GAHC010127672014

2026:GAU-AS:11931

THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

MAC Appeal no. 248/2014

National Insurance Company Limited, A Company Registered and incorporated under the Companies Act, 1956 having its registered office at 3 Middleton Street, Kalkata and one of its Regional Office at G.S. Road, Bhangagarh, Guwahati, represented by its Regional Manager, Guwahati, Assam.

..................Appellant

-**VERSUS**-

1. Motiur Rahman, Son of Late Abdul Goni, R/o - Ward no. 4, Jorbari, Dergaon, P.O. and P.S. Dergaon, Dist. Golaghat, Assam.
2. Md. Josefuddin Ahmed, Son of Late M. Ahmed, R/o - Negheriting Kalyan Nagar, P.O. and P.S. Dergaon, Dist. Golaghat, Assam.

..................Respondents

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Advocate for the Appellant	:	Ms. S. Roy, Advocate
Advocate for the Respondent no. 1	:	Ms. P. Baruah, Advocate
Date of hearing	:	18.08.2026
Date of pronouncement of judgment	:	18.08.2026
Whether the pronouncement is of the Operative part of the judgment ?	:	No
Whether the full judgment has been Pronounced ?	:	Yes

JUDGMENT & ORDER

1. Heard Ms. S. Roy, learned counsel for the appellant and Ms. P. Baruah, learned counsel for the respondent no. 1.

2. This appeal under Section 173 of the Motor Vehicle Act, 1980 ['the MV Act', for short] is directed against a Judgment and Award dated 27.05.2014 passed by the learned Member, Motor Accident Claims Tribunal, Golaghat ['the Tribunal', for short] in MAC Case no. 108/2006. By the Judgment and Award dated 27.05.2014, the Tribunal had awarded an amount of Rs. 3,45,000/- against the appellant as the

insurer of a two-wheeler [Motorcycle – Hero Honda Ambition] bearing Registration no. AS-03/D-0614, along with interest @ 6% per annum from the date of filing of the claim application till payment.

3. The claim application was filed by the respondent no. 1 herein as a claimant under Section 166 read with Section 140 of the MV Act seeking compensation of Rs. 12,50,000/- on account of injuries sustained by him in a motor vehicle accident. The claim application was registered and numbered as MAC Case no. 108/2006. In the claim application, the owner and the insurer of the two-wheeler were impleaded as the opposite party no. 1 and the opposite party no. 2 respectively. On receipt of notice, both the opposite parties contested the proceedings before the Tribunal by filing their written statement separately. Before the Tribunal, the claimant side examined two witnesses. The claimant examined himself as CW1 and one Dr. Sayed Nazim Hussain was examined as CW2 to depose in respect of the permanent physical disability sustained by the claimant due to the accident. After consideration of the evidence – oral and documentary – led before the Tribunal, the Tribunal, by the Judgment and Award dated 27.05.2014, allowed the claim application on contest by determining the compensation amount @ Rs. 3,45,000/- as just and reasonable. The Tribunal directed the appellant – insurer of the two-wheeler to pay the compensation amount to the claimant along with interest @ 6% per annum from the date of filing of the claim application, that is, 09.06.2006 till payment, in the Tribunal within a period of 60 days from the date of the Judgment and Award.

4. In the claim application, it was mentioned that in the morning hours of 07.02.2006, the claimant riding the two-wheeler, which belonged to the opposite party no. 1, was proceeding from Dergaon town side towards Jorhat side. During the journey, when he reached a place near Balijan under Dergaon Police Station on National Highway 37 at around 07-00 a.m., he lost his control of the two-wheeler due to bad road condition with stones lying on the road, and low visibility due to fog. Losing control, he fell down by the side of the road. As a result of the accident, he

sustained serious injuries on his left leg, head and other parts of his person. Immediately after the accident, he was taken to a doctor in Jorhat for treatment. Subsequently, he was referred to Patna, Bihar for further medical treatment. It was stated that due to the accident, the claimant became permanently disabled and he had lost earning capacity.

5. Before the Tribunal, the opposite party no. 1 in his written statement mentioned that the two-wheeler was duly insured with the opposite party no. 2-insurer vide an Insurance Policy no. 200200/31/05/6200000541, with validity upto 27.04.2006 and therefore, he was entitled to be indemnified by the insurer for any amount of compensation to be awarded by the Tribunal.

6. One of the issues framed and decided by the Tribunal, which has relevance in the present appeal, was : whether the accident occurred due to rash and negligent driving of the two-wheeler [motorcycle] bearing Registration no. AS-03/D-0614.

