



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

FAO-781-2013 (O&M)
Date of Decision: September 15, 2025

Rajesh Rani

...Appellant

VERSUS

Atam Parkash and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Pankaj Bali, Advocate
for the appellant.

Mr.Parvinder Singh Bedi, Advocate
for respondent No.2.

ARCHANA PURI, J.

The present appeal has been filed by mother of the injured (since deceased) to assail the dismissal of the claim petition under Section 163-A of the Motor Vehicles Act, filed by the injured to seek compensation, on account of injuries sustained by him, while driving the ill-fated car, owned by his father, who is respondent No.1.

Suffice to consider that on 27.04.2009, injured was going from Karnal to village Brass in the said car. When he reached near bus stand of village Sirsi, a stray animal came in front of the car, as a result whereof, the car became imbalanced and struck into the tree and he received injuries. The injured was taken to hospital and was extended treatment. DDR No.13

dated 14.05.2009 was recorded on the statement of Atam Parkash, father of the injured, who is owner of the car in question.

The accident, as such, was not disputed by respondent No.1- father of injured, who, at later stage, was proceeded against ex-parte. The insurance company, in its reply, also raised various preliminary objections, thereby, disputing maintainability of the petition as well as cause of action and also took the defences available under Sections 147, 149, 157 and 170 of the Motor Vehicles Act. In fact, it was asserted that the injured was not having valid and effective driving licence, at the time of accident. On merits, the factum of accident, as such was denied and also disputed about the liability of the insurance company to pay compensation to the claimant.

Issues were framed and evidence was adduced.

On appraisal of the evidence, learned Tribunal, while considering the petition to have been filed under Section 163-A of the Act, by the injured, who was son of the owner of the ill-fated car and also considering various case law, more particularly, ***Ningamma and another vs. United India Insurance Company Ltd., 2009 (3) RCR (Civil) 435***, had dismissed the claim petition, being not maintainable.

Be it noted that during the pendency of the claim petition, the injured had died on 22.01.2011 and his mother was then impleaded as his legal representative.

Being aggrieved, the mother of the injured (since deceased) has filed the present appeal.

Counsel for the parties heard.

Primarily, the contention raised before the Court is to question the findings of non-maintainability of the petition under Section 163-A of

the Motor Vehicles Act, which led to the dismissal of the claim petition.

Before adverting to the case law, so relied upon by learned Tribunal, it shall be apposite to consider various provisions of Motor Vehicles Act, which are relevant for the case in hand. These are Sections 146, 147 and 163-A, which are reproduced, as herein given:-

“S.146. Necessity for insurance against third party risk.

— (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).

Explanation. —A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:—

(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking;

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

Explanation. —For the purposes of this sub-section, “appropriate Government” means the Central Government or a State Government, as the case may be, and—

- (i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;*
- (ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;*
- (iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority.*

S. 147. Requirements of policies and limits of liability. —(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

- (a) is issued by a person who is an authorised insurer; and*
- (b) insures 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 the 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 it is a goods carriage, being carried in the vehicle, or*
- (ii) to cover any contractual liability.*

Explanation. —For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(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.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(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.

S. 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 of the authorized 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 subsection (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.”

These provisions evidently provide for two types of insurance, one; statutory in nature and the other is contractual in nature. Section 146 of the 1988 Act, statutorily requires owner to insure against third party risk before use of the vehicle. Section 147 of the 1988 Act deals with requirements of policies and limits of liability. This Section statutorily mandates the insurance policies to necessarily insure third party risk. However it also takes care of the liability to be fastened against the insured to indemnify the person or classes of persons, specified in respect of any liability, which the policy purports to cover in the case of that person or those classes of persons. Meaning thereby, Section 147(5) enables the insurer and the insured to contract for expansion of the statutory policy, which otherwise calls upon, necessary insurance for loss of third party.

The insurance company is bound to compensate the owner or the driver of the motor vehicle, in case, any person dies or suffers injuries, as a result of the accident; in case involving owner of the vehicle or others, are proposed to be covered, an additional premium is required to be paid for covering their life and property. By taking '**Act policy**', the owner of the vehicle fulfill his statutory obligation, as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual, its liability extends to the risk covered by the policy of insurance. If additional risk are sought to be covered, additional premium has to be paid.

In *Ningamma's case (supra)*, the claim was made under Section 163-A of the Act. The policy of insurance was '**Act only policy**' and not a comprehensive/package policy. The victim was travelling on Hero Honda motorcycle, which he had borrowed from the real owner. The claim petition filed by the claimants was allowed. However, the High Court in appeal, found that the accident had accrued, due to the fault of the deceased and the claim petition was not maintainable under Section 163-A of the Act, unless there was another vehicle involved in the accident. However, in further appeal, the Hon'ble Supreme Court held that the deceased cannot be held to be employee of the owner of the motorcycle, though was authorised to drive the said vehicle, by its owner and therefore, he would step into the shoes of owner of the motorcycle.

Therein, during the course of arguments, counsel for the insurance company had asserted that the claimants are not third party and therefore, they are not entitled to claim any benefit under Section 163-A IPC. In support of said contention, learned counsel relied upon decisions rendered

by the Hon'ble Supreme Court in ***Oriental Insurance Company Limited vs. Rajni Devi and others, 2008 (5) SCC 736*** and ***New India Assurance Company Limited vs. Sadanand Mukhi and others, 2009(1) RCR (Civil) 817***. However, the Hon'ble Supreme Court in ***Ningamma's case (supra)*** has made observations, with regard to ***Rajni's case (supra)*** and the application of the same, in the said case and it was observed as herein given:-

“18. In the case of 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. It was held in the said decision 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 further held that the question 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. In our considered opinion, the ratio of the aforesaid decision 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.

