

IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 2188 of 2016
(FMAT 1026 of 2015)

Samchhun Bibi

Vs.

Tata AIG General Insurance Company Ltd. & Anr.

For the Appellant : Mr. Krishanu Banik.

**For the Respondents/
Insurance Company** : Mr. Rajesh Singh.

Hearing concluded on : 27.06.2024

Judgment on : 16.07.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimant against the Judgment and Award dated 6th day of August, 2015 passed by the Learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 2nd Court, Balurghat, Dakshin Dinajpur (hereinafter called as the learned Tribunal Judge) in M.A.C. Case No. 168 of 2011, **under Section 163A of the Motor Vehicles Act, 1988.**

2. **The Facts:-**

“The victim boy Saiful Mondal @ Chhayful Mondal, since deceased, was the son of the present claimant/petitioner namely Samchhun Bibi and that at the time of the accident the victim was 20 years old and was a businessman and that on 11.10.2011 at about 18.30 hrs. the victim was coming from Gangarampur side towards his house riding a motor-cycle bearing No.W.B.-62B/4256 (Motor Cycle) and when he reached at Chalun, he lost his control over the Motor-cycle due to bad condition of the road and victim capsized on the road with his motor-cycle and due to said accident he got seriously injured and was removed to the Balurghat District Hospital but there the victim Saiful Mondal @ Chhayful Mondal died on the next day.”

3. O.P. No. 1, Najrul Islam Mondal (father of the victim) was the owner of the offending vehicle at the relevant time, which was insured under TATA AIG General Insurance Co. Ltd., the O.P. No. 2 in this case.
4. The owner of the offending vehicle bearing No. W.B-62B/4256 (Motor Cycle) has appeared in this case and filed W.O. but subsequently did not contest the case and as a result the instant

case has been heard ex-parte against said owner of the vehicle (O.P. No.1).

5. The O.P. No. 2/TATA AIG General Insurance Co. Ltd. has contested this case and has filed written objection, wherein the said O.P. has denied all the materials allegations made by the claimant/petitioner in the instant case.
6. The claimant/appellant (mother of the victim) examined herself as P.W.1 and produced relevant documents being FIR, Seizure List, Final Report, Driving Licence, School Transfer Certificate, P.M. Report, Insurance Policy etc. which were marked **Exhibit 1 to 12**.
7. The Insurance Company/Respondent No.1 did not adduce any evidence.
8. **The Tribunal finally passed the following order:-**

"M.A.C. Case No. 168 of 2011

Dated:06.08.2015

*In Para-16 of the case of **New India Assurance Co. Ltd. Vs. Sadanand Mukhi & Ors., [(2009) 2 Supreme Court cases 417]** the Hon'ble Apex Court held that:-*

"15. Keeping in view the aforementioned parliamentary object, let us consider the fact of the present case so as to consider as to whether the insurer is liable to pay the amount of compensation in relation to the accident occurred by use of the vehicle which was being driven by the son of the insured. We may, for the said purpose, notice certain decisions covering different categories of the claims. In United India Insurance Co. Ltd. V. Tilak Singh [(2006)4 SCC 404] this Court considered the provisions of the Motor Vehicles Act 1939 as also the 1988 Act and inter alia opined that the Insurance Company would have no liability towards the injuries suffered by the deceased who was a

prelision rider, as the insurance policy was a statutory policy which did not cover the gratuitous passenger."

At Para-16 in said case the Hon'ble Supreme Court has further observed that:-

16. In *Oriental Insurance Co. Ltd. V. Jhuma Saha* (2007) 9 SCC 263, it was held: (SCC p.265, Paras 10-11)

"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."

