



FAO-2843-2017 (O&M)

-1-

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

**FAO-2843-2017 (O&M)
Reserved on : 30.09.2025
Date of Pronouncement : 12.12.2025
Uploaded on : 13.12.2025**

New India Assurance Company LimitedAppellant

Vs.

Mohit Gargi and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present : Mr. Abhimanyu Kalsy, Advocate,
for the appellant.

Mr. Amarpreet Singh, Advocate,
for the respondents.

SUDEEPTI SHARMA J.

1. The appellant-Insurance Company has preferred the present appeal against the award dated 28.02.2017 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'MV Act') by the learned Motor Accident Claims Tribunal, Bathinda (for short, 'the Tribunal'), whereby the claim petition filed by the respondents/claimants was allowed and the appellant-Insurance company was held liable to pay the compensation to the respondents/claimants to the tune of Rs.5,00,000/- along with interest @ 9% per annum.

**BRIEF FACTS OF THE CASE**

2. The brief facts of the case, as pleaded in the claim petition, are that on 25.11.2015, the deceased, along with his parents i.e. the respondents/claimants and his brother, was travelling from Sri Ganganagar to Bathinda in Car bearing registration No.PB-03-S-5417. At about 4:30 a.m., when they reached near the bus stand of Balluana, opposite the gate of village Virk Kalan, the said car collided with a roadside tree. At the time of the accident, the vehicle was being driven by Mohit Gargi. As a result, Krish Gargi sustained fatal injuries and died on the spot. A DDR in this regard was registered with the police on the same day, and the matter was duly reported to the appellant/respondent-Insurance Company, who deputed their representatives, including Surveyors and an Investigator. After verifying the accident and examining the relevant documents, the appellant/respondent-Insurance Company sanctioned the own damage claim of the said vehicle.

3. Upon notice of the claim petition, respondent appeared and contested the claim petition by filing its written reply and denied the factum of the accident/compensation.

4. From the pleadings of the parties, learned Tribunal framed the following issues:-

“1. Whether Krish Gargi died due to accident of car bearing RC No. PB-03S-5417? OPP



2. *Whether the claimants are entitled to claim any compensation, if so, to what extent and from whom? OPP*
3. *Whether the insured did not comply with all the terms and conditions of the insurance policy ?OPR*
4. *Relief ”*

5. In support of their pleadings, both the parties led their respective evidence.

6. After taking into consideration the pleadings and the evidence on record, learned Tribunal awarded compensation to the respondents/claimants to the tune of Rs.5,00,000/- along with interest @ 9% per annum and appellant-Insurance Company was held liable to pay the said compensation. Hence, the present appeal.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

7. Learned counsel for the appellant–Insurance Company contends as under:-

- i. that the claim petition was not maintainable since the liability of the appellant-Insurance Company is to the extent of indemnification of the insured against third party and claimant No.2-Anju Gargi is the owner of Car bearing registration No.PB-03-S-5417.
- ii. that if the insured be fastened with any liability, the insurer is liable to indemnify the insured for the death of a passenger, if covered by the policy of the insurance,



therefore, the Insurance Company is liable to indemnify the insured.

- iii. that claimant No.2-Anju Gargi has not been impleaded as respondent, therefore, the appellant-Insurance Company can not be made liable as there is nobody to be indemnified.
- iv. that the claim petition was filed under Section 163-A of the MV Act, whereas the compensation has been granted under Section 166 of the MV Act.

In support of his arguments, learned counsel relies upon judgments passed in **National Insurance Company Ltd. Vs. Ashalata Bhowmik and others, 2018 (9) SCC 801** and **Oriental Insurance Co. Ltd. Vs. Jhuma Saha and others, 2007 (9) SCC 263**. He, therefore, prays that the present appeal be allowed and the award dated 28.02.2017 passed by learned Tribunal be set aside.

8. *Per contra*, learned counsel for respondents/claimants submits that MV Act is a beneficial legislation and the respondents/claimants have lost their 11 years old child. He further submits that the respondents/claimants never pleaded rash and negligent driving. He further submits that the respondents/claimants i.e. father and mother, who are legal heirs of the deceased cannot be separated as claimants and respondents. He, therefore, prays that the present appeal be dismissed. In support of his arguments, he relies upon the judgment passed in **Ram Murti and others**



Vs. Punjab State Electricity Board, (SC) : Law Finder Doc Id # 2091451.

