



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.672 OF 2018

TATA AIG General Insurance Company Ltd.
through its Branch Manager, 123-124 IInd
Floor, Shriram Shyam Tower, S.V. Patel Road,
Kingsway, Sadar, Nagpur

... APPELLANT

VERSUS

- 1) Ashish S/o Gopal Yadao Aged:-about 31 years,
Occu: - Nil, R/o Darda Nagar, Yavatmal, Tah &
Dist. Yavatmal
- 2) Vijay S/o Ganesh Meshram, Aged about 40
Years, Occu. Driver, R/o Waghapur Naka,
Bangar Nagar, Yavatmal, Tah & Distt. Yavatmal
- 3) Umesh S/o Sukhdeorao Dhargave, Aged about
Major, Occu. Business, R/o Pimpri, Tq. Ner
Distt. Yavatmal (DEAD-ABATED)

... RESPONDENTS

Shri Hitesh N. Verma, Advocate for the appellant.
Respondent no.2 and 3 served by paper publication.

CORAM : PRAVIN S. PATIL, J.

CLOSED ON : 08.10.2025.

PRONOUNCED ON : 17.10.2025.

JUDGMENT :

1. Heard.

2. This appeal is preferred by the Insurance Company on the ground that learned Motor Accident Claims Tribunal ('the Tribunal') has exceeded its jurisdiction while deciding the claim petition. According to the appellant, the claim petition was itself not tenable on the ground that the income of the respondent no.1 was more than Rs.40,000/-. Secondly, the Tribunal has wrongly recorded the factual position in the matter and thirdly, the respondent no.1 being one of the tortfeasor in the accident was not entitled to file the application for compensation under Section 163A of the Motor Vehicles Act.

3. To understand the controversy involved in the matter, certain facts are necessary to be considered in the present appeal.

4. The respondent no.1 is the original claimant, filed the claim petition under Section 163A of the MV Act for grant of compensation towards the injury caused to him in the motor accident.

5. It is the case of the respondent no.1, that on 01.01.2012 when he was going to Pimpalgaon from his house, by motorcycle bearing registration No. MH-29-AC-2140 at about 5.00 p.m., one auto bearing registration no.MH-29-4540 driven by respondent no.2 came from

opposite direction and gave dash to respondent no. 1's motorcycle. In this accident he sustained fracture injuries and therefore, he filed the claim petition.

6. The appellant pointed out that the Police Station, Yavatmal has registered the crime bearing no.1/2012 under Section 279, 337, 338 of Indian Penal Code against respondent nos.1 and 2. The appellant further pointed out that the vehicle insured with the appellant Company is the Auto bearing registration no. MH-29-4540 and not the motorcycle, which was driven by respondent no.1.

7. The record shows that before the Tribunal, respondent no.2 remained absent, due to which the Tribunal proceeded *ex-parte* and respondent no. 3 died during the pendency of claim petition and petition was abated against him. Hence, contesting party before the Tribunal was the present appellant and respondent no.1 claimant.

8. In the present appeal despite issued notice was duly served on the respondents, no one is appeared. Hence, on the basis of available record before me, I proceeded to decide the present appeal.

9. At the out set, the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of *Ningamma and anr. vs. United India Insurance Co. Limited AIR 2009 SC 3056*, wherein the Hon'ble

Supreme Court has observed in paragraph 15 as under :

“15. A number of decisions have been rendered by this Court in respect of the Section 163A of the MVA. In Deepal Girishbhai Soni v. United India Insurance Co. Ltd., (2004) 5 SCC 385, at page 402, one of us (Hon'ble Justice S. B. Sinha) has observed as follows:

“42. Section 163-A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs. 40,000 having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.”

This Court further observed in Oriental Insurance Co. Ltd. v. Meena Variyal, (2007) 5 SCC 428, at page 428:

“18. In New India Assurance Co. Ltd. v. Asha Rani this Court had occasion to consider the scope of the expression “any person” occurring in Section 147 of the

Act. This Court held (SCC p.235, para 26) :

“...that the meaning of the words ‘any person’ must also be attributed having regard to the context in which they have been used i.e. ‘a third party’. Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.”

In other words, this Court clearly held that the apparently wide words “any person” are qualified by the setting in which they occur and that “any person” is to be understood as a third party.

27. We think that the law laid down in Minu B. Mehta v. Balkrishna Ramchandra Nayan was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or 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 the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163-A of the Act, 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 concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the

vehicle.

28. In Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd., two of the learned Judges who constituted the Bench in Minu B. Mehta held that when a car is driven by the owner's employee on owner's business, the normal rule was that it was for the claimant for compensation to prove negligence. When the Manager of the owner while driving the car on the business of the owner took in a passenger, it would be taken that he had the authority to do so, considering his position unless otherwise shown. If due to his negligent driving an accident occurred and the passenger died, the owner would be liable for compensation. The Court noticed that the modern trend was to make the master liable for acts of his servant which may not fall within the expression "in the course of his employment" as formerly understood. With respect, we think that the extensions to the principle of liability have been rightly indicated in this decision."

10. The appellant then relied upon the judgment in the case of ***Deepal Girishbhai Soni vs. United Insurance Co.Ltd. Baroda AIR 2004 SC 2107***, wherein the Hon'ble Supreme Court has observed in paragraph 67 as under :

"67. We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs.40,000/- per annual shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act".

