



2025:DHC:8117



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 22.08.2025***+ **MAC.APP. 125/2022**

SMT. DASIYA DEVI

.....Appellant

Through: Mr. Amiet Andley, Mr. Arun K. Sharma, Advs.

versus

M/S ICICI LOMBARD GIC LTD.

.....Respondent

Through: Mr. Navneet Kumar and Mr. Harsh Sharan, Advs. for R-1.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Appeal seeks to challenge the Award dated 10.01.2022 passed by the learned Presiding Officer MACT (South-East), Saket Court, New Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Claim Petition filed by the Appellant/Claimant before the learned Tribunal was dismissed with a finding that the learned Tribunal is not in a position to hold that the accident happened due to rash and negligent driving as the Appellant have failed to prove the same.

2. Briefly the facts are that accident caused the death of an 18-year-old boy. It is contended by the Appellant that the boy was riding as a pillion rider on a scooty, whereas it is the case of the Respondent that the deceased was in fact riding/driving the scooty which met with an accident on 12.07.2015. The deceased succumbed to injuries on 13.07.2015.

2.1 The Appellant filed a Claim Petition before the learned Tribunal



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under Section 166 of the Motor Vehicles Act, 1988 [hereinafter referred to as “MV Act”] against the insurer/Respondent No.1, the driver and the owner of the vehicle.

2.2 Two witnesses were produced before the learned Tribunal. Firstly, the Investigating Officer [IO] and secondly, PW1, Mr. Mohan Choudhary, the father of the deceased. The Respondent No.2/driver of the vehicle was not traceable. The IO appeared on one date and was cross-examined. The evidence was closed thereafter by the learned Tribunal by its order dated 26.11.2021. The IO, however, passed away during Covid – 19 pandemic as is recorded in the order dated 26.11.2021 passed by the learned Tribunal.

3. Learned Counsel for the Appellant makes three submissions. Firstly, he submits that in the event that the Court had found that the Claimant was unable to succeed in terms of the provisions of Section 166 of the MV Act, there is no bar on the learned Tribunal from converting the Petition into a Petition under Section 164 of the MV Act. The learned Tribunal had the liberty to convert the Petition filed under Section 166 of the MV Act into a Petition filed under Section 164 of the MV Act for payment of compensation. However, this was not done, secondly it is contended that even though an opportunity was granted to the Appellant to examine the summoned witness, on account of Covid – 19 pandemic this opportunity could not be availed.

3.1 Learned Counsel for the Appellant submits that the finding that has been given by the learned Tribunal premises itself on the judgment passed by a Coordinate Bench in *New India Assurance Co. Ltd. v. Shashi Negi & Ors.*¹, however, the judgment in fact affirms the proposition that a Motor

¹ 2016 SCC OnLine Del 3044



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Accident Tribunal can on its own accord *suo moto* convert a Petition under Section 166 of the MV Act into a Petition under Section 163A/164 of the MV Act as it exists today.

3.2 Learned Counsel for the Appellant seeks to rely upon the judgments passed by a Coordinate Benches of this Court being *United India Insurance Co. Ltd v. Rita Devi and Ors.*², *New India Assurance Co. Ltd. v. Shashi Negi & Ors.*³ and *Oriental Insurance Co. Ltd v. Sh. Shiv Prasad Indramani & Ors.*⁴ to submit that Section 164 of the MV Act commences with a non obstante clause and thus has an overriding effect. It is contended that since this is a beneficial legislation, the provisions of the MV Act should be interpreted liberally.

3.3 Learned Counsel further submits that there is no dispute that there exists a valid and subsisting insurance policy in the present case, thus the Appellant cannot be penalised for a breach either.

