115 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 10.02.2025

1 **CM-12084-CII-2016
CM-1550-CII-2017 in/and
FAO-3335-2016**

Shri Jagdeep Singh ...... Appellant

Versus

Reliance General Insurance Co. Ltd. And ors. …... Respondents

2 **CM-12085-CII-2016
CM-1556-CII-2017 in/and
FAO-3336-2016**

Shri Jagdeep Singh ...... Appellant

Versus

Reliance General Insurance Co. Ltd. And ors. …... Respondents

3 **FAO-5187-2016**

Smt. Dhan Kumari & anr. ...... Appellants

Versus

Shri Samarpreet Singh and ors. …... Respondents

4 **CM-18053-CII-2016
CM-18052-CII-2016
CM-18054-CII-2016 in/and
FAO-5306-2016**

Samarpreet Singh & anr. ...... Appellants

Versus

Smt. Dhan Kumari and ors. …... Respondents

5 **CM-381-CII-2017 in/and**
FAO-76-2017

National Insurance Co. Ltd. ...... Appellant

Versus

Hardeep Kaur and ors. …... Respondents

6 **CM-4342-CII-2017, CM-4343-CII-2017**
CM-7673-CII-2018, CM-7670-CII-2018
CM-7671-CII-2018, CM-7672-CII-2018
XOBJC-80-CII-2018 in/and
FAO-1366-2017

National Insurance Co. Ltd. ...... Appellant

Versus

Smt. Pratima Tyagi and ors. …... Respondents

7 **CM-763-CII-2017 in/and**
FAO-229-2017

Reliance General Insurance Co. Ltd. ...... Appellant

Versus

Smt. Pratima Tyagi and ors. …... Respondents

8 **CM-1819-CII-2017,**
XOBJC-205-CII-2017
CM-23099-CII-2017 in/and
FAO-590-2017

Reliance General Insurance Co. Ltd. ...... Appellant

Versus

Smt. Neetu and ors. …... Respondents

9 **CM-4332-CII-2017 in/and**
FAO-1362-2017

National Insurance Co. Ltd. ...... Appellant

Versus

Smt. Neetu and ors. …... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :- Mr. Ashwani Arora, Advocate
for the appellant (FAO-3335-2016 & FAO-3336-2016)
for respondent No.4. (FAO-5187-2016)
for respondent No.4 (FAO-5306-2016)
for respondent No.6. (FAO-1366-2017)
for respondent No.7 (FAO-229-2017)
for respondent No.6 (FAO-590-2017) and
for respondent No.5 (FAO-1362-2017)

Mr. Satpal Dhamija, Advocate
for respondent No.1-Reliance Gen. Ins.
(FAO-3335-2016 & FAO-3336-2016)
for respondent No.5-Reliance Gen. Ins. (FAO-5187-2016)
for respondent No.5-Reliance Gen. Ins. (FAO-5306-2016)
for respondent No.7-Reliance Gen. Ins. (FAO-1366-2017)
for respondent No.6-Reliance General Ins. (FAO-1362-2017)

Mr. Rajesh Punj, Advocate
for respondents No.2 & 3 (FAO-3335-2016 & FAO-3336-2016)
for respondents No.1 & 2 (FAO-5187-2016)
for the appellants (FAO-5306-2016)
for respondents No.3 & 4. (FAO-76-2017)
for respondents No.4 & 5/cross-objectors.
(FAO-1366-2017)
for respondents No.4 and 5 (FAO-229-2017)
for respondents No.3 and 4 (FAO-590-2017).
for respondents No.3 and 4 (FAO-1362-2017)

Mr. Paul S.Saini, Advocate
for respondent No.4-Ins. Co.
(FAO-3335-2016 & FAO-3336-2016)
For respondent No.3- Ins. Co. (FAO-5187-2016)
For respondent No.3-Ins. Co., (FAO-5306-2016)
For the appellant (FAO-76-2017)
For the appellant (FAO-1366-2017)
for respondent No.6 (FAO-229-2017
for respondent No.5 (FAO-590-2017)
for the appellant (FAO-1362-2017)

Mr. Dheeraj Nirola, Advocate
for the appellants (FAO-5187-2016)
for respondents No.1 & 2 (FAO-5306-2016)

Ms. Tarranum Madan, Advocate for
Mr. Subhash Goyal, Advocate
for the appellant(s) (FAO-229-2017 & FAO-590-2017)

Mr. Sanjeev Patiyal, Advocate
for respondents No.1 and 2/claimants (FAO-590-2017)
for respondents No. 1 and 2/claimants (FAO-1362-2017)

None for respondents No.5 & 6 (FAO-3335-2016).

