



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 20th OF FEBRUARY, 2026

MISC. APPEAL No. 6796 of 2023

FUTURE GENERALI INDIA INSURANCE CO. LTD.

Versus

*SHAFIUDDIN THROUGH LEGAL REPRESENTATIVE MOTHER SMT.
ISMAT BANO AND OTHERS*

Appearance:

Shri Bal Krishna Agrawal - Advocate for the appellant/Insurance Company.

Shri Dharmendra Kumar Garg-Advocate for respondent No.1/claimant.

ORDER

This appeal under Section 173(1) of the Motor Vehicles Act, 1988 has been preferred by the appellant–Insurance Company challenging the Award dated 31/08/2023 passed by the learned Fourth Additional Member, Motor Accident Claims Tribunal, District Vidsiha (M.P.) in Claim Case No. 05/2020, whereby compensation has been awarded to the claimant. The appellant seeks reduction of the amount of compensation so awarded.

2. By the impugned Award, the Claims Tribunal has awarded a total compensation of Rs. 4,05,800/- along with interest from the date of filing of the claim petition till its realization on account of injuries sustained by claimant-Shafiuddin in a motor accident.

3. Brief the facts of the case are that on 24/09/2018 claimant and his family were traveling in the vehicle in question, a car bearing registration No. MP04-CP-2366. While attempting to save an animal near the Kirravada culvert, the car in question collided with the culvert, causing serious injuries to the claimant. He was admitted



to the Civil Hospital, Bina, from where he was referred to Bansal Hospital, Bhopal. He received treatment while admitted there. On the date of the accident a case was registered against the driver of the offending vehicle. After investigation, a charge-sheet was filed before the competent Court.

4. The owner of the offending vehicle was proceeded ex-parte and the Insurance Company filed his written statement denying the averments made in the claim petition.

5. After framing the issues and recording evidence adduced by the parties, the Claims Tribunal passed the impugned Award granting compensation as stated hereinabove.

6. Learned counsel for the appellant—Insurance Company submitted that the Award passed by the Claims Tribunal is contrary to law and the material available on record. It is contended that the claimant himself was negligent and solely responsible for the accident and, therefore, the claimant was not entitled to any compensation. It is further submitted that the Tribunal erred in fastening liability upon the Insurance Company, as the driver does not fall within the definition of a third party and no additional premium was paid under the policy to cover the risk of the driver. On these grounds, it is prayed that the impugned Award be modified.

7. Per contra, learned counsel for the claimant supported the impugned Award and prayed for dismissal of the appeal.

8. Heard learned counsel for the parties and perused the record of the Claims Tribunal.

9. The contention of the learned counsel for the Insurance Company is that the claimant was not in the position of the owner of the offending vehicle and, therefore, the claimant was not entitled to claim compensation under Section 163-A of the Motor Vehicles Act.



10. The High Court of Kerala in the case of **Vijayarajan (supra)** in para 5 has held as under:-

"5. Per contra, learned counsel for the appellant would contend that the deceased cannot be treated as a driver within the meaning of the personal accident cover. According to him, the insurance policy provides for compensation as contained in the policy of insurance, if the accident occurs when it is driven by the owner who is also the driver. In order to resolve this controversy, it is necessary to refer to the terms of the policy. It is true that in the premium an amount of Rs.50/- has been paid for the compulsory PA to owner-driver and it may at first blush appear to support the case of respondents 1 to 4. However, on a further scrutiny of the elaborate clauses contained in the policy, we feel that the question is to be answered against respondents 1 to 4. The policy speaks about it being a liability only policy and thereafter it provides for dealing with liability with the parties. Thereafter, it provides personal accident cover for owner-driver. "

11. However, in the present case, it is undisputed that the claimant was driving the offending vehicle at the time of the accident. Hence, the claimant stepped into the shoes of the owner and, accordingly, was covered under the insurance policy only to the extent of the premium paid for "Personal Accident Cover for Owner-Driver".

12. The Apex Court in the case of **Ramkhiladi and another vs. United India Insurance Company and another, 2020(1) T.A.C. 353 (SC)** in para 5.4 to 5.6 has held as under :-

"5.4 An identical question came to be considered by this Court in **Ningamma [Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710 : (2009) 5 SCC (Civ) 241 : (2010) 1 SCC (Cri) 1213]** . In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163-A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163-A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the



compensation under Section 163-A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163-A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing Registration No. RJ 29 2M 9223, being a third party with respect to the offending vehicle. However, no claim under Section 163-A was filed against the driver, owner and/or insurance company of the motorcycle bearing Registration No. RJ 29 2M 9223. It is an admitted position that the claim under Section 163-A of the Act was only against the owner and the insurance company of the motorcycle bearing Registration No. RJ 02 SA 7811 which was borrowed by the deceased from the opponent-owner Bhagwan Sahay. Therefore, applying the law laid down by this Court in Ningamma [Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710 : (2009) 5 SCC (Civ) 241 : (2010) 1 SCC (Cri) 1213], and as the deceased has stepped into the shoes of the owner of the vehicle bearing Registration No. RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 163-A of the Act against the owner and insurance company of the vehicle bearing Registration No. RJ 02 SA 7811 shall not be maintainable.

5.5 It is true that, in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the principle of no-fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163-A of the Act against the owner and insurer of the vehicle bearing Registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing Registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in Dhanraj [Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553 : 2005 SCC (Cri) 363], an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an 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 the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

5.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163-A of the Act was made only against the owner and insurance company of the vehicle which was being driven



by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163-A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle."

13. Applying the principle laid down in the aforesaid judgment, it is clear that since the claimant had borrowed the offending vehicle and was driving it at the time of the accident, he stepped into the shoes of the owner. Therefore, the claimant is entitled only to the amount payable under the "Personal Accident Cover for Owner-Driver" as per the terms of the insurance policy.

14. Learned counsel for the Insurance Company has submitted that as per the insurance policy, the amount of personal accident cover for owner-driver is Rs.2,00,000/-. Therefore, the claimant is entitled to receive only Rs.2,00,000/- towards compensation.

15. In view of above discussion, the just and proper amount of compensation in the instant case is Rs.2,00,000/- as against the award of the Claims Tribunal of Rs.4,05,800/-. Accordingly, the compensation amount is reduced from Rs.4,05,800/- to Rs.2,00,000/-.

16. In the result, the appeal is **partly allowed** by reducing the compensation amount to a sum of Rs.2,00,000/-. The said amount shall bear **interest @ 6 per cent** from the date of the filing of the claim petition till its realization. All other findings recorded by the Claims Tribunal



shall remain intact. Insurance Company is entitled to get excessive amount (if already deposited) from the Claims Tribunal in accordance with law.

With the aforesaid modification, the appeal is **partly allowed** and stands **disposed of**.

(HIRDESH)
JUDGE

Prachi