IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 112 OF 2013

The New India Assurance Company Ltd. ...Appellant

Versus

1. Rama Vishram Gavas
Age about 60 Years, Occupation : Nil

2. Sou. Sitabai Rama Gavas
Age about 55 Years, Occupation : Household,

3. Sanjay Rama Gawas
Age 27 Years, Occupation : Nil.

4. Ku. Nilima Rama Gavas
Age 27 Years, Occupation : Nil.

5. Prashant Rama Gawas
Age 23 Years, Occupation : Nil.

All R/o. Padave Majgaon,
Taluka Sawantwadi,
Dist. Sindhudurg.

6. Uday Rama Gawas
Age Major,
R/o. House No. 232/2, Upper Jetty,
Near Electricity Department,
Mormugao, Goa South
Goa – 40380. ...Respondents

WITH
CIVIL APPLICATION NO. 1999 OF 2013
IN
FIRST APPEAL NO. 112 OF 2013

1. Rama Vishram Gavas ...Applicants
Age about 60 Years, Occupation : Nil (Org. Claimants)

2. Sou. Sitabai Rama Gavas
Age about 55 Years, Occupation : Household,

3. Sanjay Rama Gawas
Age 27 Years, Occupation : Nil.

4. Ku. Nilima Rama Gavas
Age 27 Years, Occupation : Nil.

5. Prashant Rama Gawas
Age 23 Years, Occupation : Nil.

All R/o. Padave Majgaon,
Taluka Sawantwadi,
Dist. Sindhudurg.

IN THE MATTER BETWEEN :-

The New India Assurance Company Ltd. ...Appellant

Versus

Rama Vishram Gavas and Ors. ...Respondents

Mr. D. R. Mahadik, for the Appellant in F.A. and Respondent in Civil Application.

Mr. Anand S. Patil Advocate for Respondent Nos. 1 to 5 in F.A. and Applicant in Civil Application.

CORAM	**:**	**N. J. JAMADAR, J.**
RESERVED ON	**:**	**22nd OCTOBER, 2021.**
PRONOUNCED ON	**:**	**4th JANUARY, 2022.**

JUDGMENT :

1. Are the dependents of a person, who borrows the motor cycle from its owner and dies in an accident while riding the said motor cycle, there being no involvement of any other vehicle, entitled to compensation under Section 163-A of the Motor Vehicles

Act, 1988 ("MV Act, 1988"), is the question which wrenches to the fore in this appeal.

2. The aforesaid question arises in the backdrop of the following facts:

a) Rajendra Prasad (hereinafter refereed to as "the deceased"), was the son of respondent Nos. 1 & 2 and brother of respondent Nos. 3 to 5 (original applicants). He was employed as inspector (Sampling) with a company, namely, Quality Services and Solutions, Goa. On 30th June, 2007 at about 10.00 p.m. the deceased was riding the motor cycle bearing No. GA-6-B-6667 owned by the respondent No.2-original opponent No.1 and insured with appellant/insurer/ original opponent No.2, on his way to Vasco. When the deceased came near Martin Bar Sada, within the limits of Marmgao, he lost control over the motor cycle and fell down. Eventually the deceased succumbed to his injuries. The applicants preferred a claim for compensation under Section 163-A of the MV Act, 1988.

b) The opponent No.1- owner did not resist the claim.

c) The opponent No.2 - insurer resisted the claim by raising multiple grounds including a contention that the claim

was not maintainable against the respondent No.2 as it was filed under Section 163-A of the MV Act, 1988 for the death of the deceased on account of his own rash and negligent act. The person responsible for the accident is not entitled to claim compensation under Section 163-A of the MV Act, 1988. It was contended that Section 163-A does not alter the legal basis on which the liability arises under Section 147 of the MV Act, 1988.

