



2025:DHC:10973



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on: 04.12.2025

+ MAC.APP. 282/2018
MAMTA & ORSAppellants
Through: Mr. Anshuman Bal, Advocate.

versus

UNITED INDIA INSURANCE
COMPANY LIMITED & ANRRespondents
Through: Ms. Suman Bagga and Ms. Mouli
Sharma, Advocates for R-1.
Mr. Sourabh Luthra, Advocate for
R-2.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. The appellants, who were the claimants before the Motor Accident Claims Tribunal [“the Tribunal”], are in appeal against an award dated 20.11.2017 in MACT No. 14818/2015, by which the Tribunal dismissed their claim for compensation under Section 163A of the Motor Vehicles Act, 1988 [“the Act”], as it then was. The claim arose out of a fatal accident, in which one Mr. Naresh Kumar died. The claimants are his wife, two sons and his mother.

2. The facts of the accident, as they appear from the impugned award, are that the deceased was driving in a Rural Transport Vehicle [“RTV”] [bearing registration No. DL1VA0252]. On 29.09.2012, at about 5:45 PM, an accident took place in *Gali No. 7, Ashok Nagar, Delhi*, between the RTV and a motorcycle [bearing registration No. DL4SBT7946] [“the insured vehicle”]. The accident resulted in the death of Mr. Naresh



Kumar. The claimants thereafter instituted a claim under Section 163A of the Act against the owner-cum-driver and the insurer of the insured vehicle.

3. The Tribunal framed the following three issues:

“(i) Whether deceased Naresh Kumar died on account of injuries sustained in accident taking place on 29.09.2012 at about 5:45 PM in front of Gali No. 7, Ashok Nagar, Delhi within the jurisdiction of PS Jyoti nagar due to rash and negligent driving of vehicle bearing No. DL 4 SBT 7946 by respondent No. 1? OPP

(ii) Whether petitioners are entitled to compensation ? If so to what amount and from whom? OPP

(iii) Relief.”

4. It returned a finding against the claimants on issue No. (i) and, therefore, dismissed the petition.

5. Mr. Anshuman Bal, learned counsel for the appellants, submits that the Tribunal has erroneously proceeded on the basis that the insured vehicle was not involved in the accident at all, and that the deceased was himself negligent, which would defeat the claim under Section 163A of the Act. He relies upon the judgment of the Supreme Court in *United India Insurance Co. Ltd. v. Sunil Kumar*¹, in support of this contention.

6. Ms. Suman Bagga, learned counsel for the respondent No. 1- United India Insurance Company Limited [“the Insurance Company”], however, submits that in the facts of the present case, an FIR was registered only against the deceased, who was the driver of the RTV, and not against the driver of the insured vehicle, which was insured by the Insurance Company. She also draws my attention to the finding in the impugned award that the insured vehicle was not involved in the accident

¹ (2019) 12 SCC 398 [hereinafter “*Sunil Kumar*”].



at all.

7. Section 163A of the Act, as it existed prior to the amendment by the Motor Vehicles (Amendment) Act, 2019, provided as follows:

“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.”

This section has subsequently been modified and incorporated in the post amendment provision of Section 164 of the Act.

8. The erstwhile Section 163A provided for grant of compensation in the case of fatalities or permanent disability, even in the absence of proof of rash and negligent driving. The compensation was to be granted in terms of a structured formula provided in the Second Schedule to the Act, by way of a detailed table incorporating variables such as the age of the deceased and his/her annual income. The Second Schedule was amended² in the year 2018, doing away with the structured formula, and providing

² Gazette of India, Notification No. 2815 GI/2018, Ministry of Road Transport and Highways, dated 22.05.2018.



instead for a fixed compensation of Rs. 5,00,000/- in the case of death, and for the quantum payable in cases of injury.

9. In the present case, the two questions which require determination are as follows:

(a) whether the insured vehicle was involved in the accident which resulted in the death of the deceased; and

(b) whether the claimants are entitled to compensation, even in the face of the allegation of negligence against the deceased.

QUESTION (a)

10. As far as the first question is concerned, the Tribunal has held against the claimants for the following reasons:

*“9.The requirements in respect of Section 163-A of MV Act accordingly is as to whether an accident involving motor vehicle took place resulting in death or bodily injuries of the nature mentioned in the schedule which entitles one for compensation irrespective of who contributed or who was negligent for causing the accident. Admittedly in this matter, Naresh Kumar (deceased) was driving the RTV and caused accident due to use and involving the RTV only. **There is nothing on record to prove that motorcycle driven by the respondent No. 1 was involved in the accident resulting in death of Naresh Kumar at all. It is not explained by the petitioners as to how the accident was caused involving the motorcycle.***

10. I have gone through the Judgment reported as (2009) 2SCC417 titled New India Assurance Company Ltd. Vs. Sadanand Mukhi & Others and the ratio of the judgment is squarely applicable in the facts and circumstances of this case. The ratio of the judgment reported as AIR 2009 SCC3056 titled Nigamma & Anr. Vs. United India Insurance Company Ltd. is also applicable in the facts of this case. In the case in hand, the deceased who claimed to be the owner in possession of the RTV being owner could not himself be a recipient of the compensation as the liability to pay the same is on him. Accordingly, the legal representatives of the deceased who had stepped into the shoes of the owner of the vehicle could not have claimed compensation U/s 163A of M.V. Act, 1988.

