IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1439 OF 2011

The Oriental Insurance Co. Ltd
Daulat Building, Shivaji Chowk,
Parbhani ... Appellant

Versus

1. Gangubai w/o Dattatraya Khandare,
Age: 33 years, Occu: Household,
R/o. Dhanora, Tq. Jintur,
Dist. Parbhani

2. Meera d/o Dattatraya Khandare,
Age: 1 year under guardianship
of her real mother respondent no.1
R/o. Dhanora, Tq. Jintur,
Dist. Parbhani

3. Bhagubai w/o Dattatraya Khandare,
Age: 30 years, Occu: Household,
R/o. Dhanora, Tq. Jintur,
Dist. Parbhani

4. Shivkanya d/o Dattatraya Khandare,
Age: 1 year under guardianship
of her real mother respondent no.3
R/o. Dhanora, Tq. Jintur,
Dist. Parbhani

5. Laxibai w/o Manikrao Khandare,
Age: 60 years, Occu: Household,
R/o. Dhanora, Tq. Jintur,
Dist. Parbhani

...Respondents
(Orig. Claimants no.1-5)

6. Baburao S/o Ahruba Shinde,
Age: 23 years, Occu.Business,
R/o. Shinde Galli, Pathri

Respondent No. 6 is
(Ori. Respondent No. 1)

Mr. U. S. Malte, Advocate for the Appellant
Mr. M. P. Kale, Advocate for Respondent Nos. 1 to 5

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 04 NOVEMBER 2025
PRONOUNCED ON : 07 NOVEMBER 2025

JUDGMENT:

1. Insurance Company - Original Respondent No. 2 hereby assails judgment and order dated 03.05.2010 passed by learned Motor Accident Claim Tribunal, Parbhani in MACP No. 55/2009 granting compensation as claimed by present Respondent Nos. 1 to 5.

2. Brief facts giving rise to Appeal are as under:

On 17.12.2008 deceased Datta was a passenger of a auto rickshaw bearing registration no. MH-28-C-7611 and was proceeding to his house. The said auto rickshaw was given dash by jeep bearing registration no. MXV-8881 thereby causing multiple injuries to deceased Datta. While undergoing treatment, he succumbed to the same. Crime was registered against jeep driver bearing no. 74/2008. Legal heirs of the deceased Datta set up compensation Petition bearing MACP No. 55/2009 but by invoking section 163-A of the Motor Vehicles Act, 1988 (for short '**the Act**'). Original Respondent No. 1 did not contest. Present Appellant/Insurance Company – Original Respondent No. 2 resisted the claim Petition. After appreciating the respective cases, learned Tribunal was pleased to grant compensation to the tune of Rs. 3,45,500/- with 6% rate of interest.

Dissatisfied by the above judgment and order of learned Tribunal, Original Respondent No. 2 i.e. Insurance Company has come up in instant Appeal.

3. After considering the submissions advanced by the learned Counsel for Insurance Company before this Court, it is emerging that principal grounds raised are two folds. Firstly, at the time of accident nine passengers were occupying the said auto rickshaw and thereby there is violation of rules and Secondly, occupants in the auto rickshaw cannot be said to be third party so as to invoke Section 163-A of the Act. Thus, very maintainability of the claim Petition under Section 163-A of the Act has been questioned.

4. In answer to above, learned Counsel for Respondents would support the impugned judgment and award and would take this Court through the observations of the Tribunal, more particularly, paragraphs 7 and 8 wherein it is held that deceased being occupant of the auto rickshaw and having met with road traffic accident, he is a gratuitous passenger and, therefore, claim under Section 163-A of the Act itself very much maintainable.

5. After considering above respective submissions and on going through the grounds raised in the Appeal memo, to the extent of the above submissions made by the learned Counsel for the Insurance Company,

ground nos. 5 and 6 are reflected in the Appeal memo. Though other grounds about non-joinder of necessary party i.e., owner of the auto rickshaw or its insurer is raised, said grounds are not pressed into service before this Court.

6. The short point, which needs consideration at the hands of this Court, is whether claim Petition under Section 163-A of the Act is maintainable or not. Section 163-A of the Act, reads as under:

> *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.*
>
> *(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.*

7. The above provision is clearly a beneficial one. The very purport of this provision is that claimants, while invoking Section 163-A of the Act, are not expected to demonstrate or to prove as to who was negligent or who was not. Obviously, claim for compensation is based on structured format and no fault liability scheme that does not contemplate claimants proving who was negligent or who is wrong. The above position has been reaffirmed in numerous judgments by the Hon'ble Supreme Court that in proceedings under Section 163-A of the Act the insurer is precluded from raising any defence of negligence on the part of the victim and the provision is rather declared to have overriding effect over all statutes or laws including fault based claims. The few take away from all settled position is that Section 163-A provides for final structured compensation scheme of the independent fault or negligence; claimant under Section 163-A is also not required to prove negligence/wrongful act. Finally, Insurance Company is clearly precluded from raising any defence to that extent. The purport of the above provision is to provide speedy redressal by way of compensation to heirs or claimants on account of death or injury to any person in road traffic accident.

8. Another noticeable part is that no such ground was ever raised before Tribunal which is now raised for the first time before this Court in instant Appeal.

9. The Hon'ble Supreme Court in case of ***Shivaji and Ors. vs. Divisional Manager, United India Insurance Co. Ltd. And Ors, AIR 2018 SC 3705***, by referring to earlier judgment in case of ***United India Insurance Co. Ltd. v. Sunil Kumar and Anr, AIR 2017 SC 5710***, in paragraph 5 has considered the applicability of Section 163-A of the Act, which reads thus:

> *5. The issue which arises before us is no longer res integra and is covered by a recent judgment of three judges of this Court in United India Insurance Co. Ltd. v. Sunil Kumar and Anr., MANU/SC/1562/2017 : AIR 2017 SC 5710. wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time". The Court observed that if an insurer was permitted to raise a defence of negligence Under Section 163A of the Act, it would "bring a proceeding Under Section 163A of the Act at par with the proceeding Under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding Under Section 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation.*

10. In view of above settled legal position, this Court finds no merit in the Appeal. Accordingly, Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

Malani