IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 23 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No

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MANJUBEN ALIAS MANJULABEN SHANTILAL GARASIA & ORS.
Versus
SIRAJBHAI IMAMUDDIN LUHAR & ANR.

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Appearance:
NISHIT A BHALODI(9597) for the Appellant(s) No. 1,2,3,4,5,6,7
MR VIBHUTI NANAVATI(513) for the Defendant(s) No. 2
RULE UNSERVED for the Defendant(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 12/01/2026

ORAL JUDGMENT

1. The present appeal is filed at the instance of the original claimants under Section 173 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”), being aggrieved and dissatisfied with the judgment and decree dated 28.10.2020 passed by the learned Motor Accident Claims Tribunal (Main) at Dahod in M.A.C.P. No. 101 of 2010. By the said judgment and decree, the Tribunal has dismissed the claim petition preferred by the present appellants under Section 163A of

the Act of 1988. Hence, the present appeal.

2. Before considering the merits of the case, appropriate would be to consider the manner in which the accident had taken place;

2.1 On 27.10.2009, deceased Shantilal Kalabhai Garasia, who was deputed as Police Inspector, L.C.B., was on his way to Dahod to apprehend one accused of robbery. He had started his journey from Godhra and while he had reached near Hotel at Asaydi, one vehicle came from the opposite side, being driven in rash and negligent manner on the wrong side, and had dashed with the Esteem Car of the deceased, resulting in the accident. The deceased had sustained fatal injuries and unfortunately succumbed to the same. The incident was reported with the Devgadh Baria Police Station, pursuant to the complaint registered by one Dhanabhai Bhavanbhai (Unarmed A.S.I.) vide I-C.R. No. 187 of 2009 dated 27.10.2009 for the offences punishable under Sections 279, 304 (A) of the Indian Penal Code as well as under Sections 177, 184 and 134 of the Act of 1988. The said complaint was registered against an unknown driver of an unknown vehicle.

3. <u>PROCEEDINGS BEFORE THE TRIBUNAL</u> :

3.1 The cause of action arose for the heirs and legal representatives of the deceased, which includes the wife of the deceased, major children, and the parents. The claim petition was preferred initially under Section 166 of the Act of 1988, praying for compensation of Rs.80 Lakhs, with interest and proportionate cost. The said claim petition was registered with the Motor Accident Claims Tribunal, Dahod on 10.02.2010 as M.A.C.P. No. 101 of 2010. The said claim petition was preferred against opponent No. 1- Sirajbhai Imamuddin Luhar, being joined as owner of the Esteem Car and opponent No. 2- Bajaj Allianz General Insurance Company Limited, as the Insurance Company of the Esteem Car.

3.2 Responding to the notice issued by the Tribunal, the opponents have entered their appearance. Pending the claim petition, an application was moved seeking deletion of the applicant no.1 on the ground that the father of the deceased, who was originally applicant No. 5, had expired on 30.11.2010. The application was allowed, directing appropriate amendments to be carried out in the main claim petition. The claimants have also preferred an application at Exh. 23, seeking conversion of their claim petition from Section 166 to 163A of the Act of 1988. The Court, upon hearing the learned advocates appearing for the respective parties, vide order dated 10.07.2019, had permitted such conversion. The respondent- Insurance Company had preferred an application under Section 170 of the Act, which came to be allowed vide order dated 02.01.2018.

3.3 The issues were framed by the Tribunal at Exh. 11, which read as under:

> “(a) Whether the applicants prove that the deceased sustained injuries and died on account of rashness or negligence in driving on part of the driver of the vehicle-opponent No. 1 involved in the accident?
>
> (b) What amount, if any, the claimant/s is/are entitled to by way of compensation and from which of the opponents?
>
> (c) What order and award?”

3.4 The wife of the deceased had submitted her examination-in-chief affidavit at Exh. 25. She had mainly deposed in line of the averments made in the claim petition. It was claimed that the Esteem Car of the deceased was hit by an unknown vehicle, and thereafter, the Esteem Car had dashed with a tree. As a result, the deceased had sustained fatal injuries and he had expired, while he was under treatment. Various documentary evidences were placed on record and relied upon. It was contended that the deceased was aged around 35 years at the time of the accident and used to earn Rs.40,000/- annual income. The claimant was cross-examined by the advocate appearing for the Insurance Company, wherein she had denied the fact that her husband had expired since the car had dashed with the tree. She had admitted to the fact that after the death of her husband, she is receiving pension till date. She had also denied the fact that the Esteem Car involved in the accident, was of the ownership of her husband.

3.5 After her deposition being recorded at Exh.25, the Insurance Company had preferred an application at Exh. 36 praying for deletion of opponent No. 2 from the array of the parties on the ground that the deceased himself was driving the Esteem Car, and the driver, having entered into the shoes of the owner for his own negligence/tort, the claimant cannot claim any compensation against the respondent- Insurance Company of the car. It was also submitted that as per the settled legal position, the driver entered into the shoes of the owner, and therefore, cannot be considered as a third party. Even otherwise, the driver of the vehicle cannot be considered as a third party, and therefore, the petition was not tenable in the eyes of law and was required to be dismissed.

3.6 The aforesaid application submitted by the respondent- Insurance Company was responded to by the claimants by filing their reply at Exh. 37, by raising a defense that the Esteem Car was insured with the respondent- Insurance Company on the date of the accident and in view of the insurance policy, the driver as well as the owner of the vehicle, in case sustained injuries due to motor vehicle accident, the Insurance Company is liable to pay compensation. It was further submitted that considering the provisions of Section 163A of the Act of 1988, the issue of negligence is not required to be considered at all. The only requirement is the involvement of the vehicle. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **United India Insurance Company Limited v. Sunil Kumar and Others** (Civil Appeal No. 9694 of 2013 (Special Leave Petition (Civil) No.7586 of 2012). The aforesaid application was decided by the Tribunal vide order dated 10.07.2019, by recording *prima facie* observations that considering the policy, the risk of driver and owner being covered and the liability column also clarifies the risk covered for third party and personal accident for driver and owner, and with other 5 passengers, the limit of liability to such persons for paid driver being extended, in view of full package premium being paid, at this stage, it cannot be said that the risk of the deceased driver is not covered. Thus, the objection raised by the respondent Insurance Company was not entertained.

3.7 The matter was proceeded further at the stage of evidence, whereby the respondent Insurance Company has examined Mr. Jayur

Babubhai Patel, the officer of the respondent -Insurance Company. In his examination-in-chief (Exh.41), the said officer has categorically deposed that the interest of the owner of the vehicle was covered at the material time as per the policy of insurance, which was subject to the terms, conditions, exceptions and limitations mentioned thereof, and also subject to confirmation of the compliance of Section 64 (B) of the Insurance Act, 1938. The said witness has further pointed out that the insurance policy issued, was a private car package policy which covered the period from 20.09.2009 to 19.09.2010. It was also stated that the deceased, though driving the vehicle, was not a paid driver of opponent No. 1 as being a friend of opponent No. 1, who is the owner of the vehicle. Reliance was placed on the statement of the owner of the vehicle being recorded during the course of investigation in reference to the F.I.R. No. 187 of 2009 registered with Devgadh Baria Police Station. It was also highlighted that the Insurance Company had collected the premium for covering the risk of own damage as well as towards basic third party liability and towards personal accident cover for owner-driver; however, it was subject to Section (III) of the policy. Thus, the risk of the deceased-cum-driver was not covered under the policy, and had therefore prayed for appropriate orders exonerating the respondent- Insurance Company.

