IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : **04.03.2022**

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2638 of 2019
and
CM.P.No.12817 of 2019

The Divisional Manager,
TATA AIG General Insurance Company Limited,
No.1, C.N.C. Road,
Ethiraj Salai,
Egmore,
Chennai. ... Appellant/2nd respondent

Vs.

1.A.C.Jagadeesann … 1st Respondent/Petitioner

2.Lenin Selvakumar … 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 01.09.2018 in M.C.O.P.No.13 of 2017 on the file of the learned Special Sub Judge, Motor Accidents Claims Tribunal, Tiruvannamalai.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B. Gopalan Associates

For Respondents : Mr.J. Ramesh for R1

JUDGMENT

The Insurance Company who was the 2nd respondent before the Claims Tribunal is the appellant before this Court. The 1st respondent herein is the claimant before the Claims Tribunal and the 2nd respondent herein who is the owner of the vehicle was arrayed as the 1st respondent before the Tribunal. The 1st respondent is the father of the 2nd respondent herein. The issue that arises for the consideration of this Court is the liability of the appellant Insurance Company to compensate the injuries suffered by the 1st respondent while using the motor vehicle belonging to the 2nd respondent and which was insured with the appellant Company.

Facts of the case:

2.In order to appreciate the above issue, it is necessary to give a brief resume of the facts that have culminated in filing of the appeal as follows:

(i) Claimant's case:

3.It is the case of the 1st respondent that on 08.10.2014, while he was driving the Car bearing Registration No.TN 24R 1666, belonging to the 2nd respondent, he lost control and hit a tamarind tree. The impact caused grievous injuries to him. The 1st respondent suffered a left leg knee joint fracture, left hip joint fracture, pelvic bone fracture, head injury and injuries all over the body (as stated in the claim petition).

4.The scene of accident as narrated by the 1st respondent in Column No.23 of the claim petition is as follows:

"The petitioner submits that on 08.10.2014 at about 07.30am, the petitioner was going from Bargur to Mathur Village on business work in the car bearing Registration No.TN 24R 1666 on the left side of the road with due care and caution and by observing the traffic rules. The petitioner submits that while he was going from Bargur to Athiganoor Village on Mathur to Bargur road near Perumalkuppam Village one Nadar Kottai due to the bad conditions of the road, the Car had lost its control and dashed against a tamarind tree. Hence, the petitioner had sustained fractures of left leg knee joint, left hip joint fracture, pelvic bone fracture and injuries on head, left leg, left hip, and injuries all over the body. Hence, the petitioner was immediately

taken to the Government Headquarters Hospital, Krishnagiri and then to MIOT Hospitals, Chennai for higher treatment."

Therefore, the 1st respondent had filed a claim petition under Section 163A of the Motor Vehicles Act, 1988.

Counter of the Insurance Company:

5.The 1st respondent had remained *ex parte* and the appellant Insurance Company had taken out a preliminary objection stating that the 1st respondent, who was the driver on wheels of the insured vehicle, at the time of the accident, is none other than the father of the insured and considering the fact that he was the driver of the insured vehicle, he steps into the shoes of the owner. Further, the he was not entitled to claim compensation as a third party.

6.The appellant had stated that under Section 147 of the Motor Vehicles Act, they are liable to indemnify the insurance risk only

against the third party risk. The 1st respondent being the owner, had himself caused the accident, therefore, the question of indemnifying him would not arise. Apart from the preliminary objection, the appellant had also questioned the claim on merits. They had questioned the amount of compensation that has been claimed and stated that the same is an exorbitant claim. The appellant herein had also put the 1st respondent to strict proof of the fact that the 1st respondent possessed a valid driving license. The claim that the 1st respondent is the only breadwinner of the family, etc., had been denied.

7.That apart, the appellant had also contended that the 1st respondent had himself made a statement to the police that he was not interested in proceeding with the investigation since the accident had occurred only due to his carelessness and thereafter, the criminal case was closed against the petitioner, it would go to show that the 1st respondent was responsible for the accident.