d) The learned Member, Motor Accident Claims Tribunal Sindhudurg, ("the Tribunal") recorded the evidence of applicant No.1 – Rama. After appraisal of the oral evidence and the documents tendered for his perusal, the learned Member was persuaded to allow the application holding, inter alia, that the deceased died on account of the injuries sustained in the accident while he was riding the motor cycle bearing No. GA-6-B-6667, there was no breach of the conditions of contract of insurance, and, thus, the applicants were entitled to compensation. Arriving at a multiplicand of Rs.24,000/- and applying the multiplier of 16 and adding thereto the compensation under conventional heads, the Tribunal directed the opponent Nos.1 & 2 to jointly and severally pay a sum of Rs.3,86,000/- along with interest @ 6% per annum from the

date of the petition, to the applicants.

e) Being aggrieved by and dissatisfied with the aforesaid judgment and award, the opponent No.2/insurer is in appeal.

3. The principal ground of challenge in appeal is whether a person who had borrowed the vehicle from the owner and suffered death in an accident on account of his own negligence can be said to be a third party within the meaning of Section 147 and a victim under Section 163-A of the MV Act, 1988.

4. I have heard Mr. Mahadik,, the learned counsel for the appellant and Mr. Anand Patil, the learned counsel for respondent Nos. 1 to 5 – original applicants at length. With the assistance of the counsels for the parties, I have perused the material on record including the pleadings, deposition of witness Rama (PW-1) and the documents tendered before the Tribunal.

5. Before adverting to consider the submissions canvased across the bar it may be apposite to note uncontroverted facts. First and foremost, it is the case of the applicants that the deceased was riding the motor cycle bearing No. GA-6-B-6667 and met with an accident as he lost control over the said motor cycle. No other vehicle was even remotely involved. Secondly, there is not much controversy over the fact that the said motor cycle was owned by

opponent No.1 and insured with opponent No.2 – appellant. Thirdly, nor there is much dispute over the fact that the contract of insurance was valid and subsisting. Fourthly, and most significantly, Rama – PW-1, conceded in the cross examination that opponent No.1 Uday, the insured, was his another son i.e. the brother of the deceased. Fifthly, it is not the claim of the applicants that the deceased was in the employment of opponent No.1 – insured. On the contrary, it was the positive case of the applicants that the deceased was employed as an inspector (Sampling) with the company, Quality Services and Solutions, Goa.

6. In the light of the aforesaid facts, Mr. Mahadik the learned counsel for the appellant strenuously submitted that the applicants who claimed to be the dependents of the deceased are not entitled in law to claim compensation even under the provisions of Section 163-A of the MV Act, 1988. Amplifying the submission, Mr. Mahadik, the learned counsel for the appellant, would urge that the tribunal committed a manifest error in opining that since the question of negligence was not required to be delved into in an application under Section 163-A of the MV Act, 1988, the applicants were entitled to compensation. Mr. Mahadik further submitted that since there was no liability on the insurer to pay compensation where the accident occurred due to the negligence of the insured

himself, the insurer could not have been saddled with the liability. To bolster up this submission, Mr. Mahadik, the learned counsel for the appellant placed a strong reliance on the judgment of the Supreme Court in the case of **Ningamma and Another Vs. United India Insurance Company Limited**[1], and the judgment of this Court in the case of **United India Insurance Co. Ltd V. Kirtikumar S/o Mannalalji Lunawat,** in First Appeal No.505 of 2013, dated 24th December, 2013.

7. In opposition to this, the learned counsel for the respondent Nos. 1 to 5/original applicants endeavoured to support the impugned judgment and award. Laying emphasis on the text of the provisions contained in Section 163-A of the MV Act, 1988, Mr. Patil submitted that the questions of negligence as well as to whom the negligence was attributable are wholly irrelevant in an application under Section 163-A of the MV Act, 1988. Thus, the learned Member was justified in passing the impugned award, submitted Mr. Patil

8. I have given a careful consideration to the aforesaid submissions. In the backdrop of the uncontroverted facts, extracted above, the primary question which arises for consideration is the status of the deceased qua the insurer. Under Section 147 of the MV Act, 1988, the policy of insurance, inter alia,

1(2009), 13 SCC 710

covers cases against any liability which may be incurred by the insured in respect of death or bodily injury to any person including owner of the goods or his authorized representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place. There is, thus, a significant distinction as regards the liability of the insurer. Where compensation is claimed in respect of the death or bodily injury to a third party, the liability of insurer is unlimited. In contrast, where the compensation is claimed for death of the owner or another passenger of the vehicle, who can not be termed as a third party, the liability of the insurer depends upon the terms of contract. In the later case, in the absence of contract to pay compensation for the death or injury to the insured and/or paid driver, the insurer is not statutorily liable to pay compensation.

