party, thus, he was not covered by Section 163-A of 1988 Act. The rigor of Section 163-A of 1988 Act does not come into play where owner is driving the vehicle and no other vehicle is involved because in the absence of any other vehicle, it would be owner of the vehicle who is responsible for the accident. He further submitted that as per insurance policy, the maximum liability of insurer is Rs. 1,00,000/- and as per GR 36 of

Indian Motor Tariff which relates to personal accident cover for owner and driver creates maximum liability of Rs. 1,00,000/- in case of two wheeler. Liability of Rs. 1,00,000/- is maximum liability and it is payable in case of death or 100% permanent disability whereas in the present case, there is 8% permanent disability so, a maximum sum of Rs. 50,000/- could be awarded.

5. Per contra, learned counsel for the respondent contended that as per Section 163-A of the Act, there is no limit of liability and appellant is primarily aggrieved from award of Rs. 1,07,000/- whereas appellant has no objection if a sum of Rs. 1,00,000/- is awarded. He very fairly stated that he has no objection if awarded amount is reduced from Rs. 1,07,000/- to Rs. 1,00,000/-. In support of his contention, he pointed out judgment of this Court passed on 16.8.2022 by a Co-Ordinate Bench of this Court in **FAO No. 4837 of 2013 titled as “National Insurance Company Limited vs. Roopa and others”**.

6. I have perused the record and heard arguments of both sides.

7. The dispute in question has been considered time and again by different High Courts as well Hon'ble Supreme Court. In the present case, Section II (Liability Premium Computation) of Policy is relevant which is reproduced alongwith note appended on the bottom of the table:-

B. Liability Premium Computation (Section II) in Rs.		
<u>Basic Premium including Premium for TPPD</u> :		
Vehicle	:	300.00
CNG/LPG/Bi-Fuel Kit	:	0.00
Add		
a) Compulsory PA Cover (Owner Driver)	:	50.00
b) Optional PA Cover (Un Named Driver)	:	0.00
c) Optional PA Cover (Pillion Rider)	:	0.00
Legal Liability		
d) Legal Liability Cover(Paid drivers, Cleaners)	:	0.00
e) Legal Liability Cover (other then (sic) paid Drivers,Cleaners	:	0.00
Total Liability Premium(B)	:	350.00
Total Premium (A+B)	:	792.00
For any other Extra	:	0.00
Add Service Tax	:	82.00
Gross Premium	:	874.00

LIMIT OF LIABILITY: Limit of the amount of Company's liability under the Section-II-I(i) in respect of any one accident as per M.V.Act 1988. Limit of the amount of the Company's liability under Section II-I(ii) in respect of any one claim of series of claims arising out of one event: Upto Rs. 100000/-.

8. For the adjudication of issue raised by appellant, it would be apt to look at Sections 147 and 163A of the 1988 Act which are reproduced hereinbelow:-

“147 **Requirements of policies and limits of liability.** —
(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer;
and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including 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 a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. —For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

- (a) save as provided in clause (b), the amount of liability incurred;
- (b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance

within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

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 (8 of 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.”

From the perusal of above quoted Sections, it is quite evident that liability created under Section 163-A is more or less *paramateria* with liability embodied in Section 140 of 1988 Act. An aggrieved party as per Sections 141 of 1988 Act can file petition either under Section 140 or 163A of 1988 Act. Both the provisions are mutually exclusive. Section 163A of 1988 Act was introduced to enhance the object embodied in Section 140 as well as Section 166 of the 1988 Act. It was realized that claim petitions under Section 166 of 1988 Act are adjudicated after a long time whereas object of compensation is to help the aggrieved family members at the earliest. There may be a case where head of the family dies and all the dependents come on road. There is always the immediate need of financial assistance. Section 166 of 1988 Act does not fulfill the aforesaid object. Thus, Section 163A of 1988 Act was inserted with effect from 14.11.1984.

From the reading of Section 163 A of 1988 Act, it is quite evident that owner of motor vehicle or insurer shall be liable to pay in case of death or permanent disability. The liability of owner of motor vehicle is co-extensive with liability of insurer. In case, owner of motor vehicle is driving the vehicle and it does not meet with an accident with another vehicle means no third party is involved, the insurer

cannot be held liable to make payment under Section 163A of the 1988 Act.