Order of the Tribunal:

8.The Tribunal after considering the evidence and the arguments proceeded to partly allowed the petition granting compensation of Rs.11,34,265/- to the 1st respondent with interest @ 7.5% per annum. On the issue now before this Court, the following point for consideration was framed by the Tribunal which read as:

> *"Whether the petition was maintainable under Section 163(A) of the Motor Vehicles Act and whether the petitioner was entitled to compensation?"*

9.The Tribunal had returned a finding, relying upon the Judgment of the Hon'ble Supreme Court reported as **United India Insurance Company Limited v. Sunilkumar and another in AIR 2017 SC 5710**, that where a case is filed under Section 163A of the Motor Vehicles Act, the claimant was not required to plead or establish that the death or permanent disablement in respect of which the claim has

been made was due to negligence of the owners of the vehicle or the vehicles concerned or any other person. Therefore, the learned Judge applying the ratio of the Judgment referred to above held that in a proceeding under Section 163(A) of the Motor Vehicles Act, it is not open to the insurer to question negligence on the part of the victim. Thereafter, the learned Judge had proceeded to take note of the Certificate given by the Medical Board which had assessed the 1st respondent's disability at 50% and proceeded to award a sum of Rs.11,34,256/- of which the sum of Rs.10,30,265/- was under the head of medical expenses as proved by Ex.P.7 – Medical Bills. Challenging the said Award, the Insurance Company is before this Court.

Submissions:

10.Mr.M.B.Raghavan, learned counsel appearing on behalf of the Appellant Insurance Company would rest his case on the Judgment of the Hon'ble Supreme Court reported as **Ramkhiladi and another v. The United India Insurance Company and another [2020 (2) SCC**

550]. The learned counsel would submit that in the said case, the Hon'ble Supreme Court after considering the earlier decisions had observed that in order to mulct the liability under Section 163(A) of the Act on the on the Insurance Company, the claimant should be a third party. If the owner himself has caused the accident, he cannot claim compensation for himself under Section 163A of the Act, since a person cannot be both, an owner as also a recipient. The heirs of the owner in the case before the Supreme Court could not have maintained the claim in terms of Section 163A of the Act.

11.The learned Judges had relied upon the Judgments in **Oriental Insurance Co. Ltd. V. Jhuma Saha [(2007) 9 SCC 263], National Insurance Co. Ltd. V. Laxmi Narain Dhut [(2007) 3 SCC 700]** and **Premkumari v. Prahlad Dev [(2008) 3 SCC 193]** to come to the above conclusion.

12.Mr.J.Ramesh, learned counsel appearing on behalf of the respondents would contend that the ratio laid down in **Ramkhiladi's** case supra, would not be applicable to the case on hand, since all the Judgments relied upon in the said Judgment were cases where the claim was in respect of fatal accidents.

13.He would rely on the Judgment of the Jammu & Kashmir Court in **Oriental Insurance Company Limited v. Narinder Kumar and another [2002 ACJ 1116]**, which held that if there is no pleading taken about the validity of the license and its objection the same cannot be taken on appeal. This Court is unable to understand as to why this Judgment has been quoted since in the instant case the appellant Insurance Company has taken a defence that the act does not contemplate the owner of the vehicle being indemnified in respect of the injuries sustained by him in an accident which is the result of own negligence.

14.He would rely upon the Judgment of the Hon'ble Supreme Court reported in **T.S.Shylaja v. Oriental Insurance Company and others [(2014) 2 SCC 587]** to buttress his arguments that since if the claimant was the paid driver of his son, the owner of the vehicle, the Tribunal ought to have granted him the Award under Section 163A of the Act.

15.Heard the learned counsels appearing on either side and perused the papers.

Discussion:

16.The core issue involved in the above appeal is

"Whether the appellant Insurance Company is liable to compensate the 1st respondent for the injuries sustained by him in an accident which was caused by him without any third party intervention?."

