**IN THE HIGH COURT OF HIMACHAL PRADESH**
**SHIMLA**
**FAO(MVA) No.130 of 2013**
**Date of Decision: 25.04.2026**

Anjana & Anr. …Appellants

Versus

Kubja & Ors. …..Respondents

*Coram:*

***The Hon'ble Mr. Justice Virender Singh, Judge.***

***Whether approved for reporting?***

For the Appellants : Mr. Arsh Chauhan, Advocate.

For the Respondents : None for respondents No.1 to 4.

Ms. Devyani Sharma, Senior Advocate, with Mr. Shivam Sharma, Advocate, for respondent No.5.

**Virender Singh, Judge** *(Oral):*

Appellants have filed the present appeal, under Section 173 of the Motor Vehicles Act, (hereinafter referred to as the 'M.V. Act'), against the award dated 02.11.2012, passed by learned Motor Accident Claims Tribunal-II, Shimla, District Shimla, H.P., (hereinafter referred to as the 'learned Tribunal'), in MAC No.44-S/2 of 2010, titled as Anjana and another versus Kubja and others.

2. By way of award dated 02.11.2012, the learned Tribunal has dismissed the claim petition, filed by the appellants.

[1] Whether reporters of Local Papers may be allowed to see the judgment?

3. For the sake of convenience, parties to the present appeal, are hereinafter referred to, in the same manner, in which, they were referred to by the learned Tribunal.

4. Brief facts, leading to filing of the present appeal, before this Court, may be summed up, as under:-

4.1. The claimants, being widow and minor son of Rajesh, have filed the claim petition, under Section 163-A of M.V. Act, seeking compensation, on account of death of Rajesh on 03.05.2010, involving Vehicle No.HP63A-7300, owned and registered, in the name of predecessor-in-interest of respondents No.1 to 4 and insured with respondent No.5.

4.2. According to the claimants, Rajesh was driving Vehicle No.HP63A-7300 (vehicle in question), with the consent and authority of the registered owner, who was also sitting with him. When, the said vehicle reached at Chaila Tehsil Kotkhai, District Shimla, at about 10:00 AM, on 03.05.2010, the said vehicle met with an accident, in which, predecessor-in-interest of the claimants and owner has expired.

5. When put to notice, this claim petition has been contested by the respondents. Respondents No.1 to 4 have filed

the joint reply, denying the factum of accident. The contents of paras 5 to 7 have been denied, mainly for want of knowledge, whereas, contents of paras 8 to 11 have been admitted to be correct. In addition to this, it has been pleaded that respondent No.3 was also travelling in the ill-fated vehicle and sustained injuries.

6. Another plea has also been taken that respondent No.1 Kubja is also legal heir of Rajesh and as such, she is also entitled for the compensation.

7. Insurance Company has filed the separate reply by taking the preliminary objections that the claim petition is not maintainable; the claimants are not entitled to any claim; the Insurance Company is not under legal obligations to indemnify the claimants, as the vehicle in question, at the time of accident was driven by a person, who was not a regular/paid driver, but, was a family member and was not holding a valid and effective driving license; the vehicle in question was being permitted to ply in violation of the terms and conditions of the insurance policy. On merits, the contents of the claim petition have mainly been denied for want of knowledge. Thus, the insurance company has prayed that the claim petition may kindly be dismissed.

8. From the pleadings of the parties, following issues were framed by the learned Tribunal, vide order dated 04.07.2011:

> *1). Whether death of Sh. Rajesh was caused due to involvement of Vehicle No.HP-63A-7300 ? OPP.*
> *2). If issue No.1 is proved to what amount of compensation the petitioners are entitled to and from whom ? OPP.*
> *3). Whether the driver was not holding valid and effective driving licence to drive the car at the time of accident ? OPR.*
> *4). Whether Car No.HP63A-7300 was being driven without registration certificate ? OPR.*
> *5). Relief.*

9. Thereafter, parties to the lis were directed to adduce evidence. After closure of the evidence, the learned Tribunal, upon hearing learned counsel for the parties, has dismissed the claim petition.

10. Feeling aggrieved from the said award, present appeal has been filed before this Court, on the ground that the learned Tribunal has wrongly held that Rajesh stepped into the shoes of his father, as, he was driving the ill-fated car with the consent of his father.