4. Learned Counsel for Respondent No. 1, on the other hand, vociferously argued that the factual narration is disputed. Firstly, he submits that the deceased was not the pillion rider but was himself riding the vehicle and thus, he was responsible for rash and negligent driving and his legal heirs could not file for compensation. Secondly, relying on the judgment of a Coordinate Bench in *Bharti Axa General Insurance Company Ltd. v. Bimla Rana & Ors.*⁵ he submits that where the deceased borrowed the scooter from its registered owner, he has stepped into the shoes of such registered owner and could not be treated as a party so as to bring liability

² 2014 SCC OnLine Del 7523

³ 2016 SCC OnLine Del 3044

⁴ 2024 SCC OnLine Del 3960

⁵ MAC. APP. 428/2017 – Judgment dated 11.09.2017



on the Insurance Company including under Section 163A of the MV Act.

5. The principal contention of the Appellant is that since the driver of the scooty - Respondent No. 2 did not enter into the witness box, an adverse inference should have been drawn against him by the learned Tribunal. Instead, the learned Tribunal has held that since the Appellant had not examined any eye witness or cross-examined the IO, rash and negligent driving could not be proved and dismissed the Claim Petition. It is apposite to examine the finding of the learned Tribunal in this behalf which are set out below:

"19. In the MACT cases, claimants are required to prove the rash and negligent driving by the driver of the offending vehicle. In this case, petitioners did not examine eyewitness to the accident. Record shows that earlier untraced DAR was filed by IO in this matter stating that the offending vehicle was being driven by deceased Vikas and Rohit was pillion rider of the scooty bearing No. DL-3SDE-1443 (offending vehicle herein). It is stated by IO in the chargesheet that the deceased Vikas was self driving his scooty and his friend Rohit was sitting his back side on seamy and scooty was hit divider Andrewd Ganj Fly over (N. D.) self. After treatment in the AIIMS hospital the victim Vikas was declared dead by the doctor. Later on claim petition u/s 166 of M. V. Act filed by petitioners. Despite that petitioners have not taken any steps to examine eye witness of the accident to prove rash and negligent driving of respondent no.2.

20. Petitioner No. 1/father of deceased admitted during his cross examination that he did not witness the accident. No other witness to the sequence of events was examined on behalf of petitioners. This Tribunal relied upon judgment titled as New India Assurance Company Ltd. Vs. Shashi Negi; 2016 SCC OnLine Del 3044 in which it is held that:

"In the facts and circumstances, chis Court finds it difficult to follow the view taken in Pushpa Rana (supra). Since the law declared by the Supreme Court in Meena Variyal (supra) is binding, there is no escape from the conclusion that it the burden of the claimants in a petition under section 166 of MV Act to prove negligence."

21. In the aforesaid discussion, this Tribunal is not in a position to hold that the accident happened due to rash and negligent driving of the respondent no. 2. In the light of aforesaid judgment, issue no.2 is therefore decided against the petitioners.

Issue No. 2



22. As the petitioners have failed to prove that the accident happened due to rash and negligent driving of the respondent no.2, they are not entitled for the compensation as prayed for. The petition is accordingly dismissed.”

[Emphasis supplied]

6. It is contended by the Appellant that the offending vehicle was being driven not by the deceased, Vikas but by Respondent No. 2, Rohit. The Appellant has contended that Respondent No. 2 was summoned as a witness on 14.09.2018 and the learned Tribunal also directed the IO to produce Respondent No. 2 on the next date of hearing. Subsequently, by order dated 29.11.2018, the learned Tribunal directed that Respondent No. 2 was not traceable as his family has left the house where they were residing earlier. Thus, it is contended that despite making all efforts, Respondent No. 2 [driver of the vehicle] could not be brought before the learned Tribunal to test the veracity of his statement through his cross-examination.

6.1 In addition, it was contended by the Appellant that permission was sought to examine the IO on various dates by the Appellant. However, since the IO was not present, the cross-examination could not take place. Thereafter, including in view of the impending Covid pandemic, when the Court notice was issued to the IO to appear for his cross-examination on 26.11.2021, the Court was apprised that the IO had passed away on 25.08.2021. It is thus the contention of the Appellant that even the veracity of the statement of the IO could not be verified by the Appellant nor could he be confronted with discrepancies and contradictions with regard to the accident in the FIR or in the chargesheet/final report. The Respondent No. 3 [owner of the vehicle] also did not appear before the learned Tribunal and thus, even his statement could not be recorded.