(i)Evolution of the concept of "No Fault Liability":

17.The claim is made under Section 163A which has been introduced in the Motor Vehicles Act, 1988, by the amending Act 54 of 1994 which in legal parlance is called “no fault liability”. To understand the above principle, it is necessary to briefly trace the origin of the codification of rules for claiming compensation for the death or bodily injury to a person. The concept has its genesis in the Law of Torts. The codification insofar as India is concerned has its roots in the Fatal Accidents Act, 1855. This Act was restricted to only compensation for death. The Act attempted to compensate families for the loss of a person whose death is the result of the wrongful act, negligence or default of another. The Act contains only four sections and did not restrict itself to road accident. Thereafter, the Motor Vehicles Act, 1939 (hereinafter referred to as the 1939 Act) came to be enacted. In 1982, amendment was introduced to the act in and by which Chapter VII A was introduced. The amendment was brought

about by the Motor Vehicles (Amendment Act 1982 Act 47 of 1982), for the sake of brevity referred to as the 1982 Amendment.

18.The 85th report of the Law Commission of India was a precursor for introducing the 1982 Amendment to the 1939 Act. The Law Commission had proposed amendments to Chapter VIII of the Motor Vehicles Act, 1939, relating to the question of insurance of Motor Vehicles and adjudication for claiming compensation in respect of accidents from motor vehicles. Under the Law, as it then stood, the Tribunal could grant compensation only if it is proved the accident was on account of the negligence on the part of the driver or the owner of the vehicle.

19.The Hon'ble Supreme Court had been suggesting that the principle of “No Fault Liability” be introduced in cases of claims arising out of road accident. In the Judgment of the Hon'ble Supreme Court reported as **Concord of India Insurance Co. Ltd., v. Nirmala**

Devi and others, [AIR 1979 SC 1666 = (1979) 4 SCC 365], the Bench consisting of Hon'ble Justice V.R. Krishna Iyer and Hon'ble Justice R.S.Pathak had observed that the jurisprudence of compensation for motor accidents must develop in the direction of "No Fault Liability". In the language of the Bench which was authored by the Hon'ble Justice V.R. Krishn Iyer, the following reasons were quoted for the need for development in the direction of "No Fault Liability".

> "*2. Medieval roads with treacherous dangers and total disrepair, explosive increase of heavy vehicles often terribly overloaded and without cautionary signals, reckless drivers crazy with speed and tipsy with spirituous potions, non-enforcement of traffic regulations designed for safety but offering opportunities for systematised corruption and little else and, as a cumulative effect, mounting highway accidents, demand a new dimension to the law of*

torts through no fault liability and processual celerity and simplicity in compensation claims cases."

20. In a later Judgment of the Hon'ble Supreme Court reported as **Rattan Singh v. State of Punjab (1979) 4 SCC 719)**, the Bench, once again led by the Hon'ble Justice V.R. Krishna Iyer, in very strong words had articulated the menace caused on account of the use of motor vehicles on the road as follows:

"*1.This petition for special leave under Article 136 is by a truck driver whose lethal hands at the wheel of an heavy automobile has taken the life of a scooterist a deadly spectacle becoming so common these days in our towns and cities. This is a case which is more a portent than an event and is symbolic of the callous yet tragic traffic chaps and treacherous unsafety of public transportation the besetting sin of our highways which are more like fatal facilities than*

means of mobility. More people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country. What with frequent complaints of the State's misfeasance in the maintenance of roads in good trim, the absence of public interest litigation to call state transport to order, and the lack of citizens' tort consciousness, and what with the neglect in legislating into law no fault liability and the induction On the roads of heavy duty vehicles beyond the capabilities of the highways system, Indian Transport is acquiring a menacing reputation which makes travel a tryst with Death. It looks as if traffic regulations are virtually dead and police checking mostly absent. By these processes of lawlessness, public roads are now lurking death traps. The State must rise to the gravity of the situation and provide road safety measures through active police

presence beyond frozen indifference, through mobilisation of popular organisations in the field of road safety, frightening publicity for gruesome accidents, and promotion of strict driving licensing and rigorous vehicle invigilation, lest human life should hardly have a chance for highway use.