11. The case law relied upon by the learned Tribunal is also stated to be not applicable, in the facts and

circumstances of the present case. According to the appellant, Rajesh was third party, for the purpose of Section 163-A and he cannot be considered, as owner of the car by any stretch of imagination.

12. On the basis of the above facts, Mr. Arsh Chauhan, Advocate, appearing for the appellants has prayed that the appeal may kindly be allowed.

13. The prayer so made, has been opposed by Ms. Devyani Sharma, Senior Advocate, assisted by Mr. Shivam Sharma, Advocate, appearing for respondent No.5-Insurance Company, on the ground that the learned trial Court has rightly dismissed the petition, after relying upon the decision of Hon'ble Supreme Court, in **Ningammam and another versus United India Insurance Company Limited,** reported in **AIR 2009 SC 3056.**

14. Heard.

15. Admittedly, respondent No.1 is the mother (class-1 legal heir) of Rajesh, who has lost his life in the accident in question, whereas, claimants are widow and minor son of Rajesh. The vehicle in question was registered in the name of Chet Ram, who, as per the case setup by the claimants, also died in the accident.

16. In such situation, the material question, which arises for determination before this Court is about the fact that as to whether Rajesh, the predecessor-in-interest of claimants, falls within the definition of 'third party'. Answer to this question is in negative, as the Hon'ble Supreme Court, in **Ningammam and another versus United India Insurance Company Limited,** reported in **AIR 2009 SC 3056**, has authoritatively held that even a person, who borrowed the vehicle, met with an accident, does not fall within the definition of 'third party'. Relevant paragraph-19 of the judgment, is reproduced 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."*

17. In a recent decision in **Wakia Afrin (Minor) versus National Insurance Company Limited**, reported in **(2025) SCC Online SC 1591**, Hon'ble Supreme Court has reiterated the same view. Relevant paragraphs 5 to 16 are reproduced, as under:-

> *5. On the liability under Sections 163A & 166, in the absence of a third party claim, a number of decisions were placed before us, which we will have to refer to. Dhanraj v. New India Assurance Co. Ltd.,(2004) 8 SCC 553, found that an Insurance Policy under Section 147 of the Act does not require the insurer to assume the risk of death or injury on the body of the owner of the vehicle, since the policy issued only indemnifies the insured against liabilities incurred towards a third person or in respect of damages to property. That was a case in which the appellant was travelling in his own jeep and suffered injuries in pursuance to an accident. The driver of the jeep was held responsible for the accident by the Tribunal and the challenge was against the direction to the insurer to pay compensation to the owner/claimant.Extracting Section 147 and referring to Oriental Insurance Co. Ltd. v. Sunita Rathi, (1998) 1 SCC 365, it was held that Section 147 covers only the liability towards a third person or in respect of damages to property. When the owner of the vehicle, the insured, has no liability to a third party, the Insurance Company also does not have any liability. A premium paid under the head "own damage" was held to be a premium on the vehicle and the non-electrical accessories not relatable to the personal injury of the owner/injured.*
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> *6. Immediately we have to notice that Sunita Rathi (1998) 1 SCC 365, relied on in Dhanraj, ((2004) 8 SCC 553, only considered whether the insurer had any liability to indemnify the owner when the motor accident occurred prior to the issuance of the insurance policy; in that case a few minutes before. The observation that the liability of the insurer arises, only when the liability of the owner is proved, to indemnify the insured under the contract of insurance, was in the context of there existing no valid policy at the time of accident, and not under Section 163A.*
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> *7. In National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700, the question considered was whether principles laid down in National Insurance Co. Ltd. v.*

*Swaran Singh, (2004) 3 SCC 297 with reference to fake licenses were applicable even to third party claims. While finding that Section 149 applies only to third party risks, the principles in Swaran Singh, (2004) 3 SCC 297 that any condition taking away the rights of third parties are void, was reaffirmed; not really relevant for the issue arising herein.*

*8. Oriental Insurance Co. Ltd. v. Jhuma Saha, (2007) 9 SCC 263 was a case in which the owner, while driving an insured vehicle swerved the vehicle to save a goat and dashed against a tree causing injuries inter-alia to the owner- driver. The claim under Section 166 of the Act was held to be not maintainable, relying on Dhanraj (2004) 8 SCC 553.*