7. The Appellant has consistently maintained that the scooty was being driven by Respondent No. 2 and this forms part of the Detailed Accident Report (DAR) as well. It was also contended that the driver of the scooty sustained no injury, however, the pillion rider (the son of the deceased) was flung from the scooty and hit his base of the neck on the wall of the flyover causing compression of the brainstem leading to his death.

8. The Respondent No. 1/Insurance Company has contended that no compensation could be granted to the Appellant. Relying on the judgment of the Coordinate Bench in the ***Bharti Axa*** case has held that the liability could not be fastened on the Appellant as the deceased had borrowed the scooter from its registered owner [Respondent No. 3], and having stepped into the shoes of the owner, he could not be treated as a third party to bring the liability on the Appellant. Reliance in this behalf is placed on the following extract of ***Bharti Axa*** case below:

“2. By order dated 24.11.2016, the Motor Accident Claims Tribunal (Tribunal), awarded compensation in the sum of Rs.2,97,834/- fastening the liability on the appellant to pay.

3. The insurer is in appeal arguing that since the scooterist/deceased had borrowed the scooter from its registered owner, he having stepped into the shoes of the owner, he could not be treated as a party so as to bring the liability on to the appellant. This plea must be accepted in view of the rulings of the Supreme Court in *New India Assurance Company Ltd. vs. Sadanand Mukhi & Ors.*, (2009) 2 SCC 417, *Ningamma & Anr. vs. United India Insurance Company Ltd.*, (2009) 13 SCC 710 and of this court following the said law in a series of judgments including *Oriental Insurance Company Limited vs. Shakuntala & Anr.*, MAC APP.142/2007, decided on 2nd March, 2016 and MAC Appeal No. 408/2008 *National Insurance Company vs. Sanju & Ors.* decided on 25th August, 2017.”

[Emphasis supplied]

9. Undisputably, the Respondent No. 2 did not enter the witness box. He further left the premises where he was residing at and could not be traced thereafter. Despite being served through publication, he did not appear as a



witness in the learned Tribunal at all. All efforts made by the Appellant also did not yield any result since the Respondent No. 2 was not traceable. In addition, despite the efforts made by the Appellant to cross-examine the Respondent No. 3 or the IO, no cross-examination could be conducted.

9.1 The evidence of PW-1 who is the father of the deceased sets out that Respondent No. 2 came to his house on a scooty and took his son with him. He further clarified that the scooty was being driven by Vikas as not by Rohit (the deceased). It is apposite to set out the relevant extract of the cross-examination of PW-1 below:

“ ...

I tender my evidence by way of affidavit Ex. PW1/A, which bears my signatures at Point A & B.

...

XXXXXX by Sh. H.L. Dagar, Counsel for Insurance Company.

*I am not an eye witness to the accident. On the date of accident, lived at H. No. 351, Shahpur Jat, New Delhi. **On that day, Rohit came on scooty to our house and took my son Vikas with him on scooty . I do not know where they went from my house. It is wrong to suggest that Rohit and Vikas were coming from Hauz Khas to our house and had not left from our house for some unknown place.** It is wrong to suggest that I had not seen them at my house as they never reached our house and met with the accident before reaching our house. **It is wrong to suggest that scooty was being driven by Vikas and not by Rohit as stated in the charge sheet.** Rohit and Vikas studied in the same school. I cannot say if Rohit always came to our house on scooty or not. Scooty was owned by Manoj a friend of Rohit. I do not know how Mohit and Manoj were friends. Rohit told us in the hospital after the accident that scooty was owned by Manoj. I do not know any Vishwas of Hauz Rani. (vol. He may be father of Manoj).*

It is wrong to suggest that scooty was being driven by Vikas after taking it from Manoj.

I do not remember the exact date of birth of my son Vikas but he was born on 14th date.”

[Emphasis Supplied]

10. The statement of R1W1, SI Krishan Kumar who was summoned at the behest of Respondent No.1/Insurance Company filed the untrace



chargesheet after conducting the investigation, which stated that the offending vehicle was being driven by the deceased. It further set out that Respondent No. 2 was a pillion rider and that neither of them had the driving licence since they both were minors. The crucial evidence on the basis of which the Impugned Award was passed could not be put to the test of cross-examination. Neither Respondent No.2 nor Respondent No.3 appeared in the witness box.