2.*These strong observations have become imperative because of the escalating statistics of road casualties. Many dangerous drivers plead in court, with success, that someone else is at fault. In "the present case, such a plea was put forward with a realistic touch but rightly rejected by the courts below. Parking of heavy vehicles on the wrong side, hurrying past traffic signals on the sly, neglecting to keep to the left of the road, driving vehicles crisscross often in a spirituous state, riding scooters without helmets and with whole families on pillions, thoughtless cycling and*

pedestrian jay walking with lawless ease, suffocating jam-packing of stage carriages and hell-driving of mini-buses, overloading of trucks with perilous projections and, above all, police man, if any, proving by helpless presence that law is dead in this milieu charged with me(sic)lee such is the daily, hourly scene of summons by Death to innocent persons 1 and 2 who take to the roads, believing in the bona fides of the traffic laws. We hope that every State in India will take note of the human price of highway neglect, of State transport violations and the like, with a sombre sensitivity and reverence for life."

This Scenario unfortunately has not changed in over four decades.

21.These Judgments gave the nudge for the Law makers to contemplate an amendment to the 1939 Act. The 85th Law Commission

was entrusted with this task. The suggestions of the Law Commission in this regard are as follows:

> *"3.16.In a "No fault System", compensation is granted for certain injuries without proof of fault. "Compensation" in this context means compensation for actual losses, but not for intangible damage. The injured person will, under a"no fault" system, be in a better position, compared with traditional tort law, since he will be entitled to receive immediate compensation for his actual loss (expenses, loss of profits or wages) without lengthy litigation or proof of fault."*

22.After extracting the need for reform in the Law, the Law Commission has provided the following justification for introducing this reform, namely, social justice and practical necessity. The Law

Commission observed that the incorporation of the "No Fault Liability" principle has to be considered for the following reasons:

> *"3.34.The incorporation of "No-fault liability" principle will considerably reduce the delay that occurs in the disposal of claims cases by the Claims Tribunal, making it easy for the person sustaining injury in an accident of the nature specified in Section 110(1) (or the heirs of a person killed in such an accident) to obtain compensation without being required to fight a long-drawn battle for obtaining it."*

Ultimately, they have made the following suggestions:

> *"3.45.Having regard to the considerations set out in this Chapter, it appears to be appropriate to provide for liability without fault in relation to death or bodily injury caused by accidents from motor vehicles. Such a liability would rest on the risk created by the use of a motor vehicle, and not on fault."*

23.In the light of the recommendations of the Law Commission, Section 92A was introduced in the Motor Vehicles Act, 1939, through an amendment in 1982, by which this doctrine of liability without fault was first introduced. Initially, the amount fixed under this Section was a sum of Rs.15,000/- for death and Rs.7,500/- for Permanent disability. Thereafter, the Motor Vehicles Act, 1988 hereinafter referred to as the 1988 Act was enacted and Section 92A of the 1939 Act was replaced by Section 140 whereby the compensation for death under the "No Fault Liability" clause was enhanced to a sum of Rs.50,000/- and the compensation for permanent disabilities was enhanced to a sum of Rs.25,000/-. Though the new Act had been enacted, representations were received from various quarters calling for reconsideration of the Act. Thereafter, a Review Committee was constituted by the Government of India in the year 1990 and in terms of the Recommendations made by this Review Committee, the Act was

amended in the year 1994 in terms where of a new pre-determined formula in the form of Section 163A for payment of compensation to road accident victims on the basis of their income and age on a no fault basis was provided. The amended Act contained a provision in Section 163B giving an option to the claimant to claim compensation either under Section 140 or under Section 163A. This had caused a great deal of confusion and claimants were moving applications both under the provisions of Section 140/163A and 166.

Judicial Pronouncement:

24.The issue regarding the filing of a simultaneous application under Section 140 / 163A and Section 166 of the Act came up for consideration before the Hon'ble Supreme Court in the Judgment of **Deepal Girishbhai Soni and others v. United India Insurance Company Limited, Baroda** [(2004) 5 SCC 385].