9. I have heard learned counsel for the parties and carefully perused the record of this Court with their able assistance.

10. The relevant portion of the award dated 28.02.2017 passed by learned Tribunal on Issue No.2 is reproduced as under:-

“2. Whether the claimants are entitled to claim any compensation, if so, to what extent and from whom? OPP

Issue No.2 :

10. Onus to prove this issue No. 2 is also upon the claimants that they are entitled to compensation from the respondents, being dependent upon the earnings of deceased. Learned counsel for respondent no.1 has submitted that no compensation can be granted to the claimants. The claimant no.2 is the owner of the offending vehicle. The liability of the insurance company is to the extent of indemnification of the insured against a third person. If the insured can be fastened with any liability the insurer is liable to indemnify the insured. For the death of a passenger, if covered by the policy of the insurance, the insured is liable and therefore, the Insurance Company is liable to indemnify the insured. He has further submitted that the claimant no.2 has not been made respondent and the Insurance Company can not be made liable as there is nobody to be indemnified.



Thus, the claimants are not entitled for any compensation. But this contention of learned counsel for the respondent is not tenable. It has been held by Hon'ble Madras High Court in 2014(9) RCR (Civil) 487 that the owner of the vehicle being claimant can not be made and arrayed as a respondent. He can not be made liable to pay compensation to himself and consequently the Insurance company can not be vicariously made liable to indemnify the insured. It has further been held by Hon'ble Madras High Court that the insured "as a person" being the legal heir of the deceased, in a different capacity is entitled for compensation. In that event, the Insurance Company can not escape from indemnifying the insured simply because the insured happens to be the recipient. In a simple analogy, had there been any legal heir apart from the insured, they would maintain a claim for compensation as they are entitled for compensation. Therefore, the insured being the legal heir, dependent, mother, in a dual capacity is entitled to be indemnified by the Insurance Company and is also entitled to be a recipient of such claim. Thus, in view of the law laid down by the Hon'ble Madras High Court the claimants are entitled for compensation. The deceased is claimed to be 11 years of age at the time of accident in question."



11. A perusal of the record shows that the claim petition was filed under Section 163-A of the MV Act. So far as the contention of the appellant-Insurance Company that the claim petition was filed under Section 163-A of the MV Act, whereas the compensation has been granted under Section 166 of the MV Act, is concerned, the same is rejected since the claim petition was filed under Section 163-A of the MV Act and the compensation has also been granted under Section 163-A of the MV Act. Both the judgments relied upon by the appellant-Insurance Company are distinguishable as in both the cases referred to by the appellant-Insurance Company in **Ashalata Bhowmik's case (supra)** and **Jhuma Saha's case (supra)**, the claim petition was filed under Section 166 of the MV Act and the owner himself was driving offending vehicle and died in the accident. Furthermore, both the judgments relied upon by the appellant-Insurance Company are on third party rights.

12. Now coming to the question of impleadment of owner i.e. respondent No.2-Anju Gargi, who is claimant No.2 in the claim petition as respondent is concerned, the same is also rejected for the reasons recorded herein-below discussed as under.

13. Before proceeding further, it would be apposite to reproduce Section 163-A of the MV Act, which reads as under:-

“163A. 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 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 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 (8 of 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.”

14. A bare reading of the above referred to Section shows that the owner of the motor vehicle or 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. It further states that in any claim for compensation, 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.

15. A bare reading of the above referred to provision further shows that the owner of motor vehicle or the authorised insurer shall be liable to pay, which means that if the vehicle is not insured then the owner would be liable and if insured, the Insurance Company would be liable to pay the compensation.

16. The intention of the legislature under the provisions of MV Act for grant of compensation is very clear regarding payment of compensation. The legislation has taken into consideration the aspect of getting the vehicle insured by the Insurance Company and entitlement of the insurer to the compensation, as per the policy. The owner and driver of the vehicle is required to be impleaded just to see, as to whether the vehicle is insured or not?, as to whether the driver was having a valid and effective driving license at the time of accident? and as to whether the driver is having route permit or not?

17. Therefore, in view of the above as per provision of Section 163-A of the MV Act, the liability to pay the compensation is on the owner of the motor vehicle or the authorized insurer.