11. There is a clear contradiction between the statement of IO and PW-1. The fact that the Respondent No. 2 left the premises without a forwarding address and did not appear before the learned Tribunal despite repeated attempts is also of significance. All these circumstances would clearly require that adverse inference to draw against both Respondent No.2 and Respondent No.3.

12. The Appellant has also made an alternate argument that in the event that the learned Tribunal found that the negligence could not be proved by the Appellant, it could have *suo moto* converted the Claim Petition and granted compensation under Section 163A of the MV Act. Section 163A of the MV Act provides for a compensation as is indicated in the IInd Schedule of the MV Act in the following manner:

“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 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.”

12.1 The learned Tribunal gave a finding that the Appellant did not take any step to examine the eye witness of the accident to prove rash and negligent driving. It was further held that since no witness was examined while relying on the judgment in the ***Shashi Negi*** case, that Appellant was unable to to prove negligence on the part of the Respondent.

12.2 While reaching this conclusion, the learned Tribunal did not take into account, that the ***Shashi Negi*** case relied on the ***New India Assurance Co. Ltd. v. Devki & Ors***⁶ and that the paragraph 8 of the ***Devki*** case gives a finding that the option of conversion is always available to the Court. This aspect has also been discussed and a similar view was taken by the Coordinate Bench in the ***Rita Devi*** case as well.

13. This Court has examined the judgments passed by the Coordinate Benches of this Court as placed on record by the Appellant. In ***Shashi Negi*** case, the Coordinate Bench while examining the aspect of negligence had discussed the judgment in ***Devki*** case to observe that even in the ***Devki*** case, the Court has taken a view that where it is difficult to prove the evidence with regard to negligence, the option of no-fault liability as per the structured formula under Section 163A of the MV Act is always available. Paragraph 8 of the ***Devki*** case is set out below:

“8. In the facts and circumstances, this Court finds it difficult to follow the view taken in Pushpa Rana (supra). Since the law declared by the Supreme Court in Meena Variyal (supra) is binding, there is no escape from the

⁶ MAC.APP 165/2013 dated 29.02.2016



conclusion that it is the burden of the claimants in a petition under section 166 of MV Act to prove negligence. Should they find it difficult to prove evidence with regard to negligence, the option to have resort to no fault liability on the structured formula under Section 163A of MV Act is always available to seek just compensation. The case of Bimla Devi (supra) cannot be an illustration to hold otherwise inasmuch as it is clear from the narration of facts noted therein that an eye witness was available and the conclusion on facts had been reached on the basis of his testimony.”

[Emphasis supplied]

14. In the ***Rita Devi*** case, the Coordinate Bench has held that it is a settled principle that while a claimant is barred from pursuing remedies under both Section 166 and Section 163-A of the Motor Vehicles Act simultaneously, there exists no prohibition on the conversion of a petition from one section to the other at any stage of the proceedings. This right of conversion is fundamental to the beneficial and social objective of the legislation, which aims to provide speedy and expeditious compensation to accident victims. Upon such conversion, the claim is then adjudicated strictly under the structured formula of Section 163-A, requiring the claimant to forgo any claim for income exceeding the statutory limit and dispensing with the need to prove negligence. The relevant paragraphs of the ***Rita Devi*** case are set out below:

“7. In the present case the Tribunal has permitted the claimants to convert the petition under Section 166 into a petition under Section 163A. It was not a case where two petitions have been pursued simultaneously by the claimants.