25.A Bench consisting of the Hon'ble Chief Justice and two other Judges, traced the legislative history and after analysing the relevant provisions of Section 140, 163A and 166 observed as follows:

> *"39. Section 163A was introduced in the Act by way of a social security scheme. It is a code by itself. It appears from the Objects and Reasons of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act several representations and suggestions were made from the State Governments, transport operators and members of public in relation to certain provisions thereof. Taking note of the observations made by the various Courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a*

Review Committee. The Review Committee in its report made the following recommendations:

"The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability cases. It also provides for payment of compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31.3.1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as the Insurance Company if a system of structured compensation can be

introduced. Under such a system of structured compensation that is payable for different clauses of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels. The General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for settlement of claims on "fault liability" in respect of third party liability under Chapter XI of M.V. Act, 1988. They have suggested that the claimants should first file their Claims with Motor Accident Claims Tribunals

and then the insurers may be allowed six months time to confirm their prima facie liability subject to the defences available under Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time."

The Bench ultimately held as follows:

*"**57.**We, therefore, are of the opinion that remedy for payment of compensation both under Section 163A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163A or under Section 166 of the Act, but not under both."*

The learned Judges had in no clear terms stated that it is no doubt true that the Motor Vehicles Act was a beneficial legislation requiring a liberal construction, however, its trite that in such cases the Courts should not travel beyond the scheme of the legislation and extend the statutory benefit to those who are not covered thereby.

26.The Hon'ble Supreme Court in the case reported as **Shivaji Dayanu Patil and another v. Smt.Vatschala Uttam More [AIR 1991 SC 1769]** has touched upon the introduction and the statement of the objects and the reasons for amending the 1939 Act to introduce the concept of "No Fault Liability". The Hon'ble Supreme Court held as follows:

> *"There has been a rapid development of road transport during the past few years and large increase in the number of motor vehicles on the road. The incidence of road accidents by motor vehicles has reached serious proportions. During the last three years, the number of*

road accidents per year on the average has been around 1.45 lakhs and of these the number of fatal accidents has been around 20,000 per year. The victims of these accidents are generally pedestrians belonging to the less affluent sections of society. The provisions of the Act as to compensation in respect of accidents can be availed of only in cases of accidents which can be proved to have taken place as a result of a wrongful act or negligence on the part of the owners or drivers of the vehicles concerned. Having regard to the nature of circumstances in which road acci- dents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what are known as "hit-and-run" accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitably to secure strict

enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown..... "

27.The Judgment reported as **Ningamma and another v. United India Insurance Co. Ltd., [(2009) 13 SCC 710]** was another case where the Hon'ble Supreme Court had discussed Section 163A. In that case, the deceased-victim had been travelling in a bike that he had borrowed from the real owner and had hit a bullock cart carrying iron sheets, as a result of which he sustained fatal injuries. His legal representatives thereupon sued the owner of the motor bike that the deceased had borrowed and the insurance company. The Hon'ble Judges of the Supreme Court after discussing the law on the subject had held that in order to claim compensation, the recipient had to be a

third party. If the driver is the owner of the motor vehicle or if the vehicle had been driven by another, he would step into the shoes of the owner and therefore, from a reading of Section 163A, it is clear that the legal representative of the deceased is not entitled to compensation. This Judgment had gone on to consider the question as to whether the legal representatives could claim compensation under Section 166 of the Motor Vehicles Act. The Bench held that if the claimants are able to prove the negligence of the deceased in the accident then they could seek compensation under Section 166 of the Act. Therefore, a reading of the Judgment clearly indicates that the Hon'ble Supreme Court had clearly laid down that the victim of an accident or his legal representatives are not left remediless. It only states that in order to claim compensation under Section 163A, a claim cannot be made if the victim himself is the owner of the vehicle which has caused the accident without any third party intervention.