3.8 The said witness was further cross-examined by the original claimants. He had admitted the fact that the policy was issued in the name of the owner of the vehicle, which was a private car package policy. He had also admitted that the owner of the vehicle had handed over his car for personal use. He had also admitted to the fact that premium was realized towards 5 passengers; however, he had clarified that the premium is towards personal accident. He had also admitted the fact that the deceased himself was driving the vehicle; however, he has denied the fact that, in view of the package policy, the risk was covered. The insurance policy was produced on record and was admitted as evidence at Mark 42/1. Along with the said policy, the entire terms and conditions of the policy have also been produced on record. The statement of the owner of the vehicle recorded by the Investigating Officer in respect of the F.I.R. registered, has also been produced on record at Mark 42/3. The claim submitted by the owner of the vehicle by addressing a letter dated 27.11.2009 to the officer of the Insurance Company has been produced on record at Mark 42/4.

3.9 The closing pursis was filed by the respective parties declaring their intention not to lead any further evidence. The written arguments were submitted by the respondent Insurance Company at Exh.44, whereas the claimants have submitted their written arguments at Exh. 45. As recorded earlier, the predecessor Member of the Tribunal has framed the issues at Exh.11; however, in view of the conversion of the claim petition from Section 166 to Section 163A of the Act, the Tribunal, while considering the submissions made by the respective parties and the core issue raised with regard to the liability of the Insurance Company, has framed the following issue:

> "(a) Whether the representatives of the owner of the vehicle/borrower driving the motor vehicle at the time of accident, is entitled to file a claim petition under Section 163-A of the Motor Vehicles Act, 1988?"

FINDINGS OF THE TRIBUNAL :

3.10 The Tribunal, at the outset, has noted the relevant legal provisions, more particularly, Section 140 of the Act, which deals with the situations where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle. The Tribunal has, thereafter, taken into consideration Section 163A of the Act, which is a special provision as regards payment of compensation in a structured formula basis. On joint reading of the aforesaid provisions, the Tribunal has noted that Section 163A of the Act starts with a non-obstante clause and a petition as such under Section 163A is maintainable against the owner of the vehicle or the authorised insurer. It is further observed that it is a special provision to give compensation to the legal heirs of the person, who has lost his life or the victim who has suffered permanent disability, expeditiously. Noticing the interpretation given to the term “any person” in view of the judgment of the Hon’ble Supreme Court in the case of **Ningamma & Anr vs United India Insurance Co.Ltd** reported in **2009 (13) SCC 710,** whereby it is opined that the term "any person" means third party for the purpose of Section 163A of the Act, the Tribunal has arrived at a conclusion that the deceased had stepped into the shoes of the owner of the vehicle, and therefore, he cannot be treated as a driver employed by opponent No. 1. The tribunal has further taken into consideration the judgment of the Hon’ble Supreme Court in the case of **Ramkhiladi vs The United India Insurance Company** reported in **2020 (2) SCC 550** as well as the unreported decision of this court in the case of **Bajaj Alliance General Insurance Company Ltd, Bhavnagar vs. Jitendrabhai Thakarsibhai Vadhaiya & Ors.** (passed in Special Civil Application No.15333 of 2016 on 08.09.2016) as well as in the case of **New India Assurance Co. Ltd vs. Parulben wd/o Bankimbhai Nanalal Patel & ors.** (passed in First Appeal- No. 3539 of 2014 on 27.02.2018). The Tribunal has also considered the merits of the case by noticing that the deceased was serving as a Police Inspector in L.C.B., Dahod and was earning a monthly salary of Rs. 28,000/-. It was also contended in the claim petition that an additional income of Rs. 3,000/- per month was also earned by doing agricultural work. Thus, it was claimed that the total monthly income of the deceased was Rs. 31,000/-. Considering the above aspect, the Tribunal has noted that, in view of the provisions of Section 163A, the Tribunal lacks jurisdiction to decide such a claim petition where the income exceeds more than Rs. 40,000/- per annum. Considering the manner, in which the accident as reported as transpired on record, in view of the FIR produced on record at Exh.28 and the statement of the owner of the car as produced on record at Mark 42/3 before the Investigating Officer, and the letter addressed to the Insurance Company by the owner of the vehicle produced on record at Mark 42/4, the Tribunal has arrived at a conclusion that the deceased had borrowed the Esteem Car from opponent No. 1- owner. Therefore, the deceased had stepped into the shoes of the owner of the Esteem Car, in view of the provisions of Section 163A of the Act and in view of the decision of the Hon'ble Supreme Court in the case of **Ningamma** *(supra)*, the Tribunal had arrived at the conclusion that the petition under Section 163A of the Act, 1988 at the instance of the legal representatives of the deceased was not maintainable. Hence, the present appeal.

4. At the stage of the admission hearing of the appeal, considering the submissions made by the learned advocate for the appellants and

in view of the decision of the Hon'ble Supreme Court in the case of **Ramkhiladi** *(supra)*, whereby considering the terms and conditions of the insurance policy, more particularly, the Clause related to personal accident cover for 5 passengers including even driver/ third party, *prima facie,* the Court found that the claim petition could not have been dismissed *in toto* and was required to be allowed to the aforesaid extent, had admitted the appeal with the order dated 12.01.2022. The notice of admission upon respondent No. 2 is reported to have been duly served; however, the rule of admission upon respondent No. 1-owner of the vehicle has remained unserved. Considering the issue involved and the contesting respondent Insurance Company being represented through counsel, the matter was peremptorily heard finally, with the able assistance of learned advocates on record for the respective parties.

<u>SUBMISSIONS ON BEHALF OF CLAIMANTS</u> :

5. Learned advocate Mr. Nishit A. Bhalodi appearing for the appellants has vehemently assailed the impugned judgment by submitting that the tribunal failed to exercise the jurisdiction vested in it to decide the claim petition under section 163A of the Act of 1988 and to award compensation. At the outset, he had highlighted the facts of the case, more particularly, the manner in which the accident

had taken place. It was submitted that admittedly the claim petition was permitted to be converted into a petition under Section 163A of the Act. It was submitted that it is a settled legal position that while considering the claim petition under Section 163A of the Act, the Tribunal is not required to look into the issue of negligence. As regards the limitations of entertaining a claim petition under Section 163A of the Act is concerned, the attention of this Court is invited to the latest amendment being brought by virtue of the Government Notification dated 22.05.2018; which provides that the minimum compensation, which can be considered under Section 163A of the Act is Rs. 5 Lakhs.

5.1 Learned advocate has assailed impugned order by submitting that the appeal of claimants be accepted by considering statutory liability of insurance company against third party or alternatively by considering contractual liability in view of terms and conditions of policy whereby legal liability has been agreed towards owner-driver is concerned.