None for respondent No.5 (FAO-3336-2016)
None for respondents No.1 & 2 (FAO-76-2017)

None for respondents No.1 to 3 and 8 (FAO-1366-2017)

None for respondents No.1 to 3 (FAO-229-2017)

***

PANKAJ JAIN, J. (ORAL)

CM-18053-CII-2016 in FAO-5306-2016

This is an application seeking condonation of delay of 21 days in filing the present appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant-appellant has shown sufficient cause to condone the delay in filing the appeal.

Application is allowed. Delay of 21 days in filing the appeal is condoned.

CM-18054-CII-2016 in FAO-5306-2016

Exemption application is allowed, as prayed for.

CM-4342-CII-2017 in FAO-1366-2017

This is an application seeking condonation of delay of 55 days in filing the present appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant-appellant has shown sufficient cause to condone the delay in filing the appeal.

Application is allowed. Delay of 55 days in filing the appeal is condoned.

CM-7671-CII-2018 in XOBJC-80-CII-2018 in FAO-1366-2017

This is an application seeking condonation of delay of 9 days in filing the present case.

For the reasons recorded in the application, this Court is satisfied that the applicant-appellant has shown sufficient cause to condone the delay in filing the appeal.

Application is allowed. Delay of 9 days is condoned.

CM-7672-CII-2018 in XOBJC-80-CII-2018 in FAO-1366-2017

For the reasons recorded in the application, the same is allowed.

Documents Annexures R-1 to R-4 are taken on record.

Main cases

1 By way of instant order, I intend to dispose off this bunch of nine appeals and a set of three cross objections pertaining to the same accident. They all are being taken for adjudication by way of common order as they involve common set of facts. Claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the 1988 Act') seeking compensation for the loss of life of their kith and kin in the Motor Vehicular accident dated 06.02.2015. As per the facts on record, a Car bearing registration No.HP03-D-2358 struck against Pajero Car bearing registration No.CH04-E-0067 while attempting to overtake the same and after the hit, Pajero went out of control and struck against an electric pole.

It jumped the divider and struck against a Car and a motorcycle and thereafter a three wheeler. Four precious lives were lost in the accident. FIR No.26 dated 06.02.2015 was registered for offences punishable under Sections 279/304-A/427 IPC at Police Station Zirakpur, District SAS Nagar. While returning finding regarding issue of rash and negligent driving, Tribunal held Drivers of both the cars i.e. Car bearing registration No.HP03-D-2358 and that of Car bearing registration No.CH04-E-0067 compositely negligent. After assessing the quantum of the compensation, the Tribunal while granting relief to the claimants directed the two insurance companies to make payment to the extent of 50% each and granted recovery rights holding that the insurers are entitled to recover the amounts from the insured as well as Drivers of the two cars who are liable to pay the compensation jointly and severally. Car bearing registration No.HP03-D-2358 was insured with National Insurance Co. Ltd. Car bearing registration No.CH04-E-0067 was insured with Reliance General Insurance Co., Ltd.

2 FAO No.3335 of 2016 and that bearing FAO No.3336 of 2016 are at the behest of owner of Car bearing registration No.CH04-E-0067 aggrieved of grant of recovery rights. FAO No.5306 of 2016 has been preferred by Driver of Car bearing registration No.HP03-D-2358. He is also aggrieved of grant of recovery rights against him. FAO No.1366 of 2017, FAO No.1362 of 2017 and FAO No.76 of 2017 have been preferred by the National insurance company. Claimants have filed cross objections bearing No.XOBJ-80-CII-2018 in FAO No.1366 of 2017. FAO No.590 of 2017 and FAO No.229 of 2017 are at the behest of Reliance General Insurance Co. Ltd.-the insurer of Car bearing registration No.CH04-E-0067. Claimants

have filed cross objections bearing No.XOBJC-205-CII-2017 in FAO No.590 of 2017. FAO No.5187 of 2016 is at the behest of claimants Dhan Kumari etc. seeking enhancement of compensation.

