

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.4837 of 2013 (O&M)

Date of Decision : August 16, 2022

National Insurance Company Limited

....Appellant

Versus

Roopa and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. R.C. Gupta, Advocate
for the appellant.

Respondents No.1 and 5 already proceeded *ex parte*
vide order dated 31.07.2015.

None for respondents No.2 to 4.

PANKAJ JAIN, J.

Insurer is in appeal impugning the award passed by the Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal') in MACT Case No.53 of 2012, dated 8th April, 2013.

2. Claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the 1988 Act') seeking compensation on account of death of Sanjay, who was driving vehicle bearing registration No.DL-2CAA-5308.

3. As per the contents of the claim petition, on the night of 18th January, 2010 at about 9.30 p.m. Maruti Omni Car bearing RC No.DL-

2CAA-5308 driven by the deceased was hit by an unknown vehicle. Resultantly, driver Sanjay suffered multiple fractures. Offending vehicle ran away from the spot taking benefit of fog. Injured was taken to General Hospital, Bahadurgarh where he was declared brought dead.

4. The claim petition was filed by the legal heirs of the deceased-Sanjay. The owner of the vehicle as well as the insurer were impleaded as respondents. On the basis of the pleadings of the parties the Tribunal framed the following issues :-

“(i) Whether Sanjay son of Bhim Singh died in a motor vehicular accident which took place on 18.01.2010 (wrongly typed as 2001 in the Award) by the use of Maruti Omni Van bearing registration No.DL-2CAA-5308? OPP

(ii) If issue No.1 is proved, whether petitioners being the legal representatives of deceased Sanjay are entitled to the compensation for the death of Sanjay having occurred in the accident in question, if so, to what amount and from whom? OPP

(iii) Whether deceased Sanjay was not holding a valid & effective driving license at the time of accident, if so, its effect? OPR-2

(iv) Relief.”

5. After analysing the evidence on record, Tribunal accepted the claim in part and awarded compensation of Rs.4,95,200/- holding respondents i.e. the insured and the insurer both liable jointly and severally.

6. Insurer is in appeal against the said award.

7. Primary contention raised by counsel for the appellant questions the maintainability of the petition. It has been contended that the deceased being driver/borrower of vehicle and not 'third party', the present petition under Section 163-A of the 1988 Act is not maintainable. Heavy reliance has been placed upon judgment passed by Apex Court in the case of **Ningamma and another vs. United India Insurance Co. Ltd., 2009 (3) RCR (Civil) 435.**

8. Ld. Counsel for the appellant further submits that the deceased was a borrower and, thus, the vehicle being used in violation of terms of the Insurance Policy, the appellant cannot be held to be liable. He further disputes the compensation awarded by the Tribunal.

9. I have heard Ld. Counsel for the appellant and have carefully gone through the records of the case.

10. Before deciding issue w.r.t. maintainability of the petition under Section 163-A of the 1988 Act in the present case, the status of the deceased needs to be decided first. It is trite that the insurer is required to plead and prove that the deceased was borrower of the vehicle. From the record, it is evident that the appellant has not led any evidence to prove that the deceased was borrower of the vehicle. Counsel for the appellant relies upon statement of Roopa (PW-1). A bare perusal thereof shall reveal that there is not even a suggestion put to her w.r.t. the deceased being borrower of the

vehicle. Not only this, respondent No.6 i.e., owner Krishan Kumar appeared as RW-1. He was cross-examined by counsel for the appellant. No question or suggestion was put to him w.r.t. the deceased being borrower of the vehicle. Thus to say that the deceased was borrower of the vehicle and was using the same in breach of the policy cannot be accepted in the absence of any evidence on record. In view of categorical statement made by PW-1 and in absence of any cogent piece of evidence to rebut the same it is held that the deceased was only a driver of the vehicle.

11. Now the main issue that needs to be adjudicated in the present appeal is :-

“Whether a driver of the vehicle can maintain petition under Section 163-A of the 1988 Act in the light of the observations made by Apex Court in Ningamma's case (supra)?”

12. As per Ld. Counsel for the appellant it is a thumb rule that a borrower or a driver or the owner cannot maintain petition under Section 163-A of the 1988 Act as they would not constitute 'third party'. In order to support his contention he relies upon the observations made in **Ningamma's case** (supra).