*9. Oriental Insurance Co. Ltd. v. Rajni Devi (2008) 5 SCC 736, was concerned with an application under Section 163-A of the Act. Two persons were riding in a motorcycle which went out of control resulting in an accident in which one of the riders was killed. There was no evidence as to who was in the driver's seat and the claim was resisted by the insurer on the ground that the cover of personal insurance cannot be invoked in the case of a pillion rider and in any event the owner of the vehicle is not a third party within the meaning of Section 147 of the Act; into whose shoes the driver steps in. Though Section 163A was noticed, reliance was placed on Dhanraj and Jhuma Saha which dealt with claims under Section 166 of the Act. It was held that under Section 163A of the Act the liability is on the owner of the vehicle and a person cannot be both 'the claimant and also a recipient' (sic); presumably meaning the same individual who has the liability cannot be the recipient of the compensation.*

*10. New India Assurance Co. Ltd. v. Sadanand Mukhi (2009) 2 SCC 417 considered the claim of the owner of the vehicle arising from the death of his son while riding the vehicle, which was insured in the father's name. The specific contention taken by the insurer was that given the relationship of the owner and the deceased, the latter was not a third party. The claim petition was under Section 166 of the Act and it was specifically observed by the Court that it is not a case of invocation of Section 163A (sic - para 12); leading to an inference that then, the decision would have been otherwise. Relying on Jhuma Saha (2007) 9 SCC 263 and Oriental Insurance Co. Ltd. v. Meena Variyal*

*(2007) 5 SCC 428, the claim under Section 166 was disallowed.*

*11. Meena Variyal, (1977) 2 SCC 441 was a case in which a Regional Manager was driving the vehicle owned by his employer-company which met with an accident leading to his death. The claimants though alleged that another person was driving the vehicle, failed to implead the said person; who in fact was the first informant which information was also to the effect that the accident occurred while the deceased was driving the vehicle. The Tribunal absolved the Insurance Company on the ground that the policy did not cover an employee driving the vehicle and directed the owner of the car to pay the compensation. The claimants filed an appeal in which this Court found that the application under Section 166 would not be maintainable since the deceased was not a third party and an Insurance Policy under Section 147(1), in addition to a third party would not cover the liability in respect of death or injury arising out and in the course of the employment of an employee of the insured unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver or a conductor in the case of a public service vehicle or otherwise the owner of the goods carried in a goods vehicle or his representative. It was found that under Section 166, the claimants would not have a case, in both instances of the deceased being an employee, having driven the vehicle or having travelled in the vehicle; the deceased being an employee not covered by the Workmen's Compensation Act. It was held that the liability of the insured owner could be indemnified by the insurer only if there is a special contract bringing such person under the coverage of the policy. In fact this Court has specifically referred to a three-Judge Bench of this Court in Minu B. Mehta v. Balkrishna Ramchandra Nayan (1977) 2 SCC 441, wherein it was categorically held that proof of negligence was necessary before the owner or the Insurance Company could be held to be liable for the payment of compensation in a motor accident claim case. It was in recognition of the principle laid down in Minu B. Mehta (1977) 2 SCC 441 that the provision for no-fault liability came to be incorporated, was the finding.*

*12. Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710, considered the claim of the wife and son, legal heirs of the person who was driving a vehicle, which he borrowed from the real owner. The accident occurred while*

*a bullock cart proceeding in front of the motorcycle abruptly stopped, leading to a collision and the rider of the motorcycle succumbing to the injuries sustained. While noticing the beneficial provision under Section 163A, it was held that Section 163A will not have any application when the claim is for the owner of the vehicle who cannot be the recipient of the compensation and the person who has the liability. Quite surprisingly this Court remanded the matter to the Tribunal for consideration under Section 166 of the Act.*

*13.Ramkhiladi v. United India Insurance Co.(2020) 2 SCC 550 was again with respect to a vehicular accident involving two motorbikes. The legal representatives of the deceased, who was driving one of the motor cycles, filed an application under Section 163A; impleading only the owner and the Insurance Company of the motorcycle driven by the deceased. Even the Insurance Company had a contention that the rash and negligent driving of the other motorcycle resulted in the accident; giving rise to a valid claim under Section 166 against the owner and insurer of the other vehicle. It was held that though in a claim under Section 163A of the Act, there was no requirement to plead or prove the negligence or default of the driver or owner of the vehicle since a claim under Section 163A is based on the principle of "no fault liability"; still only if the deceased is a third party, the claim can be maintained.*