18. Now coming to the procedure and power of the Motor Accident Claims Tribunal, Section 169 of the MV Act is reproduced as under for the same:-



“169. Procedure and powers of Claims Tribunals. —

(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.”

19. A bare reading of the above referred to provision of the MV Act shows that the provisions of the Code of Criminal Procedure, 1973, as well as the Code of Civil Procedure, 1908 (for short, ‘CPC’) would be applicable in the claim petition. Meaning thereby, the procedure regarding parties to the suit etc. would be followed as provided under CPC.



20. Order I of CPC reads about parties to suit. It would be apposite to reproduced Order I Rule 1 and Order I Rule 3 of CPC, which reads as under:-

“1. Who may be joined as plaintiffs.—All persons may be joined in one suit as plaintiffs where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.

2. XXX XXX XXX

3. Who may be joined as defendants.—All persons may be joined in one suit as defendants where —

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.”

21. A bare reading of Order I Rule 1 of CPC referred to above shows that all persons may be joined in one suit as plaintiffs where any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative.



22. Order I Rule 3 of CPC reads about who may be joined as defendants, which says that all persons may be joined in one suit as defendants where any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative.

23. In view of the above referred to provisions under CPC, parties to the suit are to be recognized by the cause of action and relief claimed against. Meaning thereby, the plaintiffs are the persons, who are claiming relief against the defendants. Further, defendants are the persons against whom the relief is claimed. Whether the terminology used is plaintiff and defendant, petitioner and respondent or claimant and respondent, the meaning would be the same that the plaintiff/petitioner/claimant are the persons, who are asking for relief against the defendant/respondent. And defendant/respondent are the persons against whom the relief is sought for.

24. Now coming to the contention raised by the appellant-Insurance Company with respect to the impleadment of owner of Car bearing registration No.PB-03-S-5417 i.e. Anju Gargi as respondent in the claim petition.

25. The facts of the case shows that both the claimants i.e. Mohit Gargi (claimant No.1) and Anju Gargi (claimant No.2) are father and mother of the deceased-Krish Gargi. Both have filed the claim petition against the appellant/respondent-Insurance Company for compensation as parents/legal heirs of the deceased-Krish Gargi since there is no dispute that



the Car bearing registration No.PB-03-S-5417, which suffered accident was insured with the New India Assurance Company Limited i.e. the appellant.

26. A bare reading of Section 163-A of the MV Act shows that the owner of the motor vehicle or the authorised insurer shall be 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.

27. As already explained above, the intention of the legislature in making liable the owner of the motor vehicle and authorized insurer by separating them with 'or' is very clear, to mean that if the vehicle is not insured, the owner of the motor vehicle would be liable and if the vehicle is insured then the authorized insurer would be liable to pay compensation.

28. In the present case, both the parents i.e. Mohit Gargi (claimant No.1) and Anju Gargi (claimant No.2), father and mother, are the legal heirs of the deceased-Krish Gargi. Whether mother is the owner or father is the owner, it is not required to implead owner as respondent since as per the provisions of CPC as well as the language used under Section 163-A of the MV Act, the relief sought in the present case is from the appellant-Insurance Company. Therefore, there is no requirement to implead Anju Gargi, who is owner of Car bearing registration No.PB-03-S-5417 as respondent, since as per the provisions of CPC, defendant/respondent is the person against whom the relief is asked for and as explained above, Mohit Gargi, is not



asking for compensation from Anju Gargi, who is the mother and owner of the Car bearing registration No.PB-03-S-5417, which is insured.

29. Further as per Section 163-A as referred to above, it is claimant, who is to see against whom he is to seek the relief. Otherwise also, in the present case, Car bearing registration No.PB-03-S-5417 was insured and there is no dispute regarding the same and the appellant-Insurance Company is liable to pay the compensation, as per the insurance policy as well as Section 163-A of the MV Act.

30. In light of the above discussion, this Court finds that the findings recorded by the learned Tribunal are based on correct appreciation of evidence and sound application of law. The award does not suffer from any legal infirmity or perversity warranting interference in appellate jurisdiction.

31. Consequently, the present appeal, being devoid of merits, stands **dismissed**.

32. The statutory amount of Rs.25,000/- deposited by the appellant at the time of admission of the appeal, is ordered to be refunded to it.

33. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

12.12.2025

Virender

Whether speaking/non-speaking	: Speaking
Whether reportable	: Yes/No