*So, it is clear from the above noted decision of the Hon'ble Supreme Court that in the situation like the present case where the son of the insure was driving the motor-cycle and got injured and died and seven except said vehicle no other vehicle was involved in said accident, the insurer shall have no liability to pay compensation for the death of the son of the insured. **As such the present claimant is not entitled to get compensation from the Insurance Co. in the instant case U/S.163A M.V. Act.***

**Sd/-
Judge, Tribunal,
AdJ, 2nd Court, Balurghat.
Dakshin Dinajpur"**

9. Being aggrieved, the claimant preferred the present appeal on the grounds :-

- a) *That the Learned Tribunal Judge ought to have appreciated that the father of the victim/deceased was a party to the claim proceeding and the victim/deceased was a third party and as such the impugned order is bad in law and the same is liable to be set aside.*
- b) *The Learned Tribunal Judge misconstrued and misunderstood the ratio decided in the case of **National Insurance Company Ltd. Vs. Sinitha and Others [2012 (1) T.A.C. 234 (S.C.)]; Oriental Insurance Company Ltd. Vs. Rajni Devi & Ors. [2008 (2) T.A.C. 752 (S.C.); Ningamma and Another Vs. United India Insurance Company Ltd. [2009 (3) T.A.C. 13 (S.C.)]; New India Assurance Company Ltd. Vs. Sadanand Mukhi & Ors. [(2009)2 Supreme Court Cases 417]** while adjudicating the present claim case.*

10. Considering the materials and evidence on record, the following facts are required to be discussed :-

- i) *The victim was riding the offending vehicle (motor cycle) which belonged to the insured, his father.*
- ii) *He lost control of the vehicle and met with the accident, reasons being given as bad condition of road, to save a cyclist etc.*
- iii) *He sustained severe injuries leading to his death.*

iv) Gangarampur P.S. Case No. 444/11 under Sections 279/304A IPC started, ended in a FRT as the rider of the motor cycle died in the said accident.

11. **The petitioner** has relied upon the judgment of the **Hon'ble Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore & Ors., 1988 AIR 719**. It appears that the facts of the said case **is not similar** to the facts in the present case, as in the said case **there were two vehicles involved**, whereas only one vehicle is involved in the present case, which the victim was riding when it met with an accident.

12. **The respondent/insurance company has relied upon the following judgments :-**

A. New India Assurance Company Ltd. vs. Sadanand Mukhi & Ors., in Civil Appeal No. 7402 of 2008, (2009) 2 SCC 417.

“11. Provisions relating to grant of compensation occurring in Chapters XI and XII of the Act have been enacted by Parliament in order to achieve the purpose and object stated therein. Section 146 of the Act lays down the requirements for insurance against third-party risk. Where a third-party risk is involved, an insurance policy is required to be mandatorily taken out. The requirements of policies and the limits of liability, however, have been stated in Section 147 of the Act. Section 147(1)(b) of the Act, reads as under:

“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—

(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 a 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.”

The provisions of the Act, therefore, provide for two types of insurance — one statutory in nature and the other contractual in nature. Whereas the insurance company is bound to compensate the owner or the driver of the motor vehicle in case any person dies or suffers injury as a result of an accident; in case

involving owner of the vehicle or others are proposed to be covered, an additional premium is required to be paid for covering their life and property.

15. *Keeping in view the aforementioned parliamentary object, let us consider the fact of the present case so as to consider as to whether the insurer is liable to pay the amount of compensation in relation to the accident occurred by use of the vehicle which was being driven by the son of the insured.....*

18. *..... Learned counsel for the respondents would contend that the object and purport of the Act being to cover the risk to life of any person, the said decision should be applied in this case also. We do not think that it would be a correct reading of the said judgment as therein **National Insurance Co. Ltd. v. Laxmi Narain Dhut [(2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142]** has been followed. In **Laxmi Narain Dhut [(2007) 3 SCC 700: (2007) 2 SCC (Cri) 142]** a distinction between a statutory policy and a contractual policy has clearly been made out. These decisions, clearly, are applicable to the facts of the present case.*

19. *In view of the aforementioned authoritative pronouncements, we have no hesitation to hold that the Insurance Company was not liable. The impugned judgment, therefore, cannot be sustained. It is set aside accordingly. The appeal is allowed. No costs."*

B. In *Ningamma & Ors. vs. United India Insurance Co. Ltd.,* in Civil Appeal No. 3538 of 2009 and 3540 of 2009, ((2009) 13 SCC 710), the Supreme Court held:-

"12. *In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative?*

13. Before dwelling further, it would be useful to discuss the relevant paras of Sections 163-A and 166 of the MVA applicable in the present case:

“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 or 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.