7. For deciding the above issue, the Tribunal considered the testimony of the claimant, CW1. In his testimony, C.W.1 stated that on 07.02.2006, he was riding the two-wheeler, belonging to the opposite party no. 1, on the National Highway from Dergaon to Jorhat and when he reached near Balijan under Dergaon Police Station, he lost the control of the two-wheeler due to bad road conditions, etc. and as a result, he fell down on the road and sustained serious injuries. On the basis of such evidence, the Tribunal reached a finding the claimant himself was responsible for causing his own injuries and therefore, he was not entitled to get compensation under Section 166, MV Act. As this finding of the Tribunal was not challenged by the respondent no. 1 - claimant by filing any appeal, the same is to be treated to have attained finality.

8. After holding that the respondent no. 1 – claimant would not be entitled to get compensation under Section 166, MV Act though he had sustained injuries as a result of the motor vehicle accident, the Tribunal had suo moto converted the

application under Section 166, MV Act, as it was originally filed, into an application under Section 163A, MV Act on the premise that rash and negligent driving would not be required to be proved under Section 163A of the MV Act.

9. The other two issues framed by the Tribunal were : [i] 'whether the complainant is entitled to get compensation, if so, to what extent and payable by whom?' and [ii] 'whether other relief / reliefs of the claimant is entitled to get?'

10. In view of the point raised in this appeal by the insurer as the appellant, it is only the issue regarding the entitlement of the respondent no. 1 – claimant to be awarded compensation under Section 163A of the MV Act, which requires consideration.

11. The contention advanced on behalf of the appellant – insurer is that as the respondent – claimant was the permissive user of the two-wheeler, having borrowed it from its owner, and there is a clear finding that only he was responsible for the accident, he is not entitled to get compensation under Section 163A of the MV Act from the appellant – insurer as the claimant had stepped into the shoes of the owner. The other contention advanced in this connection is that the Tribunal could not have converted the application, initially filed under Section 166 of the MV Act, suo moto into a claim application under Section 163A of the MV Act, without any notice to the parties.

12. Section 163A of the MV Act was inserted in 1994 by way of a Social Security Scheme. For ready reference, Section 163A is quoted hereinbelow :-

> **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.

[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.

13. The provisions in Section 163A has been inserted to provide for a pre-determined structured formula for payment of compensation to road accident victims on the basis of age / income of the deceased or the person suffering from permanent disablement. The provision has an overriding affect as it contains a non-obstante clause in terms of whereof the owner of the motor vehicle or the authorized insurer is liable to pay compensation in case of death or permanent disablement due to accident arising out of the use of motor vehicle, as indicated in the Second Schedule, to the legal heirs of the victim as the case may be.

14. The first of the above two issues is no longer res integra and is covered by the decisions of the Hon'ble Supreme Court of India in **Ningamma and another vs. United India Insurance Company, [2009] 13 SCC 710**; **Ramkhiladi and another vs. United India Insurance Company and another, [2020] 2 SCC 550**; and a decision of a coordinate bench of this Court in **MAC Appeal no. 79/2020** [**the National Insurance Company Limited vs. Bikash Ghosh and another**].

15. In **Ningamma** [supra], the deceased was traveling on a two-wheeler [Motorcycle], which he borrowed from its real owner from Ilkal to his native place Gudur. When he was proceeding by Ilkal – Kustagi, National Highway, a bullock cart proceeding ahead of the motorcycle carrying iron-sheet suddenly stopped and consequently, the rider, Ramappa who was riding the motorcycle dashed against it. As a result of the accident, Ramappa sustained fatal injuries on vital parts of his body and on the way to Government Hospital at Ilkal, he died. The claim application was filed by the wife and son of the deceased, Ramappa.

15.1. It has been held that in a case wherein the victim died or where he was permanently disabled due to an accident arising out of the 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 163A. But if it is proved that the driver is the owner of the vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. The Hon'ble Supreme Court has held that the proposition is absolutely clear on a reading of Section 163A of the MV Act and, accordingly, the legal representatives of the deceased who had stepped into the shoes of the motor vehicle, could not have claimed compensation under Section 163A of the MV Act. Applying the said principle into the facts of the case, the Hon'ble Supreme Court has held that the claimants were not entitled to claim compensation under Section 163A of the MV Act as the provisions of Section 163A is not applicable to the facts and circumstances of the said case. The Hon'ble Supreme Court has further held that when a claim is made by the legal representatives of the deceased under Section 166 of the MV Act, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving and it would be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs.