5.2 It was submitted that the Tribunal ought to have considered the fact that the deceased was a third party to the contract of insurance, which indisputably was between respondent No. 1 and respondent No. 2. It was further submitted that the risk of third parties is statutorily and mandatorily covered in view of the policy. According to him, Section 163A is a special provision which starts with non-obstante clause. It was therefore submitted that it would have an overriding effect on any other provision within the Act as well as other existing laws, or "any instrument having force of law" , which includes the terms and conditions of an insurance policy. It was therefore submitted that the insurer cannot defend the claim petition filed under Section 163A on the grounds enumerated under Section 149(2) and Section 147 of the Act. In view of the special provision of section 163A, on the contrary it guarantees compensation regardless of fault, overrides the specific defenses under section 147 and 149 of the Act, making the owner and the authorized insurer liable to pay the determined compensation.

5.3 In support of his submission, learned advocate has placed reliance upon a recent order dated 01.08.2025 of the Hon'ble Supreme Court in the case of **Wafia Afrin Vs. National Insurance Co. Ltd. (SLP (C) No.25447-48 of 2024).** It was submitted that in view of the non-obstante clause, which would have superseding effect over the other other provisions of the Act, 1988 or even the terms of policy, as observed by the Hon'ble Supreme Court, Section 163A claim petition covers every claim and is not restricted to a third party claim.

He had therefore submitted that the Tribunal had committed an error in dismissing the claim petition under Section 163A.

5.4 Learned advocate has also placed reliance upon recent judgment of this Court in the case of **New India Assurance Company Limited vs. Kantaben Manojbhai and Ors.;** First Appeal No.3223 of 2019, order dated 13.02.2025, and in case of **Iffco Tokio General Insurance Company Limited vs. Mitalben wd/o. Rakesbhai Chaturbhai Patel & Ors**; First Appeal No.1288 of 2011 decided on 30.01.2025.

5.5 He had also relied upon the decision of this Court in case of **New India Assurance Company Ltd. vs. P. Sayana Wd/ P. Balakrishna And Ors.** reported in **2008 (0) AIJEL-GJ-219822,** more particularly Para-11, wherein this Court has ruled out that statutory defenses shall not be available to Insurance Company in claim proceedings under Section 163A.

5.6 Further, the reliance was placed on the definition of the term "third party" as defined under Section 145(i) of the Act, 1988. It was further submitted that the expression "third party" is wide enough to cover any person other than the insured and the insurer, and therefore, the deceased was required to be treated as a third party. At this stage, the learned advocate has drawn my attention to the judgment of the Hon'ble Supreme Court in the case of **Ramkhiladi** *(supra)* to point out that the aforesaid aspect had not fallen for consideration, in absence of any arguments being canvassed. Disputing the reasons assigned by the Tribunal, and by referring to and relying upon the judgment of the Hon'ble Supreme Court in the case of **Ramkhiladi** *(supra),* in the facts of the present case, the learned advocate has submitted that the Tribunal ought to have considered that the deceased was a third party to the contract of insurance and in view of statutory liability , the insurance company was required to be held liable to pay compensation.

5.7 Alternatively, learned advocate has assailed the impugned judgment by contending that even if the case is examined in terms of the policy, the Tribunal had failed to consider the policy in its right perspective it nowhere excludes the risk of third party nor it expressly states that the borrower of the car driving the insured vehicle "steps into the shoes of the owner". It was submitted that if the terms and conditions of the policy are required to be read as it is, and if the deceased who was driving the insured vehicle was to be treated as having *stepping into shoes of owner* then also the insurance company was required to be held liable to pay compensation in view of legal liability incurred towards *owner- driver* clause by accepting additional premium.

5.8 It was submitted that it is an admitted fact that the deceased was driving the vehicle at the time of the accident, respondent No. 2-Insurance Company having accepted the premium towards the personal accident cover of the owner-driver and also for five passengers, thereby accepting liability towards any occupant of insured vehicle, the Tribunal ought to have held the respondent No. 2-Insurance Company liable to pay the compensation to the aforesaid extent.

5.9 The attention of this Court was invited to the relevant observations made by the Hon’ble Supreme Court in the case of **Ramkhiladi** *(supra),* to contend that even applying the principles laid down in the facts of the case, the Court has extended the benefit of compensation to the extent of personal accident risk of the driver being covered in view of the terms and conditions of the policy. He has, therefore, urged this Court to allow the present appeal to the aforesaid extent and to quash and set aside the impugned judgment and decree passed by the Tribunal.

SUBMISSIONS ON BEHALF OF INSURANCE COMPANY :

6. Per contra, learned advocate Mr. Vibhuti Nanavati appearing for respondent No. 2- Insurance Company, has vehemently objected to the aforesaid submissions. At the outset, he submitted that the appellants cannot be permitted to raise alternative submissions by blowing hot and cold. It was submitted that the Tribunal has rightly not entertained the claim petition under Section 163A of the Act, in the facts of the case, wherein, indisputably it has transpired on record that the deceased had borrowed the Esteem Car from the owner of the vehicle and was not a *paid driver*. Even otherwise, it is an undisputed fact that the deceased was in charge as Police Inspector, L.C.B., Dahod, and therefore, he could not have been employed by the opponent no. 1 as a paid driver.

6.1 On the aspect of contractual liability, the learned advocate at the outset have highlighted the legal principles. It was submitted that the contract of the insurance is a contract executed between two parties, as laid down by the Hon'ble Supreme Court in the case of **Gottumukkala Appala Narasimha Raju & Ors. vs National Insurance Co. Ltd. & Anr** reported in **(2007) 13 SCC 446,** mainly the observations made in Paras 11, 21 to 23. It was also submitted that the motor insurance policy is issued in terms of Section 147 of the Act and is to be treated as a special contract. Reliance was placed on ruling of the Hon'ble Supreme Court in the case of **M/S Texco Marketing Pvt. Ltd. vs Tata AIG General Insurance Company Ltd** reported in **2023 (1) SCC 428**, more particularly, on Para 11 and 12. Further, reliance was placed on the decision of the Five Judges Bench of the Hon'ble Supreme Court in the case of **New India Assurance Co. Ltd vs C.M. Jaya & Ors.** reported in **2002 (2) SCC 278** as well as of the Four Judges Bench in the case of **General Assurance Society Ltd vs. Chandumull Jain And Anr** reported in **AIR 1966 SC 1644 (Para 11)**, to contend that the Court had considered ratio laid down in case of ***Jugal Kishore (supra)*** as well as in case of ***Amrit Lal Sood (supra)*** merely because a comprehensive policy is issued would not automatically result in covering risk of third party for an amount higher than statutory limit in absence of specific agreement and payment of separate premium. Learned advocate therefore emphasised on the actual terms and conditions of policy incorporated to be read while determining liability.

6.2 Referring to the schedule of legal liability and the relevant clause in the policy, the learned advocate has further invited my attention to the proviso, which clarifies that the liability of the insurer shall not exceed in aggregate to the sum of Rs. 2 Lakhs during any one period of insurance. Again, referring to Clause- 2, which clarifies the coverage, it was submitted that the question to indemnify only arises where it is established that : " the owner-driver is the registered owner of the vehicle insured, the owner-driver is the insured named in this policy, and the owner-driver holds an effective driving license in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident ". It was therefore submitted that considering the aforesaid clarification, as evident from the terms and conditions of the policy, the deceased cannot be considered as the owner-driver of the vehicle involved in the accident. It was submitted that no such case of seeking compensation based on terms and conditions was pleaded before tribunal and therefore the tribunal had mainly based on legal principles laid down in case of **Ningamma** (supra) and **Ramkhiladi** (supra), rightly not entertained the claim under section 163A.