(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.

166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may 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:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

33. There are indeed cases like **New India Assurance Co. Ltd. v. Sadanand Mukhi** [(2009) 2 SCC 417 : (2009) 1 SCC (Cri) 815] 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 163-A nor Section 166 would be applicable.”

C. Ramkhilladi & Anr. vs The United India Insurance

Company & Anr., in Civil Appeal No. 9393 of 2019, the

Supreme Court held:-

“5.4 Therefore, applying the law laid down by this Court in the case of Ningamma (supra), 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 163A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable.

5.9After 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.”

13. Now it appears to this Court that, in Ningamma & Ors. vs.

United India Insurance Co. Ltd. (Supra), the Supreme Court

further held as follows :-

“16.

27. We think that the law laid down in *Minu B. Mehta v. Balkrishna Ramchandra Nayan* [(1977) 2 SCC 441] was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or 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 the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163-A of the Act, 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 concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

19. In *Oriental Insurance Co. Ltd. v. Rajni Devi* [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] wherein one of us, namely, Hon'ble S.B. Sinha, J. was a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that 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 claimant against the insurance company would depend upon the terms thereof.

20. It was held in *Oriental Insurance Co. Ltd.* case [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] that

Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer *res integra*. The liability under Section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA.

21. In our considered opinion, the ratio of the decision in *Oriental Insurance Co. Ltd. case [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67]* is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be an employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner and, therefore, he would step into the shoes of the owner of the motorbike. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle.

22. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.

23. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case.

24. However, the question remains as to whether an application for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA.

The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased; or 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.

25. When an application of the aforesaid nature claiming compensation under the provisions of Section 166 is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 162, by determining the amount of compensation, which is found to be just.

Person or persons who made claim for compensation would thereafter be paid such amount. **When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving.** It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs.

26. In this context, reference could be made to relevant paras of Section 147 of the MVA which read as follows:

“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 a 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.*

(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.

(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.”

27. *Section 147 of the MVA provides that the policy of insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorised representative carried in the vehicle or arising out of the use of vehicle in the public place.*

28. *When we analyse 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.

29. *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.*

30. *In this connection, reference can be made to the judgment of this Court in Oriental Insurance Co. Ltd. v. Rajni Devi [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] 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.*

31. *Recently, this Court in Raj Rani v. Oriental Insurance Co. Ltd. [(2009) 13 SCC 654] wherein one of us (Hon'ble S.B. Sinha, J.) 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.*

32. *It was further observed in Raj Rani case [(2009) 13 SCC 654] 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 Singh [(2003) 2 SCC 274 : 2003 SCC (Cri) 523] wherein it was observed as follows in para 7: (SCC p. 279)*

"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."

33. *There are indeed cases like New India Assurance Co. Ltd. v. Sadanand Mukhi [(2009) 2 SCC 417 : (2009) 1 SCC (Cri) 815] 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 163-A nor Section 166 would be applicable.*

34. *Undoubtedly, Section 166 of the MVA deals with "just compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "just compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award "just compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not.*

35. However, whether or not the claimants would be governed by the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court. While entertaining the appeal, no effort was made by the High Court to deal with the aforesaid issues, and therefore, we are of the considered opinion that the present case should be remanded back to the High Court to give its decision on the aforesaid issues.

36. The High Court was required to consider the aforesaid issues even if it found that the provision of Section 163-A of the MVA was not applicable to the facts and circumstances of the present case. Since all the aforesaid issues are purely questions of fact, we do not propose to deal with these issues and we send the matter back to the High Court for dealing with the said issues and to render its decision in accordance with law.