9. In the instant case, the tribunal, it seems, was not alive to the distinction between the contractual liability and the statutory liability of the insurer qua the third party. The tribunal was swayed by the fact that the application was made under Section 163-A of the MV Act, 1988. Undoubtedly, if an application is made under the special provisions contained in Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement was due to any wrongful act or

default of the owner of the vehicle or any other person. This, however, does not imply that the insurer is liable to pay compensation in cases where, it is neither statutorily liable nor has contractually undertaken the risk.

10. Reliance placed by the learned counsel for the appellant on the judgment of the Supreme Court in the case of **Ningamma and Another Vs. United India Insurance Company Limited**[2], appears to be well founded. In the said case also, the deceased was travelling on a motor cycle which he had borrowed from its owner. The deceased collided with bullock cart proceeding ahead and succumbed to his injuries. The wife and son of the deceased filed an application for compensation under Section 163-A of the MV Act, 1988. The tribunal was persuaded to award compensation. In appeal, the judgment and award passed by the tribunal was set aside by the High Court. The claimants preferred an appeal before the Supreme Court.

11. The Supreme Court adverted to the provisions of Section 163-A of the MV Act, 1988, and the object behind introducing the said provision. It was, inter alia, observed that it is in the nature of a social security measure. It is a Code by itself. After adverting to the previous pronouncements dealing with

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2(2009), 13 SCC 710

Section 163-A of the MV Act, 1988, the Supreme Court held that, if the owner himself happened to be the driver of the vehicle, the owner could not himself be a recipient of compensation as the liability to pay the same is on him. The legal representatives of the deceased who have stepped into shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MV Act, 1988.

12. The observations of the Supreme Court in Paragraph Nos. 19 to 23 are instructive and hence extracted below.

> *"19. In Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon'ble S.B. Sinha, J. was 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.*
>
> *20. It was held in Oriental Insurance Company Ltd. case, (2008) 5 SCC 736 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.*

21. In our considered opinion, the ratio of the aforesaid decision in Oriental Insurance Company Ltd. case, (2008) 5 SCC 736 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. 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.

22. 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.

23. 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."

(emphasis supplied)

13. A profitable reference can also be made to the judgment

of the Supreme Court in the case of **Oriental Insurance Co. Ltd. Vs. Rajani Devi and Ors**[3]**.** In the said case, an application under Section 163-A of the MV Act, 1988 was filed by the dependents claiming compensation for the death of Janak Raj. It was claimed that he was riding on a motorcycle along with one Sukhdev Raj. However, who was actually driving the motor cycle was not clear. In the facts of the said case, the tribunal proceeded to determine the issue of tenability of the application under Section 163-A of the MV Act, 1988 on the premise that comprehensive insurance policy having been taken, what was required to be seen was the use of motor vehicle irrespective of the fact as to whether the deceased or the Sukhdev Raj was driving the motor cycle or not.

14. The Supreme Court observed that, the tribunal was not justified in taking the said view. Observations in Para No.7 are material.

> *" 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."*

3 (2008) 5 SCC 736

15. After observing thus and adverting to the provisions contained under Section 163-A of the MV Act, 1988, and the previous pronouncements of the Supreme Court in the cases of **Oriental Insurance Co. Ltd. Vs. Jhuma Saha**[4] and in **National Insurance Co. Ltd. Vs. Laxmi Narain Dhut**[5], the Supreme Court held that the provisions contained in Section 163-A cannot be said to have any application in regard to an accident wherein, the owner of the motor vehicle himself is involved. Since the liability under Section 163-A of the Act is of the owner of the vehicle, a person cannot be both the owner and also a recipient. The heirs of Janak Raj could not have thus maintained the claim in terms of Section 163-A of MV Act. For the said purpose, only the terms of the contract of insurance could be taken resort to.