*“23. Recently, this Court in the case of **Raj Rani & Ors. v. Oriental Insurance Co. Ltd. & Ors.**, [C.A. Nos. 3317-3318 of 2009 @ SLP(C) Nos. 27792-27793 of 2008 pronounced on 06.05.2009], wherein one of us (Hon'ble Justice S. B. Sinha) has taken the view that it is not necessary in a proceeding under the MVA to go by any rules of pleadings or evidence.*

*Section 166 of the MVA speaks about "Just Compensation". The court's duty being to award "Just Compensation", it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not. It was further observed in the aforesaid case that although the multiplier specified in the Second Schedule appended to the MVA are stricto sensu not applicable in a case under Section 166 of the MVA, it is not of much dispute that wherever the court has to apply the appropriate multiplier having regard to several factors in mind. The Court has placed reliance on earlier judgment of this Court in **Nagappa v. Gurudayal & Ors., 2003(1) RCR (Civil) 258 : (2003) 2 SCC 274**, wherein it was observed as follows in para 7:*

"7. Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is -- it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the

property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. The other important part of the said section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub- section (6) of Section 158 as an application for compensation under this Act". Hence, the Claims Tribunal in an appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed."

*"24. There are indeed cases like **New India Assurance Company Limited v. Sadanand Mukhi and Others, 2009(1) RCR (Civil) 817 : 2009(1) RAJ 472 : (2009)2 SCC 417**, wherein, the son of the owner was driving the vehicle, who died in the accident, was not regarded as third party. In the said case the court held that neither Section 163A nor Section 166 would be applicable."*

13. In the aforesaid case of **Ningamma and anr.**, the claimants were the legal heirs of borrower of a vehicle from the real owner. The claim petition filed by the claimants was allowed. High Court in appeal found that the accident occurred due to the fault of the deceased and the claim petition was not maintainable under Section 163-A of the 1988 Act unless

there was another vehicle involved in the accident. The claimants went in appeal. It was in appeal that the Apex Court held as under :-

“22. When we analyze the impugned judgment of the High Court in terms of aforesaid discussion, we find that the counsel for the insurance company himself contended before the High Court that the policy of insurance was an Act policy and the risk that is covered is only in respect of persons contemplated under Section 147 of the MVA. It is the finding of fact which we have also upheld in this Judgment that the deceased was authorised by the owner of the vehicle to drive the vehicle. When we examined the facts of the present case in view of the aforesaid submission made, we are of the opinion that such an issue was required to be considered by the High Court in the light of the facts and evidence adduced in the case. On consideration of the Judgment and Order passed by the High Court we find the same to be sketchy on the aforesaid issue as to whether the claim could be considered under the provisions of Section 166 of the MVA. In this connection, reference can be made to a judgment of this Court in the case of Oriental Insurance Company Ltd. vs. Rajni Devi and Others (supra), wherein, it was held that where compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof.”

14. Observations made by Apex Court in the case of **Ningamma and anr.** (supra) are based upon observations made in case of **Oriental Insurance Company Limited vs. Rajni Devi and others, (2008) 5 SCC**

736 which is based upon judgment in the case of **Oriental Insurance Co. Ltd. vs. Jhuma Saha and others, (2007) 9 SCC 263**, which further relies upon the case of **Dhanraj vs. New India Assurance Co. Ltd. and another, (2004) 8 SCC 553**. In **Dhanraj's case** (supra) which happens to be the first one in the present series, Apex Court after considering Section 147 of the Act, found that the Act does not require an Insurance Company to insure risk of death or bodily injury to the owner of the vehicle. It was further held that from the covenants contained in the Policy it was clear that the premium was towards damage to the vehicle and not for injury to the person of the owner and thus there was no statutory or contractual liability of the Insurance Company to pay compensation to the owner.

15. **Dhanraj's case** (supra) was relied upon in the case of **Jhuma Saha** (supra). While relying upon the observations made in the case of **Dhanraj** (supra), Apex Court held that –

“13. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, section 147(b) of the Motor Vehicle Act which in no uncertain terms cover the risk of a third party only would be attracted in the present case.”

16. Both these precedents were further referred to in the case of **Oriental Insurance Company Limited vs. Rajni Devi and others** (supra). In **Rajni Devi's** case, again the question was that whether the owner of the vehicle who happens to be a pillion rider will fall within the ambit of ‘third

party' for the purpose of Section 147 of the 1988 Act. While answering the said question Apex Court held that –

“7. It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle.

*8. Section 163-A of the Motor Vehicles Act reads thus :
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."

The said provision cannot be said to have any application in regard to an accident wherein the owner of the motor vehicle himself is involved. The question is no longer res integra.

9. In Oriental Insurance Co. Ltd. v. Smt. Jhuma Saha & Ors. (SCC p.265, paras 10-12), it was held :

"10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.

11. Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise."

17. In order to appreciate the observations made in aforesaid series of precedents it will be apposite to analyze the bare provisions of law.