28.In a later Judgment of the Hon'ble Supreme Court reported in **United India Insurance Company Limited v. Sunilkumar and another, [AIR 2017 SC 5710]**, the issue before the Court was as follows:

> *"Whether in a claim proceeding under Section 163A of the Motor Vehicles Act, 1988, (hereinafter referred to as "the Act) it is open to the insurer to raise the defence / plea of negligence?"*

The Bench concluded as follows:

> ***"8.*** *From the above discussion, it is clear that grant of compensation Under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by*

Section 163A(2). Though the aforesaid Section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding Under Section 163A of the Act at par with the proceeding Under Section 166 of the Act which

would not only be self-contradictory but also defeat the very legislative intention."

29.In fact, even prior to the above Judgment, another Judgment of the Hon'ble Supreme Court in **Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and another (1987) 3 SCR 404**, reference has been made to the background in which the Chapter VIIA was introduced in the Act. The Hon'ble Supreme Court had proceeded to discuss the concept with an illustration as follows:

"Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation through

out the world to make the liability for dam- ages arising out of motor vehicles accidents as a liability without fault. In order to meet the above social demand on the recommendation of the Indian Law Commission Chapter VIIA was introduced in the Act."

and had proceeded to hold as follows:

"It is thus seen that to a limited extent relief has been granted under section 92-A of the Act to the legal representatives of the victims who have died on account of motor vehicles accidents. Now they can claim Rs.15,000 without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation

for the death or permanent disablement caused on account of a motor vehicle accident."

30.This Court in a Judgment in **Sarffia Bee and others v. B.Sathar and others [2002 ACJ 449]** had occasioned to deal with Section 92A of the said 1939 Act as amended by Act 47 of 1982. The learned Judge has observed that the provision of 92A of the Motor Vehicles Act, 1939 and Section 140 of the Motor Vehicles Act 1988, were benevolent provisions and a liberal interpretation therefore be taken while considering the scope of these provisions. The learned Judge had briefly touched upon the history of the introduction of Section 92A in the said Judgment which is extracted herein below:

"16. Section 92(A) of Motor Vehicles Act, 1939 came to be introduced by the Act 47 of 1982. Previously, the provisions of the Act, as to compensation in respect of accidents, can be availed of only in case of accident which can be proved to

have taken place, as a result of a wrongful act or negligence on the part of the owner or driver of the vehicle concerned. Having regard to nature and circumstances in which the road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle. This is the object of introduction of Section 92(A) of the Act.

17. Under Sub-section (2) of Section 92-A, the amount first fixed under compensation for 'no fault liability' was Rs. 15,000/-. Thus, Section 92-A was in the nature of a beneficial legislation enacted, with a

view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability'. In the matter of interpretation of a beneficial legislation, the approach of the Courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose. This principle has been laid down by the Apex Court in (Shivaji Dayanu Patil v. Vatschala Uttam More); (Motor Owners' Insurance Co. Ltd. v. Jadayji Keshayji Modi) and 1987 ACJ 411 : (AIR 1987 SC 1184) (SC) (Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan).”

31.The Division Bench of the Karnataka High Court in one of the Judgment reported as **Appaji V. M.Krishna [(2005) ACC 591]**, had occasion to trace out the legislative history of the no fault liability. The Bench had categorically observed as follows:

> *"It is evident from the above that* ***Section 163A was never intended to provide relief to those who suffered in a road accident not because of the negligence of another person making use of a motor vehicle, but only on account of their own rash, negligent or imprudent act resulting in death or personal injury to them.*** *The recommendations of the Law Commission were concerned more with the victims of hit and run accident cases where the particulars of offenders could not be ascertained. It also expressed concern about the security of victims of road accidents and recommended dispensing with proof of fault on the part of the owner or driver of the*

vehicle. The recommendations it is clear were made from the point of view of victims of accidents on the roads more than those who were responsible for the same. The Review Committee too had viewed the situation from the point of view of such victims and expressed concern about the time it took for disposal of ordinary cases before the Tribunals. The objects and reasons underlying the introduction of the provision also envisaged adequate compensation to victims of road accidents without going into what was described as long drawn procedure."

