

FAO-470-2023 & FAO-477-2023
119-2 & 119-3

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CH
ANDIGARH**

Date of decision : 29.08.2025

(1) FAO-470-2023 (O&M)

Hitesh Shamrao Kohade

...Appellant

Versus

Manphool Singh and others

...Respondents

(2) FAO-477-2023 (O&M)

Hitesh Shamrao Kohade

...Appellant

Versus

Naveen and another

...Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Parveen Sharma, Advocate,
for Mr. Sidharth Gulati, Advocate for the appellant(s).

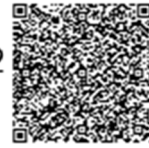
Mr. Satender Kumar Advocate
for respondent No.3 in FAO-470-2023
and for respondent No.1 in FAO-477-2023
(through Video Conferencing).

Mr. Gopal Mittal, Advocate,
for respondent No.4 in FAO-470-2023.
and for respondent No.2 in FAO-477-2023.

HARPREET KAUR JEEWAN, J. (Oral)

CM-1527-CII-2023 IN FAO-470-2023
CM-1610-CII-2023 IN FAO-477-2023

Prayer in these applications is for condonation of delay of
782 days in filing the present appeals.

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Since notice of motion was ordered to be issued vide order dated 21.08.2023, as such, present applications stood impliedly allowed.

Main case(s)

1. Both the appeals, i.e. FAO-470-2023 & FAO-477-2023 have been filed by the owner of the Maruti Car bearing registration No.GA07-E-0490 (*hereinafter referred to as the 'Car'*) impugning the common Award dated 14.09.2018, passed by the Motor Accident Claims Tribunal, Bhiwani (*for short, 'the Tribunal'*), whereby the legal representatives of deceased Sandeep and injured Naveen have been granted compensation under Section 163-A of the Motor Vehicles Act, 1988 (*for short, 'the Act'*).

1.1 Since both the appeals are arising out of a common Award, as such, taken up together for disposal. However, for brevity, facts are being taken from FAO-470-2023.

2. As per the brief facts, on 02.04.2015, Naveen was going from Goa to Vadodara while driving the Car and Sandeep was accompanying him. As per the version of Naveen, at about 9.30 a.m., when they reached in the area of Police Station Kanakvli (Khare Patel), the Car got imbalanced, slipped in the roadside and struck against a tree. Resultantly, both the occupants sustained various injuries. Ultimately, Sandeep died on the spot.

2.1 Manphool Singh and Smt. Chameli Devi, parents of the deceased-Sandeep filed separate claim petition against the injured-Naveen, owner-Hitesh Shamrao Kohade and the Insurance Company;

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whereas, Naveen-injured filed a separate claim petition seeking compensation from the owner and the insurer of the Car.

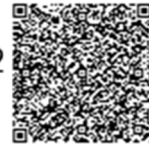
2.2 The appellant-owner of the Car was proceeded against *ex parte* by the Tribunal.

2.3 Both the claim petitions were allowed by the Tribunal; a common Award in favour of the injured as well as parents of the deceased was passed; and a sum of Rs.3,76,400/- was awarded to the injured-Naveen, whereas, an amount of Rs.3,60,900/- was awarded to the parents of the deceased-Sandeep. However, Out of the said amount, the Insurance Company was held liable to pay a sum of Rs.50,000/- each to the injured and parents of the deceased, whereas the rest of the liability was fastened upon the appellant-owner of the Car.

2.4 The appellant-owner of the Car has filed FAO-470-2023 against the legal representatives of the deceased and the Insurance Company; whereas, FAO-477-2023 has been filed against the injured-claimant and the Insurance Company.

2.5 Upon notice, these appeals have been contested by the driver of the Car-Naveen, who is respondent No.3 in FAO-470-2023 and respondent No.1 in FAO-477-2023, however, parents of the deceased-Manphool and Chameli Devi, respondent Nos.1 & 2, respectively in FAO-470-2023 have not appeared, despite completion of service as per the report of the Registry submitted for 17.10.2023.

3. Learned counsel for the appellant-owner of the Car submitted that the appellant had engaged M/s Excel Packers and Movers (*for short, 'the Packers & Movers'*) for shifting his household

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articles from Goa to Vadodara. All the articles including the Car were to be transported in a Truck bearing No.HR55-E-5842 (*for short, 'the Truck'*). The appellant paid Rs.44,045/- towards packaging and transportation charges, however, to his utter surprise, he came to know that instead of transporting the Car in the Truck, it was being 'driven' from Goa to Vadodara. The Car met with an accident and was totally damaged. The appellant moved an application (Annexure A-4) to the Police against the Packers & Movers and he was also paid a sum of Rs.1,51,776/- by the Insurance Company as the Car was having a valid insurance Package Policy.

3.1 It is contended that an *ex parte* Award was passed against the appellant without serving notice upon him on his correct address. The appellant had left Goa in the year 2015 and thereafter, he shifted to Vadodara. The appellant came to know about the present case in December 2022, when he received summons in the execution petition filed by the Insurance Company.

3.2 It is further contended on behalf of the appellant that the Award passed by the Tribunal fastening the liability on the appellant is wrong since the appellant had paid an additional premium for the driver.

4. Mr. Satender Kumar, Advocate, appearing on behalf of the injured/driver-Naveen supported the reasons recorded by the Tribunal, however, submitted that injured as well as the deceased are entitled to seek compensation as the accident took place due to use of the Car.



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5. Learned counsel appearing on behalf of the Insurance Company contends that petitioner under Section 163-A of the Act is not maintainable.

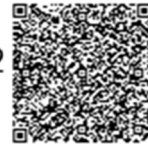
6. Heard.