In view of the aforesaid announcement and facts of the case, this Tribunal is of the considered view that the respondents are not liable



to pay the compensation. This issue is decided against the petitioners.”³

11. On this aspect, evidence was given before the Tribunal by respondent No. 2 herein, the driver of the insured vehicle, and the Investigating Officer in the criminal proceedings. The driver of the insured vehicle in his affidavit of evidence stated as follows:

“3. That I say that on 29.09.2012 I went for a meeting alongwith sales officer Late Sh. Ravinder Nath Kanojiya at Gali No. 3, Meet Nagar, Delhi through my motorcycle bearing no DL-4BT-7946. I was driving the motorcycle at moderate speed and Late Sh. Ravinder Nath kanojiya was sitting as pillion rider. After finishing the meeting we were returning to home by motorcycle then around 5.45pm I taken a u-tern at the Ashok Nagar Flyover, at the same time an RTV bearing no. DL-IVA-0252 which was stationary on the roadside started driving and hit my motorcycle from back side while driving rashly and negligently. Due to this hitting impact my motorcycle got disbalanced and we alongwith motorcycle came under the RTV and entangled under the RTV. We shouted but the driver of RTV did not listen to us and kept driving the vehicle and finally the overturned.

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5. That I say that the accident has occurred due to rash and negligent driving of the driver of RTV who suddenly started his vehicle and hit my motorcycle from back side and finally did not stop when we alongwith motorcycle entangled under the RTV.”⁴

12. In his cross-examination, he reiterated that the accident was caused due to the insured vehicle being hit from behind by the RTV.

13. SI Alok Kumar Rajan, the Investigating Officer, was also examined. In his examination in chief, he did not expressly refer to both the RTV and the insured vehicle being involved in the accident, but in cross-examination by learned counsel for the claimants, he stated as follows:

“In this case two vehicles were involved i.e. RTV bearing no. DL-

³ Emphasis supplied.

⁴ Emphasis supplied.



I/A-0252 and motorcycle bearing no. DL-4SBT-7946. *It is correct that both the vehicles were going towards same direction. It is wrong to suggest that both the drivers of the vehicles were driving their vehicles at a very high speed and in negligent manner. It is correct that I have not recorded the statement of public persons. I have recorded the statement u/s 161 Cr.PC of motorcycle rider and pillion rider. It is wrong to suggest that I did not record the statement of motorcycle rider or its pillion rider. It is wrong to suggest that I did not properly investigated the matter. It is wrong to suggest that the accident happened due to the negligence on the part of both the vehicles.”⁵*

14. On the basis of the above evidence, I am of the view that the Tribunal’s finding, on the question of involvement of the insured vehicle in the accident, is in error. The clear evidence of the driver of the insured vehicle himself, as well as the Investigating Officer was that, both the RTV and the insured vehicle, were involved in the accident.

QUESTION (b)

15. Turning now to the second question, Ms. Bagga submits that the accident occurred due to the negligence of the deceased, who was driving the RTV, and not due to the negligence of the driver of the insured vehicle, i.e. it was not the “*offending vehicle*”.

16. I am of the view that the judgment of the Supreme Court in *Sunil Kumar* cited by Mr. Bal above, forecloses such an argument. A three-Judge Bench of the Supreme Court was hearing a reference, questioning the correctness of the decision of a two-Judge Bench in *National Insurance Co. Ltd. v. Sinitha*⁶. The question referred to the larger Bench was as follows:

“Whether in a claim proceeding under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”) it is open for the insurer to raise the defence/plea of negligence?”

⁵ Emphasis supplied.

⁶ (2012) 2 SCC 356.



17. Upon an analysis of Section 140(4) and 163A of the Act, as well as consideration of various earlier judgments of the Court, the three-Judge Bench recorded the following conclusion:

“8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the insurer and/or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final compensation within a limited time-frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability were taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act on a par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention. 9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163-A of the Act, it is not open for the insurer to raise any defence of negligence on the part of the victim.”¹

18. Ms. Bagga submits that the “offending vehicle” was the RTV itself in the present case, and not the insured vehicle. However, the necessary implication of this submission is that the driver of the RTV, i.e. the deceased was negligent, and not the driver of the insured vehicle.

19. This is exactly the defence, which the Supreme Court in *Sunil Kumar* has held is not available to the insurer.



20. For the aforesaid reasons, I am of the view that the appeal is liable to be allowed, and the claim, under Section 163A of the Act, is liable to succeed.