6.3 The attention of this Court was invited to the terms and conditions of the policy to emphasize that the contract is required to be read as it is. The policy produced on record clearly prescribes that the Insurance Company has incurred legal liability to persons for basic third party liability, personal accident cover for owner-driver, legal liability to persons for paid driver / operation / maintenance, and personal accident cover for 5 passengers. He has further pointed out that, fortunately the Insurance Company, apart from producing the private car package policy schedule, has also placed on record the entire terms and conditions of the policy appended therewith. Section III, which relates to "PERSONAL ACCIDENT COVER", clarifies the status for "owner-driver".

6.4 Learned advocate has further drawn my attention to the evidence of the officer of the Insurance Company, who has been examined at Exh. 41 at the instance of the respondent-Insurance Company.Inviting my attention to the relevant part of his examination-in-chief raising such contentions and the cross-examination, the learned advocate had submitted that the claimants have failed to contradict the aforesaid stand taken by the Insurance Company. He has, therefore, submitted that no error can be found with the approach of the Tribunal in dismissing the claim petition, by referring to and relying upon the settled legal principles as culled out from the decision of the Hon'ble Supreme Court in cases of **Ningamma** *(supra)* and **Ramkhiladi** *(supra)*.Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. vs Ashalata Bhowmik** reported in **2018 (9) SCC 801**.

6.5 As regards the alternative submissions made by the learned advocate for the appellants- original claimants of deceased to be treated as "third party", by referring to and relying upon Sections 147 and 149 of the Act of 1988 is concerned, lacks merits. The learned advocate has submitted that the subclauses (i) of clause(b) of subsection (1) section 147 of 1988 Act provides for compulsory coverage against death and bodily injury to any person and damage to any property. It does not relate to death or bodily injury of a third party. The interpretation of the term "any person" as attempted to be read as person other than a party to the contract is also misconstrued, in view of the settled legal principles set out by the Hon'ble Supreme Court in the case of **New India Ass. Co. Ltd vs Asha Rani & Ors** reported in **(2003) 2 SCC 223**. The learned advocate has mainly relied upon the observations of the Hon'ble Supreme Court, more particularly, in Para 27.

6.6 Referring to Section 147 of the Act, 1988, the learned advocate has submitted that it does not envisage "third party". Even if he entered into the shoes of the owner; the issue of liability has to be strictly interpreted in terms of the conditions of the contract i.e. the insurance policy. Referring to the Constitutional Bench's judgment in the case of **General Assurance Society Limited** vs. **Chandumull Jain** *reported in* ***AIR 1966 SC 1644,*** the learned advocate has submitted that in interpreting the documents relating to a contract of insurance, the Courts are expected to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract. The contract of insurance is one of the species of commercial transactions. He has, therefore, submitted that, in view of the specific clarification being provided in the terms and conditions of the policy appended with the schedule, the Court may not entertain the plea of the appellants to read the status of the deceased as a third party, by taking into consideration the statutory provision of the definition of the term "third party" provided under Section 145(i) of the Act, 1988. He has further submitted that no additional premium was paid towards additional liability. As evident from the schedule of liability incorporated in the policy produced on record, the Insurance Company is bound to process the claim based on the liability incurred to indemnify the owner of the vehicle involved in the accident.

6.7 As regards the case put forward by the appellants to consider the deceased as a paid driver is concerned, learned advocate had placed reliance upon the decision of the Hon'ble Supreme Court in the case of **National Insurance Co vs Prembai Patel And Others** reported in **(2005) 6 SCC 172**. It was pointed out that the three

Judges Bench of the Hon'ble Supreme Court, while considering the issue of liability of the Insurance Company to pay the entire amount of compensation awarded to the claimants or its liability being restricted, in view of the observations of provisions of the Workmen's Compensation Act, the Court had considered the ratio laid down by the Constitutional Bench in the case of **C.M. Jaya** *(supra)* while interpreting the provision of Section 95(2) of the Motor Vehicles Act, 1939, which is Section 147 of the Act of 1988. The Court held that the liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. In case of an insurance policy not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed under Section 147 of the Act of 1988. Learned advocate has also relied upon the unreported decision of the Division Bench of this Court in the case of **Iffco Tokio General Ins. Co. Ltd. vs. Raval Babulal Khodidas (Father of the Deceased) & Ors.** (rendered in First Appeal No.4871 of 2010 on 04.03.2025) as well as of the learned Single Judge of this Court in the case of **Bajaj Allianz General Insurance Co. Ltd. vs. Heirs of Deceased Harshit Sureshbhai Doshi, Dipikaben Suresh & Ors.** (passed in R/First Appeal No.4945 of 2010 on 04.10.2019)

6.8 Referring to the facts of the case, learned advocate has pointed out that the Court had appreciated the contentions raised by the counsel for the appellants referring to Section 2(30) of the Act, which contemplates the person in whose name the vehicle stands registered in the records of the registering authority as the owner of the vehicle. It was contended that a person, who has borrowed the vehicle from the owner is not recognized as the owner of the vehicle under Section 2(30) of the Act. The Court, after giving thoughtful consideration to the aforesaid contention, has considered the conjoint effect of the principles laid down in the case of **Ningamma** *(supra)* and **Naveen Kumar vs Vijay Kumar And Ors** reported in **(2018) 2 SCC 1,** to arrive at a conclusion that the person who borrowed the vehicle from its registered owner for his personal use, acquires status akin to the registered owner. In other words, the Court held that the person who borrows the motor vehicle from its registered owner for his own personal use, steps into the shoes of the registered owner of the motor vehicle as contemplated under Section 2(30) of the Motor Vehicles Act. In such circumstances, as regards the liability of the Insurance Company towards personal accident risk being covered towards the "owner-driver" is concerned, alternatively it may be left open for the appellant/claimant to approach the Consumer Court, which according to him, is the appropriate remedy available to seek enforcement of the terms and conditions of the policy.

6.9 Learned advocate had placed reliance upon the judgment of the Karnataka High Court in the case of **Appaji (since deceased) And Anr v. M. Krishna And Anr** reported in **2004 ACJ 1289**. Referring to the facts of the case, which suggests that the deceased was engaged as driver by the owner of the vehicle involved in the accident. The Insurance Company had denied its liability by contending that the policy of insurance was an "Act Policy," which did not cover the risk of the driver. The Tribunal had arrived at a finding that the accident had taken place on account of the rash and negligent driving of the deceased himself and had therefore held claimants entitled to a sum of Rs. 50,000 on ‘no fault’ basis, however was disentitled to further compensation under section 163A. It was argued that the claim petition preferred by the claimant under Section 163A of the Act was required to be entertained on "no-fault" basis, in view of the non-obstante clause appearing in Section 163A of the Act. Any provision in the Motor Vehicles Act or any other law for the time being in force disentitling the claimants from payment of compensation would stand neutralised and rendered ineffective. The Court in paragraph- 24, by noticing that the accident in the instant case had taken place while the deceased was himself riding a vehicle, no other vehicle was involved in the accident against whose driver or owner it could have been filed, observed that the claimant could have claimed compensation on no fault basis under Section 163A of the Act. Considering the arguments advanced by the learned advocate for the appellants-claimants that in claim pertaining to Section 163A of the Act, the issue of negligence was not required to be dealt with, the Court held that permitting the respondents to set up the defense that the accident was without their fault would amount to negating the effect of the statutory provision dispensing with proof of fault. Having held so further the Court has disbelieved the case of the deceased being an employee and has upheld the order of the Tribunal that the claimants cannot maintain a claim petition even on the basis of no-fault liability under Section 163A of the Act.