11. By relying upon the said judgment, Co-ordinate Bench of this

Court recently decided the matter between ***Bajaj Allianz General Insurance Co. Ltd. Vs. Shobha Babanrao Khose (2020) (6) MAH LJ 371*** and observed in paragraphs 16 and 21 and 22 as under :

“16. In this backdrop, it would be now be appropriate to peruse the averments made on behalf of the respondents No.1 to 3 in the claim petition filed before the Tribunal. In the said petition while stating the particulars in respect of the deceased, it was specifically stated that the monthly income of the deceased was about Rs.5615/- per month. In paragraph IV (A) of the said petition, it was stated that the deceased was working with Ganga Fertilizers, Yavatmal and he was earning monthly salary of Rs.5615/-. On this basis, annual income of the deceased was stated to be Rs.67,392/- and thereupon, after making calculations a claim of Rs.3,24,500/- was raised on behalf of respondents No.1 to 3. Thus, it becomes clear that in the claim petition itself respondents No.1 to 3 had categorically stated that the income of the deceased was well beyond Rs.40,000/- per year. Considering the position of law clarified by the Hon'ble Supreme Court in the case of Deepal Girishbhai Soni Vs. United India Insurance Co. Ltd. (supra), it becomes clear that the Tribunal in the present case could not have entertained the claim petition under Section 163-A of the aforesaid Act.

..

21. The Tribunal found that the claimants had failed to prove monthly income of the deceased being Rs.5615/- per month, but, it proceeded to calculate the monthly income of Rs.3500/-. Even if that be so, the annual income of the deceased goes beyond the limit of annual income of Rs.40,000/-, as specified under Section 163-A of the said Act. This aspect was completely missed by the Tribunal while holding that the claim petition was maintainable and then proceeding to calculate the quantum of compensation payable to the respondents No.1 to 3.

22. In view of the above, it is found that the impugned judgment and order passed by the Tribunal is not sustainable and that it deserves to be quashed and set aside. It is held that in view of the specific averments made in the claim petition filed by the respondents No.1 to 3 regarding the monthly income of the deceased being Rs.5615/- per month, claim petition under Section 163-A of the said Act was not maintainable and the Tribunal could not have entertained the same."

12. From the above said judgment, it is the submission of the appellant that as per the Schedule II, the application under Section 163A is tenable, if the annual income of the deceased does not go beyond the limit of annual income of Rs.40,000/-

13. In the present matter, the appellant has specifically pointed out that respondent no.1 on its own stated before the Tribunal that his monthly salary was Rs.6,000/- per month, considering this, his annual income goes to Rs. 72,000/- which is beyond Rs.40,000/- and therefore, the appeal itself was not tenable.

14. So also considering the fact that learned Tribunal determined the income of respondent no.1 at the rate of Rs.4,000/- per month on the basis of evidence available on record, the income of respondent no.1 goes to Rs.48,000/- i.e beyond Rs.40,000/-. Hence, in any case, according to the appellant, as per the law laid down by the Hon'ble Supreme Court and the Co-ordinate Bench of this Court, the application filed by the respondent no.1 was itself not tenable before Tribunal in the matter.

15. The appellant to substantiate his submission particularly to the fact that Auto involved in the accident was insured with the appellant Company and offence was registered against both respondent nos.1 and 2 has pointed out from the record that vide Exhibit 23 specific reply was filed and the averment were specifically made in the written statement before the Tribunal. But in impugned order perverse findings are recorded by learned Tribunal that the motor cycle owned by respondent no. 1 was insured with the present appellant instead of auto-rickshaw thereby considering the incorrect factual position decided the application in the mater.

16. The appellant is correct to state that under Section 163A of the MV Act, the owner of the vehicle, who was involved in the accident and criminal case being registered against him, cannot file the proceedings before the Tribunal against the Insurance Company to which his vehicle is registered. However, learned Tribunal by recording perverse findings that instead of motorcycle, the auto-rickshaw involved in the accident, was insured with the appellant Insurance Company, decided the claim petition. Hence it is his submission that *prima facie* the finding recorded by the learned Tribunal are perverse and same are liable to be quashed and set aside.

17. In view of the above said factual and legal position, I am of

the opinion that the Tribunal has committed error by entertaining the application under Section 163A of the MV Act without considering the income of respondent no.1. Secondly, respondent no.1 admittedly, is the owner/driver of the motorcycle, which was insured with the appellant Insurance Company, and therefore, respondent no.1 being not a third party to his vehicle, is not entitled to claim any compensation from the appellant Insurance Company.

18. Hence, on this count, the present appeal deserved to be allowed. Accordingly, I proceed to pass the following order :

- (a) The First Appeal is allowed.
- (b) The judgment order and order passed by the Motor Accident Claims Tribunal Yavatmal in M.A.C.P. no.1/2014 is hereby quash and set aside.
- (c) The appellant Insurance Company is permitted to withdraw/get refund of entire amount deposited before this Court along with the interest accrued thereon including statutory amount.

19. The Appeal stands disposed of accordingly.

(PRAVIN S. PATIL, J.)

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