

2025:PHHC:176296



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

207

FAO-2064-2006 (O&M)
Date of decision: 19.12.2025

Paramjit Kaur and others

...Appellants

Versus

National Insurance Company Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Arun Abrol, Advocate for the appellants.

Mr. Suvir Dewan, Advocate for the respondent.

VIKAS SURI, J.(Oral)

1. The present appeal has been preferred against the award dated 29.08.2005 passed by the learned Motor Accidents Claims Tribunal, Gurdaspur (for short, 'the Tribunal'), whereby the claim petition filed by the claimant/appellants on account of the death of Sarwan Kumar in a motor vehicle accident that occurred on 02.08.2001, was dismissed.

2. Briefly, the claimant-appellants had preferred a claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'MV Act') on account of death of the husband of appellant No.1 and father of the other appellants. It was alleged that on 02.08.2021,



deceased Sarwan Kumar was returning to his village on his motorcycle bearing registration No.PB-58A-6983 and around 8.30 PM, he suddenly applied brakes of his motorcycle, causing the same to skid due to a slippery road. Upon falling from the motorcycle, the deceased suffered head injury. He was taken to Civil Hospital, Gurdaspur, where he died after some time. DDR No.45 dated 03.08.2001 was recorded by the police and proceedings under Section 174 Cr.P.C. were conducted. It was further averred that one Karnail Chand was following the deceased on a separate scooter, and had reported to the police the incident in which deceased Sarwan Kumar suffered head injury and succumbed to it despite medical aid. The deceased was riding his own motorcycle and hence, the claim petition is directed against the insurer of the motorcycle, i.e. respondent-insurance company.

2.1 Upon notice of the claim petition, the respondent contested the same by filing reply. By way of preliminary objection, the maintainability of the claim petition was challenged on the ground that the deceased was himself owner of the offending motorcycle and as such, was not a third party; and as per terms and conditions of the insurance policy, he cannot take advantage of the risk cover extended to a third party. The existence of a valid driving license was also disputed.

2.2 From the pleadings of the parties, the following issues were framed:

“1) Whether Sarwan Kumar died in vehicular accident on 2.8.2001 at about 7.30.P.M. in the area of Pull Drain of village Allechak while himself driving Hero Honda such



the No.PB-58-A 6983 and as claim petition maintainable?

OPR

2) Whether Sarwan Kumar deceased was not holding valid and effective driving license at the time of accident?

OPR

3) Whether the claimants-applicants entitled to claim are compensation ? If so, how much and against whom? OPA

4) Relief.”

2.3 The parties led their respective evidence and on consideration of the pleadings, the evidence produced and the respective contentions advanced by learned counsel for the parties, the Tribunal dismissed the claim petition by observing as under:

“In the case in hand also, deceased was owner of the insured offending motor cycle and has not taken any personal accident insurance because insurance policy totally is as silent about this aspect and such the respondent-insurance company is not liable to pay any compensation on account of death of the owner of the insured Motor Cycle and the claim-petition is not maintainable claimants are entitled to recover compensation from the respondent-Insurance Company.”

3. Aggrieved by the aforesaid, the claimant-appellants preferred the present appeal.

4. Learned counsel for the appellants has argued that the findings returned by the Tribunal regarding non-payment of premium of Rs.15/- to cover the risk of personal accident of the insured, is not made out as a perusal of the insurance policy (Ex.R1) would show that there is no column therein to reflect such a premium. It is further submitted that



the risk of personal accident is deemed to be covered under own damage, for which the insurance premium stands paid. It is also contended on behalf of the appellants that the claim petition is under Section 163-A of the MV Act which is based on the 'no fault liability' principle and neglect or default of driver/owner of the offending vehicle is not to be established for award of compensation under the said provision.

5. Per contra, learned counsel for the respondent-insurance company has defended the impugned award passed by the Tribunal. Learned counsel for the respondent would further argue that owner of the offending vehicle cannot be a claimant under the insurance policy unless and until specific premium for the same has been paid. He would refer to the insurance policy (Ex.R1) to submit that no additional premium has been paid for personal accident coverage. It is further submitted that the accident in question took place on 02.08.2001, i.e. prior to the issuance of General Regulation 36 of India Motor Tariff (IMT) 2022, which mandates Compulsory Personal Accident (CPA) cover for owner/driver under both liability only and package policies.

6. I have heard learned counsel for the parties and with their able assistance perused the record.

7. The question which arises for consideration is that the deceased himself being the owner of the offending vehicle, whether his legal heirs could maintain a petition for compensation under Section 163-A of the MV Act.