7. From the undisputed facts, it transpires that injured-Naveen was driving the car and the deceased-Sandeep was travelling in the said car at the time of the accident. As per the version of the injured-driver, no other vehicle is involved in the accident. As per his version, the car got imbalanced, slipped on the roadside and struck against a tree, resulting into the said accident.

8. As per the version of the appellant, he handed over the Car to the Packers & Movers for transporting the same from Goa to Vadodara. Though, there was a separate dispute *inter se* the owner of the Car and the Packers & Movers regarding violation of the directions to transport the Car through Truck, however, adjudication of the said controversy is not the subject-matter in the present appeals and appellant-owner has a separate remedy *qua* the same.

9. In the present appeals, admittedly, the Car owned by the appellant was driven by the driver/injured and the deceased was also travelling in the said vehicle. As such, the injured had stepped into the shoes of the owner at the time when he was driving the vehicle and transporting it from Goa to Vadodara.

10. In view of the facts and circumstances of this case, the question that would arise for determination is as to *whether the driver and the occupant of the Car would be entitled for compensation under*



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Section 163-A of the Act, where no other vehicle was involved in the accident in question?

11. An identical question was considered by the Hon'ble Apex Court in *Ningamma Vs. United India Insurance Co. Ltd. (2009) 13 SCC 710*. In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock-cart, i.e. it did not involve any other motor vehicle. The claim was filed under Section 163-A of the Act by the legal representatives of the deceased against the real owner of the vehicle. The Hon'ble Apex Court observed and held that since the deceased has stepped into the shoes of the owner, Section 163-A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was concluded that the legal representatives of the deceased would not have claimed compensation under Section 163-A of the Act. The observations by Hon'ble Apex Court read as under:-

“14. Section 163-A of the MVA was inserted by Act 54 of 1994 by way of a social security scheme. It is needless to say that the said provision is a code by itself. The said provision has been inserted to provide for a new predetermined structured formula for payment of compensation to road accident victims on the basis of age/income of the deceased or the person suffering permanent disablement. In view of the language used in said section there could be no manner of doubt that the said provision has an overriding effect as it contains a non obstante clause in terms whereof the owner of the motor vehicle or the authorized insurer is liable to pay compensation in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

15. A number of decisions have been rendered by this Court in respect of the Section 163A of the MVA. In Deepal Girishbhai Soni v. United India Insurance Co. Ltd.,(2004) 5 SCC 385, at page 402, one of us (Hon'ble Justice S. B. Sinha) has observed as follows:



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“42. Section 163-A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs 40,000 having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

16. This Court further observed in *Oriental Insurance Co. Ltd. v. Meena Variyal*, (2007) 5 SCC 428, at page 428:

“18. In New India Assurance Co. Ltd. v. Asha Rani this Court had occasion to consider the scope of the expression “any person” occurring in Section 147 of the Act. This Court held:

“26. ... that the meaning of the words ‘any person’ must also be attributed having regard to the context in which they have been used i.e. ‘a third party’. Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.”



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In other words, this Court clearly held that the apparently wide words “any person” are qualified by the setting in which they occur and that “any person” is to be understood as a third party.

* * * *

27. We think that the law laid down in Minu B. Mehta v. Balkrishna Ramchandra Nayan 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.

28. In Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd., two of the learned Judges who constituted the Bench in Minu B. Mehta held that when a car is driven by the owner’s employee on owner’s business, the normal rule was that it was for the claimant for compensation to prove negligence. When the Manager of the owner while driving the car on the business of the owner took in a passenger, it would be taken that he had the



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authority to do so, considering his position unless otherwise shown. If due to his negligent driving an accident occurred and the passenger died, the owner would be liable for compensation. The Court noticed that the modern trend was to make the master liable for acts of his servant which may not fall within the expression “in the course of his employment” as formerly understood. With respect, we think that the extensions to the principle of liability have been rightly indicated in this decision”.

17. The aforesaid decisions make it quite clear that the Parliament by introducing Section 163-A in the MVA provided for payment of compensation on structured formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under sub-section (1) of Section 163-A of the MVA. In order to prove a claim of this nature the claimant would 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.

18. However, in the facts of the present case, it was forcefully argued by the counsel appearing for the respondent that the claimants are not the ‘third party’, and therefore, they are not entitled to claim any benefit under Section 163-A of the MVA. In support of the said contention, the counsel relied on the decision of this Court in the case of Oriental Insurance Co. Ltd. v. Rajni Devi, (2008) 5 SCC 736; and New India Assurance Co. Ltd. v. Sadanand Mukhi and Ors., (2009) 2 SCC 417.

19. In Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon’ble Justice S.B. Sinha is 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 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

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further 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 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 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.”*

11.1 The aforementioned observations were further re-asserted by the Hon’ble Supreme Court in *Ramkhiladi and another Vs. United India Insurance Company and another, (2020) 2 Supreme Court Cases 550.*

11.2 In view of the facts and circumstances of this case and the ratio of law laid down in *Ningamma (supra)* and *Ramkhiladi (supra)*, the injured as well as the legal representatives of the deceased are not entitled to compensation under Section 163-A of the Act.

12. As a consequence of the above discussion, both the appeals are allowed; the impugned Award passed by the Tribunal is partly set-aside. The findings of the Tribunal holding the appellant-owner liable to pay a part of the compensation are set aside. However, the findings of the Tribunal holding the Insurance Company of the Car liable to pay a sum of Rs.50,000/- to the injured-Naveen and another



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sum of Rs.50,000/- to the parents of the deceased-Sandeep, do not require any interference.

- 13. Appeals allowed.
- 14. Pending application(s), if any, shall also stand disposed of.

29.08.2025
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[HARPREET KAUR JEEWAN]
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No