3 <u>APPEAL BY OWNERS :-</u>

3.1 There is no serious dispute with respect to composite negligence of the drivers of the two cars involved in the accident. Owners and drivers have been held liable jointly and severally. Insurer has been granted recovery rights primarily on account of findings recorded by the Tribunal on issue No.3 which read as under :-

> *"ISSUE NO.3*
> *Whether the respondent No.1 and Mankirat Singh (deceased) were not having valid driving licence at the time of accident? OPR*
>
> *15. Onus of proof of this issue was on respondents. One part is to be proved by respondent No.1 that he was having driving licence. No such driving licence has been produced and proved on record rather father of respondent No.1 has proved this fact that respondent No.1 was minor and was not having valid driving licence. In the same way counsel for respondent No.4 has produced on record learner licence of Mankirat Singh deceased and that was valid. In this view, this issue is decided accordingly.*

3.2 The issue regarding validity of learner licence and the corresponding liability of the insurance companies has been dealt by the Supreme Court in the case of ***National Insurance Co. Ltd. Vs. Swaran Singh (2004) 3 SCC 297*** and has been concluded as under :-

> *"(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies*

would be liable to satisfy the decree."

3.3 Thus learner licence having held to be valid as per ratio of law laid down by Supreme Court in the case of ***Swaran Singh's supra*** insurer cannot be absolved of its liability. Since both the Drivers have been held to be compositely negligent, this Court finds that the issue would be fully covered with respect to extent of liability of the insurance companies by the following observations made by Supreme Court in the case of ***Khenyei Vs. New India Assurance Co. Ltd. & ors. (2015) (2) RCR Civil 1019:-***

> *"(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasors and to recover the entire compensation as liability of joint tort feasors is joint and several.*
>
> *(ii) In the case of composite negligence, apportionment of compensation between two tort feasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.*
>
> *(iii) In case all the joint tort feasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feasor can recover the amount from the other in the execution proceedings.*
>
> *(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasors. In such a case, impleaded joint tort feasor should be left, in case he so desires,*

to sue the other joint tort feasor in independent proceedings after passing of the decree or award."

3.4 In view of above, the appeals preferred by the owners are allowed. Recovery rights granted by the Tribunal against appellant in FAO No.3335 of 2016 and FAO No.3336 of 2016 are set aside. FAO No.5306 of 2016 which is at the behest driver of car bearing registration No.HP03-D-2358. Admittedly the same was being driven by minor without licence. Insurer of the same is absolved of its liability.

4 <u>APPEALS FILED BY THE INSURANCE COMPANIES AND THE APPEALS/CROSS OBJECTIONS FILED BY THE CLAIMANTS :-</u>

<u>FAO No.5187 of 2016</u>

4.1 This is an appeal preferred by the claimants *qua* death of the deceased Bhupinder. A 21 years old final year diploma student in Electrical trade was hit by the offending vehicle while travelling on motorcycle. The appellants are seeking enhancement. The Tribunal tabulated the compensation payable to the claimants as under :-

Age of deceased	21 years
Occupation	Student
Age of claimants	Claimant No.1 (mother) – 42 years Claimant No.2 (father) – 44 years
Sr.No.	**Heads of claim**
1	Notional income : Rs.10,000/- per month
2	Add % of increase : Nil
3	Deduction : 50%
4	Multiplicand Rs.5000 x 12 x 16 = Rs.9,60,000/-
5	Multiplier 16
6	Loss of dependence
7	Medical expenses ----
8	Loss of consortium ----
9	Loss of estate Nil
10	Loss of love and affection Rs.1,00,000/-
11	Funeral expenses Rs.25,000/-
Total	**Rs.10,85,000/-**

4.2 The deceased was a student. He was studying in Final year of his diploma in Electrical trade in a Polytechnic College. In the considered opinion of this Court the notional income has been assessed by the Tribunal on a lower side. The same needs to be enhanced to Rs.15,000/- per month. Nothing has been granted for future prospects. Keeping in view the age of the deceased, 40% future prospects need to be added. Deceased being bachelor, deduction of 1/2 has been rightly applied. Multiplier needs to be enhanced from 16 to 18 in view of law laid down in ***Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298***. For loss of love and affection Rs.1.00 lakh has been rightly granted. The claimants are held entitled for Rs.18,000/- under each head of funeral expenses and loss of estate.

5 FAO-1362-2017, XOBJC-205-CII-2017 in FAO-590-2017 & FAO-229-2017

5.1 Appeals at the behest of the insurance company (s). The issue of their liability already stands answered above. The other issue relates to quantum of compensation. On the issue of quantum, claimants have also filed XOBJCs. The appeals and XOBJC are being decided together.