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.....”

Therein, the Hon’ble Supreme Court, further delved upon the question, 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 Motor Vehicles Act, which is not relevant for the adjudication of the present appeal.

In ***Rajni’s case (supra)***, reliance was also placed upon the judgment in the case of ***Oriental Insurance Company Limited vs. Jhuma Saha and others, 2007 (9) SCC 263***, which further relied upon the case of

Dhanraj vs. New India Assurance Company Limited and another, 2004 (8) SCC 553. In ***Dhanraj's case (supra)***, the Hon'ble Supreme Court, in consideration of Section 147 of the Act, found that the Act does not require an insurance company to insure risk of death or bodily injury to the owner of the vehicle. However, it was further held that from the contents of the policy, it was clear that the premium was towards damage to the vehicle and not for the injury to the person of the owner and thus, there was no statutory or contractual liability of the insurance company to pay compensation to the owner. Said ***Dhanraj's case (supra)*** was further relied upon in case of ***Jhuma's case (supra)*** and following observations were made therein:-

“13. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, section 147(b) of the Motor Vehicle Act which in no uncertain terms cover the risk of a third party only would be attracted in the present case.”

Both the aforesaid case law i.e. ***Jhuma's case (supra)*** and ***Dhanraj's case (supra)***, were further relied upon in ***Rajni Devi's case (supra)***, wherein, while considering the owner, who was pillion rider of the two-wheeler, to be falling within the ambit of third party, for the purpose of Section 147 of the 1988 Act and the Hon'ble Supreme Court answered the question, as herein given:-

“7. It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. 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 insurance company would depend

upon the terms thereof. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle.

8. Section 163-A of the Motor Vehicles Act reads thus:

163-A. 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 of 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."

The said provision cannot be said to have any application in regard to an accident wherein the owner of the motor vehicle himself is involved. The question is no longer res integra.

9. In Oriental Insurance Co. Ltd. v. Smt. Jhuma Saha & Ors. (SCC p.265, paras 10-12), it was held :

"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.”

Thus, considering the provisions of law as already reproduced in the earlier portion of the judgment and also taking into consideration, the ‘third party’ defined as in Section 145(g), it is evident that the third party connotes the third party to the contract of insurance and not third party to the accident.

In ***Dhanraj’s case (supra)***, the Hon’ble Supreme Court found that the additional premium was not paid, in respect of entire risk of death or bodily injury of the owner of the vehicle and thus, the policy covered the risk of a third party only. Thus, the tracing of the case law from ***Dhanraj case (supra)*** to ***Ningamma’s case (supra)***, what is crystalised proposition of law is that where the policy does not cover the owner but only covers third party, owner or any other person, claiming under him, cannot maintain petition under Section 163-A of the *ibid* Act. Meaning thereby, the statutory liability is limited to cover loss of third party. However, it also be noted that the statute simultaneously, do not prohibit the ‘contractual liability’ which is

over and above the statutory liability. Thus, considering the same, whether the duty of the insurer is only to indemnify loss of third party or he is required to indemnify, even owner/driver, shall depend upon the terms of the policy. In this regard, more particularly, considering ***Ningamma case (supra)***, beneficial reference is made to ***ICICI Lombard General Insurance Company vs. Jagdish, 2010 (3) RCR (Civil) 672***, wherein, it was observed, as herein given:-

“12. The reading of the judgment of the Hon'ble Supreme Court in the case of Ningamma & Anr. v. United India Insurance Co. Ltd. (supra) shows, that the Hon'ble Supreme Court also held, that under the Motor Vehicles Act the owner of the vehicle cannot claim compensation for himself but the Hon'ble Supreme Court further held, that the parties would be governed by the terms of their policy. It is not in dispute, that the policy taken out by the claimant was comprehensive policy covering all types of risks. Once in the policy the respondent/claimant was entitled to claim the compensation under the insurance policy then it cannot be said, that the learned Tribunal committed an error in granting the compensation for the injuries suffered under the comprehensive policy.”

In this backdrop, adverting to the case in hand, it is pertinent to mention that the injured (since deceased) was son of the owner of the ill-fated vehicle. Obviously, he being permissible user, at the most, could be taken as stepping into the shoes of the owner. That being so, had the policy being ‘**Act on policy**’, his claim would have fallen flat, but it is not so. Perusal of Ex.R1 reveals that the policy is a ‘comprehensive policy’. Besides paying premium for own damage and third party basic, for compulsory PA (personal accident) cover to owner/driver, additional

premium was paid. However, limit amount was Rs.2 lakh.

Such being the contractual terms between the insured and the insurer, the facts of the case in hand are distinguishable from *Ningamma case (supra)*, wherein, the motorcycle was borrowed from the owner and considering the victim to be borrower, his case was held to be not covered, under Section 163-A of the Motor Vehicles Act. However, in the case in hand, since, there was personal accident cover for the owner-driver, though the limit was of Rs.2 lakh, therefore, his risk of personal accident, as such, is covered.

Precisely, on this account, the claim petition to seek compensation, as such, is maintainable under Section 163-A of the ibid Act.

That being so, the injured (since deceased) is held entitled to payment of **Rs.2 lakh**, only towards the personal accident cover. On the amount of the compensation i.e. **Rs.2 lakh**, the appellant, shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the claim petition, till realization of the awarded amount. The requisite compensation be paid within a period of six weeks from today onwards, failing which, the insurance company shall be liable to pay interest @ 9% per annum, till realization.

In view of the aforesaid terms, the present appeal stands allowed.

September 15, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No