*14. We have to observe that all the cases referred to above are with respect to the claims raised by the legal representatives of the deceased or the injured owner, who was either the driver of the vehicle involved in the accident or its passenger. While Dhanraj, (2004) 8 SCC 553 Jhuma Saha (2007) 9 SCC 263 and Sadanand Mukhi dealt with claim petitions under Section 166 of the Act, Rajni Devi, (2008) 5 SCC 736, Ningamma (2009) 13 SCC 710 and Ramkhiladi (2020) 2 SCC 550 dealt with claims under Section 163A. In Sadanand Mukhi while the Court rejected the application filed under Section 166, the learned Judges also made an observation that Section 163A was not invoked. Insofar as Ningamma is concerned while the claim under Section 163A was found to be not maintainable there was a direction to the Tribunal to examine whether the claim could have been sustained under Section 166. There is considerable variance in the observations made in the decisions but however as a principle, statutory liability was held to be not applicable in case of the owner/insured, since*

*the coverage was confined to third party risks or those specified in Section 147 read with Section 149.*

*15. We cannot but notice that Section 163A is a special provision brought in, which is a non-obstante clause which overrides not only the entire provisions of the Motor Vehicles Act, 1988 but also any other law for the time being in force and any instrument having the force of law. We cannot but understand the non-obstante clause having a superseding effect over the laws of insurance or even the terms in the policy, which definitely is an instrument having the force of law. It has also to be noticed that Section 163A makes liable the owner of the vehicle or the authorized insurer to pay in accordance with the IInd Schedule in the case of death or permanent disablement due to the accident arising out of the use of a motor vehicle.*

*16. Trite is the principle that the liability with respect to an accident is on the tortfeasor and in the case of a motor vehicle accident if the tortfeasor is the driver, the owner has the vicarious liability, which liability is indemnified by the insurer, when there is a valid policy. The liability is essentially of the owner but the provision, in addition to the insured/owner makes liable the authorized insurer too. Hence, when there is a valid policy issued in the name of the vehicle involved in the accident, a claim under Section 163A, as per the words employed in the provision, according to us covers every claim and is not restricted to a third party claim; without any requirement of establishing the negligence, if death or permanent disability is caused by reason of the motor accident. This would also take in the liability with respect to the death of an owner or a driver who stepped into the shoes of the owner, if the claim is made under Section 163A dehors the statutory liability under Section 147 or the contractual liability as reduced to writing in an insurance policy. It would override the provisions under Sections 147 & 149 along with the other provisions of the M.V. Act and the law regulating insurance as also the terms of the policy confining the claim with respect to an owner-driver to a fixed sum. This according to us is the intention of incorporating the non-obstante clause under Section 163A providing for no-fault liability claims, the compensation for which is restricted to the structured formula under the IInd Schedule. It is a beneficial piece of legislation brought in, keeping in mind the enhanced chances of an accident, resulting from the prevalence of vehicles in the overcrowded roads of today. It was a social*

> *security scheme, brought about considering the need for a more comprehensive scheme of 'no-fault' liability for reason of the ever-increasing instances of motor vehicle accidents and the difficulty in proving rash and negligent driving."*

18. If, the facts and circumstances of the present case, are seen in the light of the decisions of the Hon'ble Supreme Court, as referred to above, it can be said that Rajesh stepped into the shoes of owner, as such, his legal representatives cannot maintain the petition, under Section 163-A of the M.V. Act.

19. Even, the claimants cannot seek compensation from co-claimant i.e. mother of the deceased (respondent No.1 Kubja).

20. Considering all these facts, there is no occasion for this Court to interfere with the findings, so recorded by the learned Tribunal.

21. Consequently, the appeal is dismissed and the award passed by the learned Tribunal is upheld.

22. No order as to costs.

23. Record be sent back.

**(Virender Singh)**
**Judge**

**April 25, 2026**
(subhash)