5.2 Deceased-Amit Kumar aged 34 years was owner and driver of three wheeler and lost his life in the accident. Tribunal tabulated the compensation as under :-

Age of deceased	34 years
Occupation	Driver
Age of claimants	Claimant No.1 (mother) – 32 years Claimant No.2 (daughter) – 3 months
Sr.No.	Heads of claim
1	Tentative income : Rs.20,000/- per month
2	Add % of increase : 50%
3	Deduction : 1/3rd

4	Multiplicand Rs.2000 x 12 x 16 = Rs.38,40,000/-
5	Multiplier 16
6	Loss of dependence
7	Medical expenses ----Rs.400
8	Loss of consortium ----Rs.1,00,000/-
9	Loss of estate Nil
10	Loss of love and affection Rs.50,000/-
11	Funeral expenses Rs.25,000/-
Total	Rs.40,15,450/-

5.3 Monthly income of the deceased has been assessed at Rs.20,000/- per month. The same needs no modification. Future prospects of 50% have been granted which needs to be reduced to 40%. Nothing has been paid for loss of estate. The claimants are held entitled for Rs.18,000/-. Rs.25,000/- has been rightly granted for funeral expenses.

5.4 In view of law laid down by Supreme Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009,*** the Tribunal having granted Rs.1.00 lakh under the head of loss of consortium, Rs.50,000/- ought not have been granted for loss of love and affection. Resultantly, Rs.50,000/- granted for loss of love and affection need to be deducted. The amount granted for loss of consortium is maintained.

5.5 With the aforesaid modification, the appeals/cross objections are disposed off.

6 <u>FAO-1366-2017 and XOBJC-80-CII-2018</u>

Insurance company as well as the claimants are disputing the quantum of compensation awarded by the Tribunal on account of death of deceased-Shobhit Tyagi who was travelling in three wheeler which was struck by Car bearing registration No.CH04-E-0067. As per record, the deceased was 25 years of age working as Marketing Executive in SAS Pvt. Ltd., New Delhi and was earning Rs.40,000/- per month. Tribunal rightly assessed the income of the deceased relying upon income tax return for the assessment year 2014-2015 as Rs.2,50,000/-. Cut off 1/3rd has been applied which should have been 1/4th. Multiplier of 18 has been rightly applied. Future prospects have been calculated @50% which need to be modified to 40%. Instead of Rs.1,00,000/- awarded to claimant No.1 on account of loss of consortium and Rs.50,000/- to claimants No.2 & 3 each on account of loss of love and affection, each of the three claimants is held entitled to an amount of Rs.48,000/- for loss of consortium. An amount of Rs.4,080/- has been awarded as medical expenses on actual basis which is maintained. Claimants are further held entitled for an amount of Rs.18,000/- on account of funeral expenses and Rs.18,000/- for loss of estate.

6.1 Needless to say the apportionment and disbursal of the compensation shall abide by para 39 of the award dated 19.08.2016 passed by the Motor Accidents Claims Tribunal impugned under the present appeal.

6.2 Appeals and cross objection are disposed off accordingly.

7 <u>FAO-76-2017</u>

This appeal has risen out of petition filed under Section 166 of the Motor Vehicle Act, 1988 by the parents of driver of Car bearing registration No.CH04-E-0067. Counsel for the insured contends that deceased himself being a *tort feasor,* present petition seeking compensation is not maintainable under Section 163 (A) of the 1988 Act.

7.1 There can't be any dispute with respect to the aforesaid proposition in view of law laid down by Supreme Court in the case of ***Ningamma & Anr. Versus United India Insurance Co. Ltd., (2009) 3 RCR (Civil) 435.*** Supreme Court while dealing with the issue observed as under :-

> *"19. 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. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.*
>
> *20. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case. However, the question remains as to whether an application for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or*

any of the legal representatives of the deceased; or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

When an application of the aforesaid nature claiming compensation under the provisions of Section 166 is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 162, by determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs. In this context reference could be made to relevant paras of Section 147 of the MVA which reads as follows:-

> *147. Requirements of policies and limits of liability- (1) In order to comply with the requirement of this Chapter, a policy of insurance must be a policy which-*
>
> *(a) is issued by a person who is an authorised insurer; or*
>
> *(b) insurer the person or classes of persons specified in the policy to the extent specified in sub-section (2)-*
>
> *(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including 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 in a public place;*
>
> *(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place: Provided that a policy shall not be required-*
>
> *(i) to cover liability in respect of the death, arising out of and*

in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of his death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if its is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability

xxx xxxx xxxxx xxxxxx

xxxx xxxxx xxxxxxx xxxxxx

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand: Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

xxx xxxx xxxxx xxxxxx

xxxx xxxxx xxxxxxx xxxxxx

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that

person or those classes of persons.