32.The line was therefore clearly drawn as to who could claim compensation under the No Fault Liability. As the term suggest, it is an accident that has occurred not on account of the fault of the victim but the fault of another and the victim is not bound to prove the other's fault. If the legislative intent was to provide compensation to the

person who was himself instrumental for the accident then the principle of "Contributory Negligence" would be rendered otiose.

Summation:

33.A reading of the reports of the Law Commission and the various Judgments referred above highlights the fact that the principle of "No Fault Liability" which traces its origin to Tortious liability has been incorporated into the Act primarily to cover innocent victims who fall prey to the rash and negligent use of a Motor Vehicle, particularly, hit and run accidents and where the person concerned has sustained an injury or has been killed for "No Fault" of his.

34.Considering the fact that the entire dispute revolves around the interpretation of Section 163A, it would be necessary to extract the specific provision as follows:

"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 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 motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(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. "

35.Section 163A (1) can be broken down as follows:

"(a)The Section opens with a non - obstante clause that this provision would apply even if there is any contrary provision in this Act or any other Law which is in force during the relevant time.

(b)The liability to pay in the case of death or permanent disability rests upon the owner of the motor vehicle or its authorised insurer which arises out of the use of the motor vehicle.

(c)Such compensation is payable to the legal heirs or the victim himself."

36.The scheme of the Act contemplates 4 players - the victim, the driver of the offending vehicle, owner of the offending vehicle and lastly, its insurer. In any accident which results in any damage to person or property the person who is primarily at fault is the driver of the vehicle that caused the accident. Once, the fault is fixed on the driver, the owner of the vehicle becomes vicariously liable. At times the owner and the driver may be the same person. Thereafter, if the vehicle possesses a valid insurance then the insurer is bound to indemnify the owner of the vehicle. Therefore, considering the object of the Act and the judicial pronouncements, it is clear that a person claiming compensation under the "No Fault Liability" has to first establish a third party involvement in the mishap. The Judgment in **United India Insurance Company Limited v. Sunilkumar and another, [AIR 2017 SC 5710]**, only emphasis that the Insurer cannot set up the defence of negligence, it has not done away with the primary

proof that the accident involved a third party intervention / involvement.

37.The facts in the case of **Ramkhiladi and another v. The United India Insurance Company and another [2020 (2) SCC 550]** will squarely apply to the facts of the instant case. The learned Judges had concisely set out the question that was posed for the Court's consideration as follows:

> *" 5.....is whether, in the facts and circumstances of the case and in a case where the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was negligent are not joined as parties to the claim petition, meaning thereby that no claim petition is filed against them and the claim petition is filed only against the owner and the insurance company of another vehicle which was driven by the deceased*

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

38.In **Ramkhiladi and another v. The United India Insurance Company and another [2020 (2) SCC 550]**, the Tribunal had relied upon the principle that in a claim under Section 163A the claimant was not required to plead or establish negligence. The High Court had overturned this finding and held that the application under Section 163A of the Act against the Insurance Company of the vehicle driven by the deceased himself is liable to be dismissed. This was the subject

matter of challenge before the Hon'ble Supreme Court. The learned Judge explained the principle and the purport of a claim under section 163A in Para 5.5 which is extracted hereinbelow:

> *"5.5 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."

39.The tenor and purport of the above Judgment is the principle of 'No Fault Liability" obviously implies that the injury or death or the claimant is the result of the involvement of a third party with the claimant being an innocent by stander and the accident has occurred out of no fault of his.

Therefore, in the light of the above, the Award passed by the learned Special Sub Judge, Motor Accidents Claims Tribunal, Tiruvannamalai, in M.C.O.P.No.13 of 2017 is liable to be set aside and is accordingly set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

04.03.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The Special Sub Judge,
Motor Accidents Claims Tribunal,
Tiruvannamalai.

P.T. ASHA, J,

mps

C.M.A.No.2638 of 2019
and
CM.P.No.12817 of 2019

04.03.2022