6.10 Referring to the aforesaid decisions, learned advocate has once again referred to Section III appearing in the terms and conditions of the policy appended to the schedule and has submitted that the deceased cannot be considered as the owner of the vehicle, and therefore, is not entitled to compensation towards the personal accident coverage as provided under the schedule covering risk of “owner-driver”. While summarizing his submissions, learned advocate has referred to the written arguments submitted by the Insurance

Company at Exh. 44/written arguments submitted by the applicants at Exh.45, to point out the issue of maintainability of the petition viz-a-viz the liability of the Insurance Company has specifically been raised. The decision of the Hon'ble Supreme Court in the case of **Ramkhiladi** *(supra)* has been produced on record at the instance of the Insurance Company. The issue of personal accident coverage has also been pressed, in view of the oral evidence of the officer of the Insurance Company being examined at Exh. 41. The terms and conditions of the policy have been categorically relied upon by him in his deposition. Learned advocate has, therefore, submitted that the Insurance Company may not be saddled with liability to pay the amount of compensation and the present appeal may, therefore, be dismissed.

7. In rejoinder, learned advocate for the appellants has contended that since Section III has not been relied upon by the Insurance Company, the Tribunal had no occasion to deal with it. The Court has mainly referred to and considered the decision of the Hon'ble Supreme Court in **Ramkhiladi** *(supra),* as relied upon by the learned advocate for the respondent-Insurance Company. Learned advocate has reiterated his submission to consider the case of the claimant for compensation, in view of the additional premium paid towards risk coverage of owner-driver.

ANALYSIS :

8. I have heard learned advocates appearing for the respective parties at length and have carefully considered their submissions, in light of the findings and reasons assigned by the Tribunal. I have also considered the various authorities relied upon by them, during the course of hearing. Considering the submissions made by learned advocates for the respective parties, the issues which arise for consideration of this Court are:

> (1) Whether the driver of the insured car can be said to be a third party / any person whose risk is required to be compulsorily covered for the purpose of maintaining claim petition under Section 163A of the Act, 1988?
>
> (2) Alternatively, whether the Insurance Company can be held liable to pay compensation to the legal representatives of the deceased, in view of the additional premium paid towards the head of the 'owner-driver' of the insured vehicle?
>
> (3) Whether the Tribunal committed any error in holding that the claim petition under Section 163A of the Act, 1988, was not maintainable, in the facts of the case and the evidence on record?

9. It is an undisputed fact that the claim is made under Section 163A of the Act of 1988, on the premises that the deceased was a victim of a motor vehicle accident. Section 163A of the Act has been incorporated into the Motor Vehicles Act by virtue of the Act 54 of 1994, which has come into effect from 14.11.1994. It has been held that the aforesaid provision has been incorporated by way of Social Security Scheme and was legislated pursuant to the report of a Review Committee for a claim based on a conciliation under a structured compensation formula rather than claim through normal channels. Mere filing of claim application under Section 163A of the Motor Vehicles Act, 1988, does not prevent Courts or Tribunals from examining the liability of the insurance company. While Section 163A is a "no-fault" liability provision that exempts claimants from proving negligence, it does not create an absolute liability for insurers regardless of the contractual terms, policy coverage, or legal standing of the parties. The insurer, hence, can defend any claim against the insured, which the insurer has the liability to indemnify in accordance with the policy issued.

<u>ON ISSUE OF THIRD PARTY/ ANY PERSON :</u>

10. Considering the submissions made by learned advocates for the respective parties, the core contention, which is required to be

examined at the outset is, as to whether the deceased can be treated as a third party for the purpose of fixing statutory liability of the Insurance Company.? A similar issue fell for consideration before the Bombay High Court in the case of **HDFC Chubb General Insurance Co. Ltd. Vs Shantidevi Rajbalsingh Thakur and Anr** reported in **2008 ACJ 1280**. The Court has considered the object and purpose of the aforesaid amendment and has noted that it was not to compensate a negligent driver of a motor vehicle who unfortunately was a victim of his own tort. The Court has considered Section 147(1)(b)(i), which was amended by Act 54 of 1994, whereby the term " injury to any person" came to be substituted by the term " injury to any person, including owner of the goods or his authorised representatives carried in the vehicle."

10.1 The Court, after considering the term "any person" or "third party" under the aforesaid provision, has considered the interpretation of the term "victim" appearing in Section 163A. The Court has also considered the landmark decisions of the Hon'ble Supreme Court in the case of **New India Assurance Co. Ltd. vs. Asha Rani,** reported in **2003 ACJ 1 (SC)**, as well as in the case of **New India Assurance Co. Ltd. Vs.Kusum** reported in **2003 ACJ 1992 (Karnataka),** whereby the expression "any person" was held not to include any and every person who suffers an injury or whose property has been damaged by an accident involving a motor vehicle accident. It was further observed that third parties are only pedestrians, passers-by and do not include any person in any vehicle including gratuitous passengers. The Court has also considered the decision of the Hon'ble Supreme Court in the case of **United India Insurance Co. Ltd. vs. Tilak Singh,** reported in **2006 ACJ 1441 (SC)**, whereby the Court held that in case of injury caused to a gratuitous passenger in a private vehicle, would not be covered by third-party risk, if the insurance policy does not specifically cover such a passenger, by considering Section 147 of the Act, 1988. In the facts of the case, the pillion rider on a scooter driven by the owner of the vehicle, not being specifically covered under the insurance policy, was held not to be a third party. Similarly, in the case of **Oriental Insurance Co. Ltd. vs. Meena Variyal** reported in **2007 ACJ 1284 (SC),** in a claim petition under Section 166 of the Act, preferred by the deceased employee, who was a driver employed by the owner, the Court had observed that there was no special contract covering the deceased driver. The Court had considered the issue of vicarious liability of the owner to pay compensation to the victim and had also considered the provisions of Section 146 of the Act to hold that it provides only for liabilities relating to persons and property of parties, and therefore, held the

Insurance Company not liable to indemnify the owner for the death of his employee who was driving the vehicle. Upon consideration of the aforesaid legal principles set out by the various decisions of the Hon’ble Supreme Court on the interpretation of the term "third party," viz-a-viz the liability of the Insurance Company, the Court refused to extend liberal construction of Section 163A of the Act by refusing to give wider interpretation for cover of third-party liability to be given so as to extend to all the persons inside the vehicle in the absence of specific cover for those persons and the payment of a specific premium in respect of such cover.

