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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 484 OF 2013**

Sunil S/o. Baburao Ashtekar  
Age 43 years, Occ. Nil  
R/o. Astagaon, Tq. Rahata,  
Dist. Ahmednagar.

.. APPELANT  
(Original claimant)

VERSUS

1] Balasaheb Baburao Ashtekar,  
Age 46 years, occ. Business,  
R/o. Astagaon, Tq. Rahata,  
Dist. Ahmednagar.

2] The New India Assurance Company Limited,  
through Divisional Manager,  
New India Assurance Company Limited,  
Ahmednagar.

RESPONDENTS  
(Original Respondents)

Mr. A.S. Gandhi, Advocate for appellants.  
Mr. A.S. Osmanpurkar, Advocate for respondent No.2.

**CORAM : S.G. CHAPALGAONKAR, J.**

**DATE : 18<sup>th</sup> APRIL, 2024.**

**JUDGMENT :-**

1. The appellant/original claimant impugns the judgment and award dated 8.11.2012 passed by the Motor Accident Claims Tribunal, Kopergaon in M.A.C.T. No. 28 of 2005, by which the claim for compensation under Section 163A of the Motor Vehicles Act has been

dismissed by the tribunal.

2. Mr. A.S. Gandhi, learned advocate for the appellant/claimant submits that claimant was employed as a driver of a rickshaw bearing registration No. MH-17/K-7288, owned by respondent No.1. On 29.8.2004, while he was driving rickshaw, it turned turtle due to bad condition of road. He suffered fracture of right lower Rib. Despite medical assistance, permanent disablement to the extent of 25% subsists. He had, therefore, lodged MACP No. 28 of 2005 before the tribunal under Section 163-A of the Motor Vehicles Act, raising the claim for compensation from owner and insurer of the rickshaw. However, the tribunal dismissed the claim petition, holding that the claimant does not fall within the meaning of the term “victim” in terms of Section 163A of the Motor Vehicles Act and cannot claim compensation towards injuries suffered in an accident occurred due to his own fault.

3. Mr. Gandhi learned advocate appearing for appellant - claimant submits that even the driver of the vehicle against whom allegations of negligence are made can maintain claim under section 163-A of the Motor Vehicles Act and without going into the aspect fault, such claim can be entertained and award can be passed against owner/insurer of vehicle driven by him.

4. In support of his contention, he relies upon the judgment of the Supreme Court of India in the case of ***United India Insurance Company vs. Sunil Kumar and another***, reported in **AIR 2017 SC 5710** wherein, on reference to larger bench of the Supreme Court of India, legal position has been espoused that in proceeding instituted under section 163-A of the Act, it is not open for the insurer to raise defence of

negligence on the part of the victim. Mr. Gandhi would further submit that vehicle in question was insured under the package policy. The claimant was employee of owner of the vehicle. The risk of employee/driver is statutorily covered in terms of the scheme of the Motor Vehicles Act. As such, he criticised impugned order and urges to allow the claim petition.

5. Mr. A.S. Usmanpurkar, learned advocate for the insurer vehemently submits that when claimant himself was responsible for the accident, no claim is maintainable against the owner and insurer of the vehicle. In this case, the claimant himself was on drivers seat and invited accident because of his own negligence. The tribunal has appropriately considered the claimant's case in the light of law laid down by the Supreme Court of India in the case of *Ningamma vs. United India Insurance Company reported in 2010(1) All M.R. 441* and dismissed the claim petition.

6. Having considered submissions advanced, only issue that requires consideration in this appeal is, as to "whether driver of the offending vehicle, who suffered injuries in an accident, arising out of use of vehicle, can maintain the claim against owner and insurer of the same vehicle, invoking the provisions of Section 163A of the Motor Vehicles Act.

7. Pertinently, self same issue was referred to the larger Bench of Supreme court, in view of divergent opinion expressed by coordinate bench, doubting correctness of law laid down in case of *National Insurance Company Vs. Sinitha and others (2012)2 SCC 356*. The issue has been answered by the three Judge Bench in case of *Sunil Kumar (supra)* wherein, it is held that in a proceeding instituted under section 163A of the Motor Vehicles Act, claim

cannot be defeated raising defence of negligence on part of rider / driver of insured vehicle or it is not open for the insurer to raise defence of negligence on the part of the victim.

8. In the light of aforesaid authoritative pronouncement by the Supreme Court of India, the observations of the tribunal relying upon the judgment in the case of *Deepal Girishbhai Soni and others vs. United India Insurance Co. Ltd., 2004 ACJ 934* or *Ningamma and others Vs. United India Assurance Company Ltd. (supra)* defeating claim of appellant, giving reason of his own negligence cannot be countenanced. Pertinently, in the present case, the claimant was employed as a driver on the insured rickshaw. Therefore, in the light of statutory scheme of the Motor Vehicles Act particularly under section 147, providing insurance cover specified classes of persons, the owner as well as insurer of motor vehicle are mandated to assume risk of the employed/paid driver under statutory/Liability only policy in relation to the insured vehicle.

9 In the case of Ningamma (supra), the deceased had borrowed the vehicle for his own use and stepped into the shoes of the owner. In that contingency, the finding is recorded that he could not raised claim against himself. However, in the present case, since the deceased was employed as a driver and in pursuance of his employment, he was driving his vehicle, the analogy espoused in the judgment of Ningamma (supra) would not apply. Therefore, this Court holds that the claim under section 163A of the Motor Vehicles Act at the claimant-appellants instance was maintainable.

9. So far as quantum of compensation is concerned, the claimant asserts that he suffered 25% permanent disability because of

fracture to his lumber vertebra Nos. 4 and 5. The evidence of Dr. Vinayajand Patil Orthopedic Surgeon is recorded before the Tribunal, who certified 25% disablement to claimant. Further claimant asserts that he was earning Rs. 3,200/- p.m. from his employment as driver. The owner of the vehicle admits the same. Claimant appears aged about 35 years at the time of accident, hence multiplier of 15 would be applicable. In that view of the matter, there is no difficulty to hold that the claimant must have suffered at least 25% loss of earning commensurate to percentage of permanent disablement, which can be worked out as under :-

| Sr. no. | Particulars                                                                                        | Amount         |
|---------|----------------------------------------------------------------------------------------------------|----------------|
| 1.      | Annual income Rs. 3200 x 12                                                                        | Rs. 38,400/-   |
| 2.      | Access Loss of earning commensurate with permanent disablement 25%                                 | Rs. 9,600/-    |
| 3       | Apply multiplier of 15                                                                             | Rs.1,44,000/-  |
| 3.      | Add towards pain suffering<br>In terms of Schedule II under Section 163A of the Motor Vehicles Act | Rs. 5,000/-    |
|         | Total                                                                                              | Rs. 1,49,000/- |

Resultantly, the appeal needs to be partly allowed.

Hence, the following order :-

[a] The first appeal is partly allowed;

[b] The judgment and award dated 8.11.2012 passed by the Motor Accident Claims Tribunal, Kopargaon is hereby quashed and set aside;

[c] The respondent Nos. 1 and 2 shall jointly and severally pay compensation of Rs. 1,49,000/- to the claimant alongwith interest @ 7.5% p.a. from the date of institution of claim petition, till realization of the amount.

- [d] The award be drawn accordingly;
- [e] On deposit of the amount of compensation, it be disbursed to the claimant on payment of deficit court fees, if any.
- [f] Appeal stands disposed of in above terms.

**[S.G. CHAPALGAONKAR]**  
**JUDGE**

grt/-