16. This position was further expounded by the Supreme Court in a recent decision in the case of **Ramkhiladi and Another Vs. United India Insurance Company and Another**[6]. In the facts of the said case, the Supreme Court formulated the question thus :-

> *" 9. .....whether, in the facts and circumstances of the case and in a case where the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was negligent are not joined as parties to the claim petition, meaning thereby that no claim petition is filed against them and the claim petition is filed only against the owner and the insurance company of*

4 (2007) 9 SCC 263 : (2007) 3 SCC (Cri) 443 : AIR 2007 SC 1054
5 (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142
6 (2020) 2 SCC 550

another vehicle which was driven by the deceased himself and the deceased being in the shoes of the owner of the vehicle driven by himself, whether the insurance company of the vehicle driven by the deceased himself would be liable to pay the compensation under Section 163A of the Act?; Whether the deceased not being a third party to the vehicle No. RJ 02 SA 7811 being in the shoes of the owner can maintain the claim under Section 163A of the Act from the owner of the said vehicle? "

17. After adverting to the previous pronouncements, including the judgment in the case of **Ningamma** (Supra), the Supreme Court answered the question in the negative in the following words.

" 9.5 It is true that, in a claim under Section 163A 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 163A 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 163A 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 163A 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 the case of 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 authorized 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.

9.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A 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 163A 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. "

(emphasis supplied)

18. In the light of the aforesaid exposition of law, reverting to the facts of the case, the deceased, who had borrowed the vehicle from his brother, stepped into the shoes of the owner. As indicated above, the deceased was not in the employment of the owner of the vehicle. Consequently, the deceased was not a third party qua the insurer.

19. In this view of the matter, dependents of the deceased could not have legitimately maintained an application for compensation under Section 163-A of the MV Act, 1988.

20. So far as the contractual liability, it is imperative to note

that the policy of insurance (Exh.32), which was placed on record by the insurer/appellant, reveals that the premium was paid under the head compulsory p.a. owner – cum – driver and the liability was restricted to Rs. 1 Lakh. The learned counsel for the applicants endeavoured to canvass a submission that consequent to amendment in the Second Schedule, a fixed amount of Rs. 5 Lakhs had been specified in case of death and, therefore, the applicants are entitled to a sum of Rs.5 Lakhs. In the instant case, the accident took place on 30th June, 2007. The impugned judgment and award was passed on 19th May, 2012. In the circumstances, the applicants would not be entitled to receive the compensation in terms of the amendment to the Second Schedule, which came into effect from 22nd May, 2018. This aspect is also covered by the judgment of the Supreme Court in the case of **Ramkhiladi (Supra)** wherein an identical submission was repelled.

21. The conspectus of the aforesaid consideration is that the respondent Nos. 1 to 5 - applicants are entitled to compensation of Rs. 1 Lakh in terms of the contract of insurance, Resultantly, the appeal deserves to be partly allowed.

22. Hence, the following order :

ORDER

i. The appeal stands partly allowed.

ii. The impugned judgment and award in M.A.C.P. No. 35 of 2009 dated 19th May, 2012 stands modified as under :

The appellant – original opponent No.2 – insurer shall pay an amount of Rs. 1 Lakh along with interest @ 8 % per annum from the date of the application and proportionate costs to the applicant.

iii. In case the opponent No.2/appellant has already deposited the amount of compensation in terms of the impugned judgment and award, the balance amount excluding the amount of Rs.1 Lakh and interest accrued thereon, be refunded to the opponent No.2/Appellant.

iv. In the circumstances, the parties shall bear their respective costs of this appeal.

v. Award be drawn accordingly.

vi. In view of disposal of appeal, Civil Application stand disposed of.

(N. J. JAMADAR, J.)