11. In **New India Insurance Company ltd. vs. Sadanand Mukhi**, reported in **(2009) 2 SCC 417** , the son of the registered owner while driving the motorcycle met with an accident and succumbed to injuries. The claim petition was filed by the father of the deceased, who was owner and insured of the vehicle. The Hon’ble Supreme Court declined to accept the son of the registered owner as ‘third party’. While answering the question, as to whether an insurer is liable to pay compensation in relation to an accident arising out of the use of a motor vehicle, which was being driven by the son of the insured, the Court held that the insurance company was not liable. Section 147 of the Act of 1988 thus deals with the requirement of policies and

limits of liability. The term “any person” appearing in Section 147(1)(b)(i) applies to the person other than the insured and the person’s coverage under the policy. The Bombay High Court in the case of **Bajaj Allianz General Insurance Company Limited v. Sunita** reported in **2014 (2) TAC 608**, had examined the contention of the claimants of treating the driver as third party for the purpose of imposing statutory liability upon the Insurance Company on the ground of compulsory coverage of risk under Section 147 of the Act. The court considering Section 147 opined that it does not make the insurer liable to secure compulsory coverage as the legislation has used the word “any person” and not a third party. A third party does not include a driver.

12. Keeping in mind aforesaid principles, if one looks at provisions of the Act, it is true that the term "third party" has been defined under Section 145(i) which means to include the Government, the driver, and any other co-worker on a transport vehicle. Notably, the section 163A appears under Chapter XI, which covers the subject of insurance of motor vehicles against third party risks. Trite to mention that the compulsory coverage is mandated under Chapter Xl as intended to cover the third party risks and specified categories of employees like driver, conductor etc. only when liability arises under the Workmen’s

Compensation Act. In view of legal principles laid down by the Hon'ble Supreme Court in case of Minu B. Mehta (supra), Asha Rani (supra) , Tilak Singh (supra) and Meena Variyal (supra), the expression 'third party' has to be construed in the context in which they have been used. The Supreme Court in Asha Rani (supra) reaffirmed that the occupants of the insured vehicle are not automatically third parties and therefore, do not fall under compulsory insurance. Section 149 mandates an insurer to satisfy awards only in respect of liabilities required tobe covered under Section 147; it cannot enlarge coverage beyond the statute. Thus, it has been held that if the insured cannot be fastened with any liability under the provisions of Motor Vehicle Act, then the question of the insurer being liable to indemnify insured does not arise. Applying the aforesaid principles , in peculiar facts of the present case, in absence of any other vehicle / offending vehicle involved, the deceased, who himself was driving the insured vehicle, cannot be treated as third party / any person. Thus, the insurance company cannot be statutorily held liable to compensate for the death of the driver of the insured vehicle under section 163A of the Act, 1988.

13. It cannot be ignored that the insurance policy is essentially a contract entered into between two parties; the policy of insurance is,

therefore, to be construed like any other contract. Reading the provisions of Section 147 of the Act, it mandates that the policy of Insurance must be a policy which insures the person against any liability which may be incurred by him in respect of the death or bodily injury to any person or damage to any property of third party caused by or arising out of use of the vehicle in a public place. The plain reading of the aforesaid provisions of the Act does not prevent an insurer from entering into a contract of insurance covering the risk wider than the bare minimum requirements of the statute.

14. Even on appreciation of the policy on record, indisputably it is a "Private Car Package Policy" issued by the insurance company in favour of the original opponent no.1-Sirajbhai Imamuddin Luhar being the registered owner of the vehicle involved in the accident. The policy is issued for covering risk between the period from 20.09.2009 to 19.11.2010 midnight. The appreciation of the liability incurred by the Insurance Company policy, as evident from the schedule incorporated, the same is bifurcated under two heads: the first, towards the "Own Damage" and second column with "Liability." From the bare appreciation of the contents of the amount of premium paid in the column of "Liability," it transpires that the owner has paid a premium of Rs.800/- towards basic third-party liability; Rs.100/-

towards personal accident cover for owner-driver- S.I. Rs.2 Lakhs, Rs.25/- towards the legal liability to person for paid driver/operation/maintenance; and Rs.200/- towards personal accident cover for 5 passengers of Rs.80,000/- each.

15. Considering the arguments advanced by learned advocates appearing for the respective parties, the appellants have based their case by making two alternative submissions: to treat his case being covered under the head of "Basic Third-Party Liability" or under the head of "Personal Accident Cover" for owner-driver. As rightly pointed out by the learned advocate for the respondent-Insurance Company, the aforesaid aspect is required to be considered in light of the terms and conditions of the policy as annexed. So far as the liability incurred by the owner of the vehicle under the head of 'Basic Third -Party Liability' is concerned, Section II deals with "Liability to Third Parties". The same is reproduced hereunder:

> "**Section II- LIABILITY TO THIRD PARTIES**
>
> 1. Subject to the Limits of the Liability as laid down in the Schedule hereto, the Company, will indemnify the insured in the event of an accident caused by or arising out of the vehicle, against all sums which the Insured shall become legally liable to pay in respect of :
>
> i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act the Company shall not be liable where such death or injury arises

out of and in the course of the employment of such person by the insured.

ii) damage to property other than property belonging to the Insured or held in trust or in the custody or control of the Insured.

2. The Company will pay all costs and expenses incurred with its written consent.

3. In terms of and subject to the limitations of the indemnity granted by this section to the Insured the Company will indemnify any driver who is driving the vehicle on the insured's order or with insured's permission provided that such driver shall as though he were the Insured observe fulfil and be subject to the terms expectations and conditions of this Policy in so far as they can apply.

4. In the event of the death of any person entitled to indemnity under this Policy the Company will in respect of the liability incurred by such person indemnify his/her personal representatives in the terms of and subject to the limitations of this Policy provided that such personal representatives shall as though he/she was the Insured observe fulfil and be subject to the terms expectations and conditions of this Policy in so far as they can apply.

5. The Company may at its own optional (A) arrange for representation at any Inquest or Fatal Inquiry in respect of any death which may be the subject of indemnity under this policy and (B) undertake the defence of proceedings in any Court of Law in respect of any act of alleged offence causing or relating to any event which may be the subject to indemnity under this Section."

16. The bare appreciation of the aforesaid terms of the policy, it is evident that the Insurer has agreed to indemnify the insured in the event of an accident caused by or arising out of the vehicle against all sums which the insured shall become legally liable to pay in respect of death or bodily injury to 'any person' including occupants of vehicle

insured. However, it later on carves out an exception that the company shall not be liable '*where such death or injury arises out of and in the course of the employment of such person by the insured'.* In other words, the intention of parties which can be gathered from the said recitals in the contract was that the insurance company has not undertaken responsibility to indemnify towards death or bodily injury of person in class of *driver* of the insured vehicle.

17. For the foregoing reasons, the argument raised by the learned advocate for the appellants/original claimants to treat the driver of the insured vehicle as a third party for the purpose of compliance of mandate to the owner of the vehicle to secure cover of the third party risk and the liability of the Insurance Company towards third party, is misconceived and is hereby rejected. Even otherwise for the reasons assigned further while considering contractual liability supplement such conclusion.