16. In **Ramkhiladi** [supra], the deceased was riding a motorcycle [RJ 02 SA 7811] and the accident occurred on account of rash and negligent driving of the rider of

another motorcycle [RJ 29 2M 9223]. The legal representatives of the deceased filed the claim application under Section 163A of the MV Act only against the owner of the motorcycle, which the deceased was riding, and its insurance company. Neither the rider nor the owner or the insurance company of the other motorcycle, involved in the accident, was joined as a party in the claim application. Meaning thereby, no claim application was filed against the driver, the owner and the insurance company of other motorcycle involved in the accident.

16.1. The Hon'ble Supreme Court has proceeded to make the following observations :-

> 9.4. 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 163A 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 163A 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 163A 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 163A 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 163A 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 163A 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 vs. 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.

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 [supra], 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.

* * * * * *

9.8. However, at the same time, even as per the contract of insurance, in case of personal accident the owner – driver is entitled to a sum of Rs. 1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs. 1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs. 5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs. 5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.

9.9. […] In Oriental Insurance Company Limited vs. Rajni Devi, [2008] 5 SCC 736, it has been specifically observed and held that the provisions of Section 163A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in the cases of Oriental Insurance Co. Ltd. vs. Jhuma Saha [2007] 9 SCC 263; Dhanraj [supra]; National Insurance Co. Ltd. vs. Laxmi Narain Dhut [2007] 3 SCC 700 and Premkumari v. Prahlad Dev [2008] 3 SCC 193, it is ultimately concluded by this Court that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of Ashalata Bhowmik [supra], it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall

> be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed hereinabove.
>
> 10. In view of the above and for the reasons stated above, the present appeal is partly allowed to the aforesaid extent and it is observed and held that the original claimants shall be entitled to a sum of Rs.1 lakh only with interest @ 7.5 per cent per annum from the date of the claim petition till realization […]

17. The coordinate Bench in **Bikash Ghosh** [supra] has followed the decision in **Ramkhiladi** [supra].

18. From the evidence on record, it has clearly emerged that the claim application has been filed by the respondent no. 1-claimant against the owner and the insurer of the two-wheeler which he himself was riding. There was no involvement of any other person and vehicle in the accident, other than the claimant himself and the two-wheeler [motorcycle] bearing Registration no. AS-03/D-0614. As mentioned earlier, the Tribunal had already reached a finding to the effect that the claimant himself was responsible for causing his own injuries by riding the two-wheeler. The claimant was a permissive user and the borrower of the two-wheeler which he borrowed from the owner. He had, thus, stepped into the shoes of the owner of the two-wheeler [motorcycle] which was involved in the accident and therefore, he could not maintain a claim application against the owner, as it would amount to maintain a claim against himself.

19. In view of the discussion made above and for the reasons assigned herein, this Court finds merit with the contention raised by the appellant – insurer that the claimant is not entitled to claim compensation under Section 163A of the MV Act as he stepped into the shoes of the owner as the permissive user and the borrower of the two-wheeler [motorcycle] from its owner and the appellant – insurer is liable to

pay to the claimant. Therefore, the present appeal stands allowed, by setting aside and quashing the Judgment and Award dated 27.05.2014 and by holding that the appellant – insurer is not liable to pay the amount of compensation awarded by the Tribunal in its Judgment and Award dated 27.05.2014.

20. As it is found that the respondent no. 1 – claimant is not entitled to get compensation either under Section 166 or under Section 163A of the MV Act, the issue relating to suo moto conversion of the claim application from Section 166 of the MV Act to Section 163A of the MV Act is not required to be gone into. Similarly, the other two issues, mentioned in Paragraph 9 above, do not require deliberation.

21. It is pertinent to mention that neither the claimant nor the appellant – insurer had led any evidence before the Tribunal as regards the personal accident coverage provided in the Insurance Policy no. 200200/31/05/6200000541, with validity upto 27.04.2006. Admittedly, the accident occurred during the validity of the insurance policy. Therefore, it is observed and held that the claimant shall be entitled to the sum of personal accident coverage, if any, provided in the said policy with interest @ 6% per annum from the date of filing of the claim application till realization. It is observed that the appellant – insurer shall finalize the entire process with regard to personal accident coverage within a period of two months from today.

22. In the facts and circumstances of the case, there shall be no order as to cost.

Ananta Konwar
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JUDGE

Comparing Assistant