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

234 **FAO-1233-2022 (O&M)**
Date of Decision: 08.07.2025

Smt. Suman & Another **…Appellant(s)**

Versus

S.R. Ahlawat & Another **…Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sankalp Gehlawat, Advocate for
Mr. Saurabh Dalal, Advocate
for the appellants.

NIDHI GUPTA, J. (Oral)

Present appeal has been filed by the claimants against the Award dated 06.08.2021 passed by Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as the “learned Tribunal”) whereby the Claim Petition filed by the appellants under Section 163-A of the Motor Vehicles Act (hereinafter referred to as “the Act”), has been dismissed.

Brief facts of the case are that the Claim Petition was filed by the appellants/parents of the deceased Aman, for grant of compensation of Rs.50 lakh on account of death of Aman in a motor vehicular accident that took place on 01.02.2018 involving Honda Car bearing registration No.DL-7CF-3939 (hereinafter referred to as “the offending vehicle”) which was owned by respondent No.1 and insured by respondent No.2. At the time of accident, the offending vehicle was being driven by deceased Aman himself. It was pleaded in the Claim Petition that on the date of accident 01.02.2018 at about 8:30/9 pm when the deceased reached in front of ITI Mahendergarh, suddenly a running bullock came in front of the car. Aman tried his best to save the bullock, and in this process, the car went off the road and hit against a tree. As a result thereof, Aman sustained multiple and grievous injuries on his person. Just after the accident, he was taken to General Hospital, Mahendergarh where he was declared brought dead. The car was also damaged. It was stated in the claim petition that this accident had taken place by use of the offending motor vehicle as deceased was driving the above-said car at the time of accident. An amount of Rs.1 lakh was spent on transportation and last rites of the deceased. FIR No.51 dated 02.02.2018 under Sections 279 and 304-A IPC was registered at Police Station Mahendergarh in this regard. It was further averred by the claimants that deceased was aged 19 years at the time of death. He was driver by profession and earning Rs.3,300/- per month. The deceased was only earning member of the family and the claimants were totally dependent on his income. Vide the impugned Award, the claim petition of the appellants has been dismissed. Hence, present appeal.

Learned counsel for the appellants submits that the learned Tribunal was in patent error in dismissing the appellants' Claim Petition as it failed to appreciate that the Insurance Policy was a Comprehensive Policy and not an Act only Policy. As such, the learned Tribunal erred in holding that the liability covered in the Insurance Policy for owner-cum-driver is available only when the owner himself suffered injuries or died and not when somebody else was driving the vehicle. Ld. Counsel contends that the deceased had stepped into the shoes of the owner, and the Insurance Policy being a Comprehensive Policy, compensation could not have been denied to the appellants.

Ld. Counsel further submits that even otherwise, the learned Tribunal erred in dismissing the claim petition as the provision of Section 163-A is available only to the third parties and not to the insurer himself. It is submitted that under sub-section (2) of Section 163-A, the claimants are not required to plead or establish that the death or injury 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 and thus not required to plead or establish wrongful act or neglect and they are only required to show that there was an accident of a motor vehicle arising out of a use of a vehicle and the claimant is a third party. Nothing more is required to be proved while claiming compensation under Section 163-A of the Act.

Learned counsel submits that therefore, in passing the impugned Award, two legal fictions have been created against the appellants. It is accordingly prayed that the present appeal be allowed and the impugned Award be set aside being unsustainable.

No other argument is made on behalf of the appellants.

I have heard learned counsel for the appellants and perused the case file in great detail.

Admittedly, the offending vehicle was owned by respondent No.1. It is the case of the appellants that since the deceased had borrowed the offending vehicle from respondent No.1, and was driving it at the time of accident, and since the respondent No.1 had paid additional premium for personal cover, therefore, deceased would be presumed to be the owner; and therefore, the appellants would be entitled to compensation. I find no merit in the said argument as, if the deceased is taken to be the owner of the offending vehicle, then the Claim Petition of the appellants under Section 163-A of the Act is not maintainable. Admittedly, benefit of Section 163-A of the Act is available only to third parties and not to the insurer himself.

Furthermore, it is admitted and proved fact that the deceased was nephew of RW3; and RW3 was an employee of the respondent No.1. Deceased had borrowed the offending vehicle from RW3, without the consent of respondent No.1; and deceased was not an employee of respondent No.1. Apart from self-serving testimony of mother of the deceased, there is no oral or documentary evidence on record to prove the issue of employment of deceased by respondent No.1 as driver. Rather, there is evidence to the contrary to show that at the time of accident, the deceased was not having a regular Driving Licence to authorise him to drive a car independently and that too as professional driver. In fact, at the time of accident the deceased possessed only a Learner's Licence (Ex.P6) which was valid from 21.11.2017 to 20.05.2018. Once it is proved that deceased was not having a regular Driving Licence, he cannot be employed as regular driver by respondent No.1 and too for driving the vehicle for the construction work of company. Therefore, stand taken by respondent no.1/RW2 that the deceased was not his driver nor working under his employment is duly proved. For this reason, the argument on behalf of the appellants that the Policy in question was a Comprehensive Policy, is of no help to the appellants.

Conversely, even if it is assumed that deceased was employee of respondent No.1 as claimed, and had borrowed the offending vehicle from him, even then Claim Petition under Section 163-A was not maintainable as the said provision is available only to third party and not to the insurer himself. Having borrowed the offending vehicle from respondent No.1, the deceased had stepped into the shoes of the owner and thus, could not have claimed compensation under Section 163-A of the Act. There is no evidence to prove that the deceased was driving the car under the authority and capacity of respondent No.1. To the contrary, it is proved that deceased was driving the car after taking it from the custody of its owner illegally and that too without valid Driving Licence. So even if it is assumed he was borrower of the car being nephew of RW3, an employee of respondent No.1, he cannot claim under Section 163-A of the Act.

In view of the above, the present appeal stands **dismissed**.

Pending applications, if any, stand disposed of.

(NIDHI GUPTA)
JUDGE

08.07.2025
Sunena

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