8. This court in the case of *Rukmani Devi v. New India Assurance Co. Ltd.*, 2009 ACJ 2202 has held that there cannot be a bar that the claimant cannot choose at any stage of the case to convert his petition under Section 166 to 163A of the M.V. Act. In that case this court held as follows: -

“7. Based on the above discussion and after considering the ratio of the aforesaid judgment of the Apex Court, it becomes manifest **that the bar is on taking simultaneous remedies under Section 163-A and Section 166 of the Motor Vehicles Act, but there cannot be any bar that the claimant cannot choose at any stage of the case to convert their petition from Section 166 to Section 163-A of the Motor**



Vehicles Act. Denying such right of conversion during the pendency of case would defeat the very social objective of granting speedy and expeditious compensation to the victims of the accident cases. Once the claimants have taken recourse to Section 163-A of the Motor Vehicles Act the only hindrance which will come in the way of the claimants would be that the compensation in their favour would be payable under the said structured formula of the Motor Vehicles Act and once the claimants seek an amendment to convert their petition from Section 166 to Section 163-A of the Motor Vehicles Act, then, at the same time the claimant cannot be allowed to take the advantage of the income which the deceased/victim might have been earning over and above the amount of Rs. 40,000 per annum as restricted in the Second Schedule to the Motor Vehicles Act....

9. Another question which is of vital importance is whether the petition filed under Section 166 of the Motor Vehicles Act can be allowed to be converted into a petition under Section 163-A of the Motor Vehicles Act or vice versa and if the answer is yes, then what should be the stage for allowing such a petition. There cannot be any dispute that the Motor Vehicles Act is a beneficial piece of legislation and, therefore, endeavour has to be as to how best the intention of the legislation can be achieved so as to safeguard the interest of the victims of the accident rather than defeating the same. The statute has to be construed according to the intent of the makers and it is the duty of the courts to interpret the statute to see that true intention of legislature is achieved. Taking a purposive interpretation of Section 163-A of the Motor Vehicles Act the clear intendment of the legislation was to come to the rescue of all those who in the absence of any evidence are not in a position to file a claim petition under Section 166 of the Motor Vehicles Act where death of the victim or permanent disablement of the victim is required to be proved by establishing the factum of negligence involving the offending vehicle resulting into causing the accident but under section 163-A, the requirement of proving the negligence has been dispensed with.”

9. Reference may also be had to the judgment of this Court in the case of *Tata A.I.G. General Insurance Co. Ltd. v. U.P. Roadways* where in para 6 this court held as follows:

“6. The question for consideration is whether the Claim Petition filed and decided under Section 166 of the Motor Vehicles Act can be converted into one under Section 163-A so as to claim compensation without proving any negligence on the part of the driver of the vehicle involved in the accident. There is no prohibition in law to convert the said Petition unless some prejudice is shown by the opposite party, in my view, a Claim Petition filed under Section 166 can be converted to one under Section 163-A of the Act.”

10. I may also mention that under Order 6 Rule 17 CPC the court may at



any stage of the case allow either party to alter or amend his pleadings in such manner or such terms subject to of course certain limitations as provided under the amendment of 2002. When a petition under Section 166 is converted into 163A of the M.V. Act it is like an amendment to the claim petition. For purposes of doing complete justice between the parties and completely adjudicating upon all the disputes such an amendment cannot be said to be barred.”

[Emphasis supplied]

15. Concededly, the learned Tribunal did not take this approach and instead dismissed the Claim Petition. A young boy lost his life in an accident. The Appellant’s case is that their deceased son was a riding as a pillion rider on the scooty. This has been denied by the Insurance Company. The learned Tribunal however has premised its findings based on the unverified testimony of the IO, since he passed away prior to his cross examination. Given this turn of events, to give a conclusive finding on the fact that the deceased was the driver and not the pillion rider and dismissing the entire Claim Petition cannot be sustained.

15.1 The Appellant, however, submits that during the pendency of the trial, the Covid-19 pandemic set in and when the matter was listed for his cross examination on 26.11.2021, the learned Tribunal has recorded that the IO has expired.

16. In view of the foregoing discussions, this Court deems it apposite to set aside the Impugned Order with a direction to the learned Tribunal to examine the matter afresh. The parties shall appear before the learned Tribunal on 23.09.2025.

16.1 It is clarified that the rights and contentions of both parties are left open to be agitated before the learned Tribunal in accordance with law.

17. The Appeal is disposed of in the foregoing terms.



18. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

AUGUST 22, 2025/r/ha