8. The said issue is no longer *res integra*. The Hon'ble



Supreme Court of India in ***Oriental Insurance Co. Ltd. vs. Smt. Jhuma Saha and others***, reported in (2007) 9 SCC 263, was considering a similar case where the owner himself was driving the vehicle, which due to his negligence dashed with a tree on the roadside as a result of which he died. Their Lordships of the Apex Court held that the claim petition filed by his legal representatives was not maintainable. The relevant portion of the judgment is extracted hereunder:

“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.

12. In *Dhanraj v. New India Assurance Co. Ltd.* (2004) 8 SCC 553, it is stated as follows:

“8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an 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. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.



* * *

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs 4989 paid under the heading 'Own damage' is for covering liability towards personal injury. Under the heading 'Own damage', the words 'premium on vehicle and non-electrical accessories' appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."

9. In ***Oriental Insurance Company Limited vs. Rajni Devi and others***, reported in (2008) 5 SCC 736, it was held that Section 163-A of the MV Act would not have any application in regard to an accident wherein the owner of the motor vehicle himself is involved. Reliance upon ***Jhuma Saha's case*** (supra) was placed and it was held thus:

"11. The liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The heirs of Janak Raj could not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to"

10. The aforesaid view was reiterated by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Ashalata Bhowmik and others***, reported in (2018) 9 SCC 801. Like in the present case, the deceased was the owner cum driver of the offending vehicle in question. No other vehicle was involved in the accident. The deceased himself was responsible for the accident. It was held that the deceased being the



owner of the offending vehicle was not the third party within the meaning of MV Act. The deceased was the victim of his own action of rash and negligent driving and as such, a claimant cannot maintain a claim on the basis of his own fault or negligence. He can nevertheless make the insurance company to pay for the same. Therefore, it was concluded that the legal representatives of the deceased could not have maintained the claim petition under the MV Act.

11. Applying the aforesaid settled principle of law, the Hon'ble Supreme Court in ***Ramkhiladi and another vs. United India Insurance Company and another***, reported in (2020) 2 SCC 550, held that a claim petition under Section 163-A of the MV Act was not maintainable by the borrower/permissive user of vehicle against the owner and/or insurer of the said vehicle, as such borrower/permissive user steps into shoes of owner, and the owner cannot be both claimant and recipient. It was, thus, held that the owner/borrower/permissive user cannot maintain a claim for compensation under Section 163-A of the MV Act in relation to the use of their own vehicle. Reliance was also placed upon the decision in ***Ningamma vs. United India Insurance Co. Ltd.***, reported in (2009) 13 SCC 710, wherein, 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. without involving any other motor vehicle. The claim petition was filed under Section 163-A of the MV Act by the legal representatives of the deceased against the real owner of the motorcycle, which at the time of accident was being driven by the



deceased. The Apex Court held that since the deceased had stepped into shoes of the owner of the vehicle, Section 163-A of the MV Act cannot apply where the owner of the vehicle himself is involved. Thus, the legal representatives of the deceased could not have claimed compensation under Section 163-A of the MV Act. It also deserves to be noticed here that in ***Ramkhiladi's case*** (supra), the accident occurred on 02.10.2006 by which date General Regulation 36 of the India Motor Tariff, 2002 had come into operation mandating Compulsory Personal Accident (CPA) cover for the owner-driver of an insured vehicle, and a sum of Rs.1 lakh had been specified therein as Capital Sum Insured (CSI) for two wheelers.

12. However, in the case at hand, the aforesaid General Regulation is not applicable as the accident occurred prior to coming into force of the aforesaid regulation.

13. Learned counsel for the appellants has not been able to show any material evidence on record or statutory provision to make out a ground for this Court to interfere in the impugned award passed by the Tribunal. Concededly, even the insurance premium for personal accident cover for passengers has not been paid. In the absence of separate insurance premium having been paid for personal accident cover pertaining to insurance coverage period before Compulsory Personal Accident (CPA) cover for owner-driver, under both liability only and Package policies, was made mandatory by the Insurance Regulatory and Development Authority of India (IRDAI), no benefit can be passed on to



the heirs of the deceased owner-driver.

14. In the light of the aforesaid and the settled principle of law, the claimants, being the legal representatives of the deceased, could not have maintained the claim petition under Section 163-A of the MV Act in the absence of the terms of the contract of insurance covering personal accident of the owner. No illegality or perversity has been shown to have occurred on facts or in law, while passing the impugned award.

15. In aftermath, the present appeal is dismissed.

December 19, 2025
sumit.k

(VIKAS SURI)
JUDGE

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