<u>ON ISSUE OF CONTRACTUAL LIABILITY OWNER- DRIVER :</u>

18. Having held so, this Court shall now investigate into plea of contractual liability, as alternatively pressed by the learned advocate for the claimants, by raising a contention that if, considering the ratio of the Hon'ble Supreme Court in the case of **Ramkhiladi** *(supra)*, it is

to be accepted that the deceased has entered into the shoes of the owner, then in view of the terms and conditions of the policy, the deceased is entitled to secure the amount of compensation under the personal accident coverage, as was extended in the aforesaid case. It is true that apart from the statutory liability, the insurer can always opt for seeking additional coverage by making payment of additional premium. Under Section 163A, a driver driving the insured vehicle is usually seen as covered for third-party risk, i.e. not for themselves under compulsory cover. In order to claim compensation under Section 163A of the Act for their own injuries, they generally need a specific agreement to the effect of owner-driver personal accident cover.

19. In order to appreciate the contention raised by the learned advocate for the claimants, it would be appropriate to consider the relevant provision which provides for insurance coverage of personal accident of owner-driver. The learned advocate for the respondent-Insurance Company has invited my attention to the definition of the term "owner-driver" provided under G.R.36, which states that "compulsory personal accident cover shall be applicable under both liability only and packages policies." The owner of the insured vehicle holding an effective driving license is termed as owner- driver for the

purpose of this section. The definition clearly restricts the meaning of owner-driver. In order to consider the extent of liability, it would be appropriate to appreciate Section III, which deals with the subject of personal accident cover. For better appreciation of the issue raised, section III -Personal Accident Cover is reproduced hereunder:

"**<u>Section III- PERSONAL ACCIDENT COVER</u>**
FOR OWNER-DRIVER

1. The Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the owner-driver of the vehicle, in direct connection with the vehicle insured or whilst driving or mounting into /dismounting from the vehicle insured or whilst travelling in it as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in :

Nature of injury	Scale of compensation
(I) Death…………………….	100%
(II) Loss of two limbs or sight of two eyes or one limb and sight of one eye	100%
(III) Loss of one limb or sight of one eye	50%
(IV) Permanent total disablement from injuries other than named above	100%

Provided always that

A) compensation shall be payable under only one of the items (I) to (iv) above in respect of the owner-driver arising out of any occurrence and the total liability of the insurer shall not in the aggregate exceed the sum of Rs.2. Lakhs during any one period of insurance.

B) no compensation shall be payable in respect of death or bodily injury directly of indirectly wholly or in part arising of resulting from of traceable to (1) Intentional shelf injury suicide or attempted suicide physical defect or infirmity or (2) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

C) Such compensation shall be payable directly to the insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the insured.

2) This cover is subject to

(a) the owner-driver is the registered owner of the vehicle insured herein;

(b) The owner driver is the insured named in this policy.

(c) the owner-driver holds an effective driving license, in accordance with the provisions of Rule 3 of the central Motor Vehicles Rules, 1989, at the time of the accident.

GENERAL EXCEPTIONS

(Applicable to all Sections of the Policy)

The Company shall not be liable under this Policy in respect of;

1. Any accidental loss damage and/or liability caused sustained or incurred outside the Geographical Area.

2. Any claim arising out of the any contractual liability.

3. Any accidental loss damage and/or liability caused sustained or incurred whilst the vehicle insured herein is
a. being used otherwise than in accordance with the limitations as to Use or

b. being driven by or is for the purpose of being driven by him/her in the charge of any person other than a driver as stated in the driver's clause.

4. a. Any accidental loss or damage to any property whatsoever

or any loss or expense whatsoever resulting or arising therefrom or any consequential loss.

b. Any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exception combustion shall include any self-sustaining process of nuclear fission.

5. Any accidental loss damage or liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material.

6. Any accidental loss damage and/or liability directly or indirectly or proximately or remotely occasioned by contributed to/by or traceable to or arising out of or in connection with War, Invasion, the Act of foreign enemies, hostilities or Warlike operations (whether before or after declaration of War) Civil War, Mutiny Rebellion, Military or unsurped power or by any direct or indirect consequences of any of the said occurrences and in the event of any claim hereunder the Insured shall prove the accidental loss damage and/or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequences thereof and in default of such proof the Company shall not be liable to make any payment in respect of such a claim."

20. At this stage, appropriate would be to consider G.R. 36 also, which reads as under:

"**GR 36.** Personal Accident (PA) Cover under Motor Policy (not applicable to vehicles covered under Section E, F and G of Tariff for Commercial Vehicles)

A. Compulsory Personal Accident Cover for Owner- Driver
Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an 'effective' driving license is termed as Owner-Driver for the purposes of this section.

> Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/dismounting from or traveling in the insured vehicle as a co–driver.
>
> **NB.** This provision deals with Personal Accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective driving license. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving license. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory P.A. cover for the owner – driver should not be charged and the compulsory P. A. cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her."

21. On conjoint reading of the aforesaid clauses, covering risk of personal accident in case of owner-driver is concerned, which provides for liability of the insurer not exceeding an aggregate the sum of Rs. 2,00,000/- during any one period of insurance, such coverage is made subject to : (i) the owner-driver is recognized as the registered owner of the vehicle insured and (ii) whose name appears in the insurance policy,(iii) subject to holding an effective driving license as per the provisions of the Central Motor Vehicles Rules, 1989. The general expression further provides that the company shall not be liable under the policy in case where the insured vehicle is driven by the owner or in charge of any person other than a driver as stated in the Driver's clause.

21.1 It would be required to note at this stage that the schedule of the policy defines the term "Driver" as under:

> "**Driver:** Any person including the insured provided that a person driving holds an effective driving li-cense at the time of the accident and is not disqualified from holding or obtaining such a license. Provided also that the person holding an effective Learner's license may also drive the vehicle when not used for the transport of goods/passengers at the time of the accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicle Rules, 1989."

22. Having noted the relevant terms and conditions of the policy and interpretation of the term 'owner-driver' in view of the definition of the term "owner-driver" as provided under G.R. 36 and as interpreted in the policy, the issue of liability of insurance company towards personal accident coverage also needs to be rejected. A similar issue, with regard to compulsory personal accident cover, fell for consideration before the Punjab and Haryana High Court in the case of **United India Insurance Company vs. Harjit Kaur And Another** reported in **2018 (2) ILR P&H 908**. The Court, upon appreciation of the similar terms and conditions of the policy and the definition of the term "owner-driver" provided under G.R. 36, held that only the registered owner in person is entitled for personal accident cover, if he holds an effective driving license. It further clarified that representatives of the owner will not fall within the ambit of personal accident cover. The Court also held that a strict

interpretation has to be given to the term “owner-driver” as defined under G.R. 36, by observing that no word can be added or deleted from the definition to extend the benefit to the claimants so that the term “owner-driver” can be stretched to mean owner or driver.