CONSEQUENTIAL POINTS FOR DETERMINATION

21. Three further points require clarification – quantum, liability between the respondents, and apportionment amongst the claimants.

(i) QUANTUM

22. As far as quantum is concerned, as noted above the Second Schedule of the Act was amended in the year 2018 to provide for a fixed compensation of Rs. 5,00,000/-, in case of fatality.

23. By a judgment of the Division Bench in *Urmila Halder v. New India Assurance Co. Ltd & Ors.*⁸, the Calcutta High Court concluded that the aforesaid amendment should apply to accidents which occurred before the date of the amendment, i.e. 22.05.2018. Upon the aforesaid judgment being challenged, the Supreme Court, *vide* order dated 08.02.2024⁹, affirmed the said judgment, and observed as follows:

“4. The short point for consideration before this Court is whether the amendment in Section 163-A of the Motor Vehicles Act, 1988, which came into effect by a Gazette Notification on 22nd May, 2018, would relate to an accident which had occurred prior to the said date.

5. Learned counsel for the appellant submits that the law which was amended would come into force prospectively, which is a normal rule of interpretation and there being no retrospectivity indicated in the amendment itself, the same has to be construed in a harmonious manner giving effect to each and every word.

6. Reliance was placed on the last line of the notification, which indicates that the said amendment would come into force from the date of publication in the official Gazette, which is 22nd May, 2018. It was

⁷ Emphasis supplied.

⁸ 2018 SCC OnLine Cal 11751.

⁹ In SLP (C) 6260/2019.



submitted that as the accident had occurred on 11th December, 2004, the benefit of such amendment could not be granted to the respondent. In support of this contention, learned counsel referred to and relied upon various decisions of this Court in Padma Srinivasan v. Premier Insurance Company Limited, [(1982) 1 SCC 613]; Shyam Sunder v. Ram Kumar, [(2001) 8 SCC 24]; Nasiruddin v. Sita Ram Agarwal, [(2003) 2 SCC 577] and Panchi Devi v. State of Rajasthan, [(2009) 2 SCC 589].

7. It was further contended that the present case is covered by the policy under which the payment is made and the same crystallized on the date the same was entered into and subsequent developments would not alter the rights and liabilities of the parties. Thus, the contention was that the appellant would not be liable to pay any further than what it was obliged to pay under the Act prior to coming of the amendment on 22nd May, 2018.

8. Learned counsel for the respondent submitted that the High Court has rightly taken a view that it is merely a procedural amendment which has to be given retrospective effect and it is nothing substantive so as to affect the merits of the issue.

9. Having considered the matter, we do not find any reason to interfere with the judgment impugned. With regard to the judgments of this Court relied upon by learned counsel for the appellant, having gone through the same we find that they are distinguishable from the facts of the present case and thus, the ratio of those cases would not apply in the present case.

10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-Insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs. 5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks.”¹⁰

24. The quantum of compensation in the present case, is, therefore, fixed at Rs. 5,00,000/-. The said amount will carry interest at the rate of 6% per annum from the date of filing of the claim petition.



(ii) **LIABILITY OF THE RESPONDENTS**

25. As far as liability is concerned, Ms. Bagga submits that the Insurance Company is entitled to recover from respondent No. 2 herein [driver-cum-owner of the insured vehicle], as respondent No. 1 did not have a driving licence on the date of the accident. This is contested by Mr. Sourabh Luthra, learned counsel for respondent No. 2. The Tribunal having dismissed the claim altogether, this aspect was not adjudicated at all. As the Tribunal has not addressed this issue, the matter is remanded to the Tribunal on the question of whether the Insurance Company should be granted recovery rights against respondent No. 2.

(iii) **APPORTIONMENT AND DISBURSEMENT**

26. As the Tribunal had dismissed the claim, it had no opportunity to examine the apportionment and disbursement aspects. The claimants are directed to appear before the Tribunal for this purpose.

CONCLUSION

27. The appeal is disposed of with the following directions:

- a) Impugned awarded dated 20.11.2017 in MACT No. 14818/2015 is set aside.
- b) The claimants are awarded Rs. 5,00,000/-, with interest at the rate of 6% per annum, payable from the date of filing of the claim petition until realization.
- c) The amount be deposited by the Insurance Company before the Tribunal within a period of six weeks from today.
- d) The matter is remanded to the Tribunal to decide apportionment and disbursement of the awarded amount amongst the claimants.

¹⁰ Emphasis supplied.



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- e) The matter is remanded to the Tribunal, also to decide on the issue of recovery by the Insurance Company against respondent No.2.
- f) The Tribunal is at liberty to record further evidence, if required.
- g) For these purposes, the parties are directed to appear before the Tribunal on 19.12.2025. As all parties are present, separate notice need not be issued.

PRATEEK JALAN, J

DECEMBER 4, 2025
SS/AD/