37. The High Court will also consider the question of quantum of compensation, if any, to which the claimants might be entitled to, having regard to the earning capacity of the deceased and “just compensation”, if any. Since the claim is a very old claim, we request the High Court to consider the matter as expeditiously as possible.”

14. **In the present case**, in view of the directions and guidelines in ***Ningamma & Ors. vs. United India Insurance Co. Ltd. (Supra)***, this Court has to now treat the present appeal as a **claim under Section 166 M.V. Act**, as the claimant/appellant in this case is not entitled to claim compensation under Section 163A of the Motor Vehicles Act. ***(Ningamma & Ors. vs. United India Insurance Co. Ltd. (Supra, Para 23)***
15. **The victim in this case had a valid licence (Exbt. 6).**

The Driver Clause in the Insurance Policy (Exhibit 10) is as follows:-

“Driver: Any Person including insured: Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also that the person holding an effective Learner’s Licence may also drive the vehicle and that such a person satisfies the requirements of Rules of the Central Motor Vehicles Rules, 1989.”

16. He was aged about **19 years** at the time of the accident.

17. Charge sheet (**Exbt. 4 and 5**) shows that:-

*“..... While he was returning with the said Motor Cycle to hit house on way at Chalun Betoli fall down from his Motor cycle **due to lack of control for save one cycle passenger**. As a result he was sustained grievous injury on his person and was shifted to Balurghat District Hospital, where he expired on 12.10.2011 at 10.45 hrs....”*

18. Thus, it appears that **the deceased/victim was not himself responsible for the accident. Rash and negligent driving by deceased has not been stated by the investigating officer, in the final report.**

19. Thus, in view of the guidelines in ***Ningamma & Ors. vs. United India Insurance Co. Ltd. (Supra)***, the appellants (mother’s) claim is maintainable under Section 166 M.V. Act.

20. From the materials and evidence on record, the forthcoming facts are evident:-

- i) The deceased being **19 years** of age (**Exbt-6**), multiplier of **18** is applicable. (***Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr- (2009) 6 SCC 121***)

- ii) His income be fixed at **Rs.4,000/- p.m.** being self-employed (Accident on 11.10.2011).
- iii) **Future prospects** to be **40%** of income (***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***
- iv) Deduction for personal expenses to be **50% of income** as deceased died a bachelor. (***Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)***)
- v) General damages of Rs. 70,000/- under the conventional heads of loss of estate, funeral expenses, and pain and suffering (amount to be same as for consortium). (***National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)***). General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%)

21. Thus, the just compensation in this case would be as follows:-

Monthly Income	Rs. 4,000/-
Annual Income (4,000 x 12)	Rs. 48,000/-
Deduction 50% of income	Rs. 24,000/-
	Rs. 24,000/-
Add : Future prospects @ 40% of the annual income of the deceased	Rs. 9,600/-
	Rs. 33,600/-
Multiplier x 18 (33, 600 x 18)	Rs. 6, 04,800/-
Add: General damages Loss of estate: Rs.15,000/- Pain and suffering: Rs.40,000/- Funeral expenses: Rs.15,000/-. (Rs. 70,000 + 20% = Rs. 84,000)	Rs. 84,000/-
Total amount:-	Rs.6,88,800/-

- 22.** Accordingly, the Claimant is entitled to the total **amount of compensation of Rs. 6,88,800/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**
- 23.** The Respondent No. 1/ Insurance Company shall deposit the total amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favor of the sole claimant, upon satisfaction of her identity and payment of *ad-valorem* Court fees, if not already paid.
- 24.** **The appeal being FMA 2188 of 2016/FMAT 1026 of 2015 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is set aside.**
- 25.** No order as to costs.
- 26.** All connected applications, if any, stand disposed of.
- 27.** Interim order, if any, stands vacated.
- 28.** Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
- 29.** Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)