22.1 It is a well-settled principle of law that parties shall be strictly governed by the terms and conditions of the contract of insurance (**Emphasis: National Insurance Co. Ltd. vs Ashalata Bhowmik** reported in **2018 (9) SCC 801** and **Oriental Insurance Co. Ltd vs Rajni Devi & Ors** reported in **2008 (5) SCC 736.)**

23. Bearing in mind the aforesaid principles, on close scrutiny of Section III- Personal Accident Cover clause provided in the terms and conditions of the policy produced on record, it transpires that the Insurance Company had agreed to extend insurance coverage for “owner-driver” in case of bodily injury and/or death sustained by the owner-driver of the vehicle in direct connection with the vehicle insured. The proviso appearing to Clause 1 under Section III indicates that the maximum coverage was extended to aggregate sum of Rs.2 Lakhs- during one accident, and no compensation was further payable in respect of death or bodily injury, directly or indirectly, wholly or in part, arising or resulting from or traceable to (1) Intentional self injury suicide or attempted suicide physical defect or infirmity or (2) an

accident happening whilst such person is under the influence of intoxicating liquor or drugs. Further, it provided that the Insurance Company was liable to pay compensation directly to the insured or his legal representatives. The aforesaid Clause No. 1 appearing under Section III of the personal accident cover- owner-driver is made subject to Clause 2, wherein it clearly states that the "owner-driver" is a one who is the registered owner of the insured vehicle and the policy is issued in his name and was holding an effective driving license. Thus, the intention of the parties while entering into the contractual liability by virtue of the aforesaid policy was to extend insurance coverage strictly in case of the owner who was driving the vehicle, and not in case of the driver, whether "paid driver or a borrower of the car".

24. For the foregoing reasons, the alternative submission made by the learned advocate for the appellants to extend the benefit of compensation under the contractual liability cannot be accepted.

25. The reliance placed by the learned advocate for the appellants with regard to the observations made by the Hon'ble Supreme Court in the case of **Ramkhiladi** (*supra)*, extending the benefit of compensation for the personal accident claim, would not be available inasmuch as, on close reading of the aforesaid decision of the Hon'ble Supreme Court. As rightly pointed out by the learned advocate for the

respondent, there is no discussion with regard to the terms and conditions of the policy which was the subject matter in the facts of that case.

26. At this stage, it would be appropriate to take into consideration the decision of the Hon'ble Supreme Court in the case of **Ashalata Bhowmik** *(supra)*, wherein the facts of the case suggest that the accident had occurred due to the rash and negligent driving of the vehicle by the deceased himself and no other vehicle was involved in the accident. The claim petition was preferred under Section 166 of the Act of 1988 at the instance of the legal representatives. The Tribunal entertained their claim petition. The appeal was preferred by the Insurance Company before the High Court, mainly contending that the deceased himself was the owner-cum- driver of the offending vehicle and was not a third party within the meaning of the Motor Vehicles Act, 1988.

26.1 The liability was disputed by further contending that the accident had occurred due to the negligence of the deceased and the Insurance Company was, therefore, not liable to pay compensation. The High Court, though accepted the aforesaid contention by holding that the deceased was not a third party and the accident had occurred due to the rash and negligent driving of the deceased; however, has considered extending the compensation on the ground of personal accident of the owner-cum-driver by interpreting the terms and conditions of the policy to the extent of Rs. 2 Lakhs. The High Court directed the appellant insurer to pay compensation awarded by the Tribunal as Rs. 10,57,800/-. The aforesaid decision of the High Court was the subject matter of challenge before the Hon'ble Supreme Court. The appeal was allowed by the Hon'ble Supreme Court, by observing that the High Court was not justified in directing the appellant insurer to pay compensation determined by the Tribunal. However, considering the fact that the indemnification is extended towards the personal accident of the deceased, being limited to Rs. 2 Lakhs under the contract of insurance, the respondents were held entitled to the aforesaid amount of compensation.

27. This Court has the benefit of the judgment of the High Court of Tripura in the aforesaid case. It can be noticed that while applying the principles of the Hon'ble Supreme Court in the case of **National Ins.Co.Ltd vs Balakrishnan & Anr**, reported in **2013 (1) SCC 731** as well as of the Sikkim High Court in the case of **Oriental Insurance Company Limited vs. Smt**. **Madansha Sherpa & Ors.** reported in **2014 (2) TAC 826**, on the issue of statutory policy /Act policy, the Court in para 27 noted that, in the case at hand, the question arises as to

whether the policy is an Act Policy or Comprehensive/Package Policy? Thus, there has been no discussion either by the Tribunal or the High Court on the terms and conditions of policy. The Court further noted that the Annexure-P1 has been filed, which is a policy issued by the insurer; however, the Court was of the firm opinion that before holding so, it was necessary to scan the terms of the entire policy to arrive at the conclusion, whether it is really a package policy to cover the liability. Since the counsel representing the insurer in his cross-examination has clearly admitted that the policy issued by the appellant- Insurance Company in respect of the deceased insurer for the period of coverage, was a package policy, this Court finds that the Court had not further entered into detailed scrutiny with regard to the terms and conditions of the policy. It is in this background of the facts that the Court has opined to extend the Personal Accident Coverage to the claimants of the deceased.

28. For the foregoing reasons, the alternative submission made by learned advocate for the appellants to extend the benefit of personal accident coverage in case of the deceased being driving the insured vehicle at the time of accident, in view of the terms and conditions of the policy as interpreted in the preceding paras, the same shall not be available to the deceased, as being the borrower of the insured

vehicle and not the registered owner of the insured vehicle.

ON THE ISSUE OF MAINTAINABILITY OF CLAIM PETITION UNDER SECTION 163A OF THE ACT, 1988:

29. It would be appropriate to consider the ratio laid down by the Hon'ble Supreme Court in the case of **Ningamma** *(supra),* as reiterated and followed later on in the case of **Ramkhiladi** *(supra).* Considering the provisions of Section 163A of the Act, the Court has interpreted that the persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case of such a nature wherein the victim dies due to an accident arising out of the motor vehicle, and in the event, the liability to make payment of compensation arises as provided under Section 163A, if it is found that the driver is the owner of the motor vehicle, on the fundamental principles that the owner could not himself be a recipient of the compensation towards the liability to pay, the proceedings have been held not maintainable. Thus, in the aforesaid decisions of the Hon'ble Supreme Court, in a case of such a nature where the deceased himself had stepped into the shoes of the owner of the vehicle, have not been held entitled to compensation under Section 163A of the Act. For the foregoing reasons, I conclude that the appellants-original claimants shall not be entitled to seek compensation in a claim petition

preferred under Section 163A of the Act of 1988, in absence of the driver, owner or the Insurance Company of the other unknown offending vehicle being joined as party to the proceedings, in view of the settled legal principles laid down by the Hon'ble Supreme Court in cases of **Ningamma** *(supra)* and **Ramkhiladi** *(supra).*

CONCLUSION :

30. For the foregoing reasons, no error can be found with the impugned judgment and order passed by the Tribunal, dismissing the claim petition under Section 163A of the Act of 1988. The impugned judgment and order dated 28.10.2020 passed by the learned Motor Accident Claims Tribunal (Main) at Dahod in M.A.C.P. No. 101 of 2010, is hereby confirmed. The appeal, therefore, fails, and is hereby dismissed. Record and Proceedings are directed to be sent back to the concerned Tribunal along with the Writ of this Judgment.

(NISHA M. THAKORE,J)

SUYASH SRIVASTAVA