21. Section 147 of the MVA provides that the policy of insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorised representative carried in the vehicle or arising out of the use of vehicle in the public place.

22. When we analyze the impugned judgment of the High Court in terms of aforesaid discussion, we find that the counsel for the insurance company himself contended before the High Court that the policy of insurance was an Act policy and the risk that is covered is only in respect of persons contemplated under Section 147 of the MVA. It is the finding of fact which we have also upheld in this Judgment that the deceased was authorised by the owner of the vehicle to drive the vehicle. When we examined the facts of the present case in view of the aforesaid submission made, we are of the opinion that such an issue was required to be considered by the High Court in the light of the facts and evidence adduced in the case. On consideration of the Judgment and Order passed by the High Court we find the same to be sketchy on the aforesaid issue as to whether the claim could be considered under the provisions of Section 166 of the MVA. In this connection, reference can be made to a judgment of this Court in the case of Oriental Insurance Company Ltd. vs. Rajni Devi and Others (supra), wherein, it was held that where 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 insurance company would depend upon the terms thereof.

23. Recently, this Court in the case of ***Raj Rani & Ors. v. Oriental Insurance Co. Ltd. & Ors., [C.A. Nos. 3317-3318 of 2009 @ SLP(C) Nos. 27792-27793 of 2008 pronounced on 06.05.2009],*** *wherein one of us (Hon'ble Justice S. B. Sinha) has taken the view* *that it is not necessary in a proceeding under the MVA to go by any rules of pleadings or evidence. Section 166 of the MVA speaks about "Just Compensation". The court's duty being to award "Just Compensation", it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not. It was further observed in the aforesaid case that although the multiplier specified in the Second Schedule appended to the MVA are stricto sensu not applicable in a case under Section 166 of the MVA, it is not of much dispute that wherever the court has to apply the appropriate multiplier having regard to several factors in mind. The Court has placed reliance on earlier judgment of this Court in* ***Nagappa v. Gurudayal & Ors., (2003) 2 SCC 274****, wherein it was observed as follows in para 7:*

> *"7. Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is -- it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the*

deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. The other important part of the said section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act". Hence, the Claims Tribunal in an appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed."

24. There are indeed cases like New India Assurance Company Limited vs. Sadanand Mukhi and Others, (2009) 2 SCC 417, wherein, the son of the owner was driving the vehicle, who died in the accident, was not regarded as third party. In the said case the court held that neither Section 163-A nor Section 166 would be applicable.

25.Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."

7.2 In the present case insurance policy with respect to Car bearing registration No.CH04-E-0067 is part of record of MACT petition No.59 of

2015. As per the insurance policy premium of Rs.100/- was paid for compulsory personal accident covers for owner-driver to be governed by IMT-15. As per IMT-15 for payment of premium of Rs.100/- in case of personal accident of owner-driver capital sum insured is Rs.2,00,000/-. Thus even if the present appeal is treated to be governed by Section 147 of the 1988 Act as directed by Supreme Court in ***Ningamma's case (supra),*** the claimants will be entitled for an amount of Rs.2,00,000/- apart from interest.

8 By way of impugned award they have been awarded compensation of Rs.4,26,900/- with interest @6% per annum from the date of filing of petition till its realization.

9 In view of above, the impugned award passed by MACT in CIS No.MACP/200 of 2015 is modified to the extent that the claimants will be entitled for compensation of Rs.2,00,000/- along with interest @12% per annum from the date of filing of the petition till its actual realization.

10 In view of above, appeal bearing ***FAO No.76 of 2017*** is partly allowed.

11 Rate of interest awarded by the Tribunal also needs to be enhanced to 9% per annum.

12 Needless to say that the appellants shall be entitled for interest on the enhanced amount till the date of actual realization. Anything already paid to the claimants needs to be set off.

13 Pending miscellaneous applications, if any, also stand disposed off.

14 Photocopy of this order be placed on the connected files.

(PANKAJ JAIN)
JUDGE

10.02.2025
Pooja Sharma-I

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