9. The Madras High Court in **The Divisional Manager, TATA AIG General Insurance Company Limited vs. A.C. Jagadeesann and others MANU/TN/1760/2022** in paragraphs 36 and 39 has concluded that insurance company is not liable to make payment if no other vehicle is involved and accident takes place when owner of vehicle is driving the vehicle, the same are reproduced below:-

“36. The Scheme of the Act contemplates 4 players-the victim, the driver of the offending vehicle, owner of the offending vehicle and lastly, its insurer. In any accident which results in any damage to person or property the person who is primarily at fault is the driver of the vehicle that caused the accident. Once, the fault is fixed on the driver, the owner of the vehicle becomes vicariously liable. At times the owner and the driver may be the same person. Thereafter, if the vehicle possesses a valid insurance then the insurer is bound to indemnify the owner of the vehicle. Therefore, considering the object of the Act and the judicial pronouncements, it is clear that a person claiming compensation under the “No Fault Liability” has to first establish a third party involvement in the mishap. The judgment in United India Insurance Company Limited vs. Sunil Kumar and another (AIR 2017 SC 5710), only emphasizes that the Insurer cannot set up the defence of negligence, it has not done away with the primary proof that the accident involved a third party intervention/involvement.

39. The tenor and purport of the above judgment is the principle of “No Fault Liability” obviously implied that the injury or death or the claimant is the result of the involvement of a third party with the claimant being an innocent bystander and the accident has occurred out of no fault of his.”

10. A two Judge Bench of Hon'ble Supreme Court in **Ramkhaladi and another vs. United India Insurance Company and another (2020) 2 SCC 550** dealt at length with question of liability of insurance company where no other vehicle is involved and owner of insured vehicle is found driving the vehicle. The Supreme Court in following paragraphs has clearly held that the insurance company is not liable to make payment under Section 163-A of 1988 Act if vehicle is being driven by owner of the vehicle and no other vehicle is involved in the accident:-

“9. Heard 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 163A](#) of the Act?; Whether the deceased not being a third party to the vehicle No. RJ 02 SA 7811 being in the shoes of the owner can maintain the claim under [Section 163A](#) of the Act from the owner of the said vehicle?

9.5 It is true that, in a claim under [Section 163A](#) 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 163A](#) 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 163A](#) 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 163A](#) 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 the case of Dhanraj (supra), 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 authorized 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 163A](#) 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 163A](#) 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.

9.9 Now, so far as the submission made on behalf of the claimants that in a claim under [Section 163A](#) of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under [Section 163A](#) of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi (supra), the aforesaid cannot be accepted. In Rajni Devi (supra), it has been

specifically observed and held that the provisions of [Section 163A](#) of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in the cases of [Oriental Insurance Co. Ltd. V. Jhuma Saha](#) (2007) 9 SCC 263; [Dhanraj](#) (supra); [National Insurance Co. Ltd. V. Laxmi Narain Dhut](#) (2007) 3 SCC 700 and [Premkumari v. Prahlad Dev](#) (2008) 3 SCC 193, it is ultimately concluded by this Court that the liability under [Section 163A](#) of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of [Section 163A](#) of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of [Ashalata Bhowmik](#) (supra), it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed hereinabove.”

11. In view of law laid down by Hon'ble Supreme Court in catena of judgments, this Court finds itself unable to hold appellant-insurer liable to make compensation under Section 163-A of the 1988 Act when admittedly the vehicle in question was being driven by owner of the vehicle and it did not meet with accident with any other vehicle. It is further undisputed that respondent-claimant filed claim

against insurer of its own vehicle and claim was not filed against any other vehicle.

12. It is apt to notice here that as per Section 147 of 1988 Act read with judgments delivered by different Courts, there may be contractual liability between the insured and insurer. The liability may be statutory or contractual and if contractual liability is created, the insurer is liable to make payment to the extent of liability determined by contract. As reproduced above, the respondent had made payment of Rs. 50/- towards insurance of owner of vehicle. The policy further provides that liability would not exceed Rs. 1,00,000/-. As per GR 36 of Indian Motor Tariff, there is maximum liability of Rs. 1,00,000/- in case a two wheeler is involved and driver dies in the accident or he becomes 100% disable. In case of loss of one limb or sight of one eye, insurer is liable to make 50% of the capital sum insured. In the present case, admittedly, there is permanent disability to the extent of 8%. Keeping in view totality of facts and circumstances and the statement of counsel for the appellant that they are willing and ready to pay compensation of Rs. 50,000/- in view of their contractual liability, I find it appropriate to direct insurer-appellant to make payment of Rs. 50,000/- alongwith interest as awarded by learned Tribunal.

13. In view of above discussion and findings, the impugned order deserves to be modified and accordingly the amount of compensation awarded is reduced to Rs. 50,000/- from Rs. 1,07,000/-. The insurer shall make payment alongwith interest at the

rate awarded by learned Tribunal within a period of 8 weeks, if amount of compensation has not been released.

(JAGMOHAN BANSAL)
JUDGE

12.9.2022
PARAMJIT

Whether speaking/reasoned : Yes
Whether reportable : Yes