Section 163A is part of Chapter XI of the 1988 Act. Section 146, Section 147 and Section 163A which are relevant for the decision of the present case read as under :-

“S.146. *Necessity for insurance against third party risk.*
— (1) *No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:*

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).

Explanation. —*A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.*

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:—

(a) the Central Government or a State Government,

if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking;

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

Explanation. —For the purposes of this sub-section, “appropriate Government” means the Central Government or a State Government, as the case may be, and—

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;

(iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority.

S. 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.*

S. 163A. *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 authorized 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.”

18. The conjoint reading of the afore-reproduced bare provisions of law leads to the following conclusion :-

- (i) Section 146 of the 1988 Act statutorily requires an owner to insure against third party risk before use of the vehicle;
- (ii) Section 147 of the 1988 Act deals with requirements of policies and limits of liability. Section 147 statutorily mandates the insurance policies to necessarily insure third party risk. However, Clause 5 thereof is an enabling clause whereunder an insurer has been fastened upon the liability to indemnify the person or classes of persons specified in respect of any liability

which the policy purports to cover in the case of that person or those classes of persons. Meaning thereby Section 147 (5) enables the insurer and the insured to contract for expansion of the statutory policy which otherwise mandates necessary insurance of loss of third party.

19. The third party has been defined under Section 145(g) of the 1988 Act. The clause is inclusive one. Apart from that it needs to be noticed here that the third party in this Chapter connotes third party to the contract of insurance and not third party to the accident. Borrower and owner have been equated w.r.t. maintaining petition under Section 163-A for the reason that the borrower steps into shoes of owner whereas so is not the case w.r.t. driver. Section 147(1)(b) proviso also makes it clear that the driver has a distinct status than that of owner of the vehicle.

20. In **Dhanraj's case** (supra) the Apex Court found that the additional premium was not paid in respect of entire risk of death or bodily injury of the owner of the vehicle and, thus, the policy covered the risk of a third party only.

21. It is thus clear that the proposition of law as laid down by the Apex Court in the series of the cases starting from Dhanraj's case to Ningamma's case is, that where the policy does not cover the owner but only covers third party, owner or any other person claiming under him cannot maintain petition under Section 163-A of the 1988 Act. In other words the

statute provides for the 'statutory liability' which is limited to cover loss of third party. At the same time the statute does not prohibit 'contractual liability' which is over and above the statutory liability. Whether the duty of the insurer is only to indemnify loss of third party or he is required to indemnify even the owner/driver shall depend upon the terms of the policy. Where the policy is merely a statutory policy obviously the same will fall within the ratio of law laid down in Dhanraj's case (supra) and the insurer shall be liable to indemnify only the third party and owner shall be precluded from maintaining petition under Section 163-A of the 1988 Act. However, where the policy is a comprehensive policy and the contracting parties have agreed to travel beyond the mandatory requirement of Section 146 of the 1988 Act and insurer agrees to indemnify the owner and has accepted premium for such contract to indemnify, the case would not be hit by law laid down in Dhanraj's case (supra). The parties shall be bound by the contract of insurance. In the case of **ICICI Lombard General Insurance Company Limited vs. Jagdish - F.A.O. No. 2466 of 2010 (O&M)**, Co-ordinate Bench of this Court held that -

*“12. The reading of the judgment of the Hon'ble Supreme Court in the case of **Ningamma & Anr. v. United India Insurance Co. Ltd.** (supra) shows, that the Hon'ble Supreme Court also held, that under the Motor Vehicles Act the owner of the vehicle cannot claim compensation for himself but the Hon'ble Supreme Court further held, that the parties would be governed by the terms of their policy. It is not in dispute,*

that the policy taken out by the claimant was comprehensive policy covering all types of risks. Once in the policy the respondent/claimant was entitled to claim the compensation under the insurance policy then it cannot be said, that the learned Tribunal committed an error in granting the compensation for the injuries suffered under the comprehensive policy.”

22. Coming to the facts of the present case, the Insurance Policy Exhibit R-2 would reveal that the policy is a comprehensive one. It covers the owner as well as driver. The Policy on record clearly shows that the premium was paid for insurance of the owner as well as the driver. Thus, in the present case the contention raised by the appellant w.r.t. the maintainability of the petition sans merit and thus is rejected. So far as the plea w.r.t. quantum of compensation awarded by the Tribunal is concerned, it is by now settled principle of law that the liability under Section 163-A is not limited.

23. As a sequel of the discussion made hereinabove, the present appeal is dismissed with costs, being devoid of merit.

24. Needless to say, interim order dated 11th October, 2013 whereby execution of Award beyond 50% of the amount was stayed, is vacated.

August 16, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No