



ADJUDICATING THIRD PARTY CLAIMS IN MACT CASES


Sec.163-A of the Motor Vehicle Act

-A Pragmatic Perspective

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POINTS TO PONDER

As it has become a routine practice for the litigants to invoke Section 163-A of the M.V.Act whenever invocation of Sec. 166 of the M.V.Act is forbidden or doubtful, doubts galore as follows:

- a) Whether a wrong doer himself can maintain a claim petition under Section 163-A of the M.V.Act?
 - b) Whether an Owner / Insured can maintain a claim petition against his Insurer under Section 163-A of the M.V.Act?
 - c) Whether an owner/insured-cum-driver can maintain a claim under Section 163-A of the M.V.Act?
 - d) Whether a person who has borrowed a motor vehicle from the owner/Insured and causes an accident by his own negligence can maintain a claim petition against the insurer of the Motor Vehicle under Section 163-A of the M.V.Act?
 - e) Whether a person whose annual income is above Rs.40,000/- can invoke Sec. 163(a) of the M.V.Act?
 - f) Whether any person who is otherwise disentitled to invoke Sec. 166 of Sec. 140 of the M.V.Act can maintain a claim petition
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SEC.140: LIABILITY TO PAY COMPENSATION IN CERTAIN CASES ON THE PRINCIPLE OF NO FAULT.—

- (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a Motor Vehicle or Motor Vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this Section.
- (2) The amount of Compensation which shall be payable under sub-section (1), in respect of the death of any person shall be a fixed sum of (Fifty

(3) In any claim for Compensation under sub-section (1), the Claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for Compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of Compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay Compensation under any other law for the time

SECTION 163-A: SPECIAL PROVISIONS AS TO PAYMENT OF COMPENSATION ON STRUCTURED FORMULA BASIS.

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the Motor Vehicle of the authorized 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

The three member bench of the Apex Court had an occasion to examine the ambit of this special provision in a case between **Deepal Girishbhai Son and others v. United India Insurance Co. Ltd., Baroda**, reported in **2004 (5) SCC 385** and has held as under:

“41. Section 140 of the Act dealt with interim Compensation but by inserting Section 163-A, Parliament intended to provide for the making of an Award consisting of a predetermined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The amendment was, thus, a deviation from the common law liability under the law of torts and was also in derogation of the provisions of the Fatal Accidents Act.

52. It may be true that Section 163-B, provides for an option to a Claimant to either go for a claim under Section 140 or Section 163-A of the Act, as the case may be, but the same was inserted ex abundant cautela so as to remove any misconception in the minds of the parties to the lis having regard to the fact that both

53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the Court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those, who are not covered thereby. (See Regional Director, ESI Corpn. V. Ramanuja Match Industries 1985 (1) SCC 218

APPLICATION OF THE ACT

- A cursory perusal of Section 163-A would make it clear that it has no universal application. Only a section of the society who are poor and indigent are entitled to invoke the law in view of fixation of Rs. 40,000/- per annum as the upper income limit. While dealing with the said aspect the Apex Court has held in *Deepal Girishbhai Son and others v. United India Insurance Co. Ltd., Baroda* reported in 2004 (5) SCC 385, a Larger Bench of Three-Judge held as under:



“41. The Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought to be evolved so as to grant a quick and efficacious relief to the victims falling within the specified category, the heirs of the deceased or the victim which was not available to the Claimants under Sec. 166 of the Act.

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 there for. his 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

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CLAIM BY THE OWNER OF THE VEHICLE AGAINST HIS INSURER:

- An important question might creep in as to whether an owner who is the wrong doer by causing an accident by riding the insured vehicle could maintain a claim under Section 163-A of the Act against his insurer. The answer is in the negative. The reason is that the owner of the vehicle/ insured is not a third party to the contract. Motor Vehicle Act contemplates adjudication of third party claims only. Since the owner-cum-driver is not a third party, there can be no claim by him and



The following case laws are relevant:

- 1) Oriental Insurance Co. v. Rajini Devi
2008 (5) SCC 736.**
- 2) New India Assurance Co. v. Sadanand Mukhi
2009 (2) SCC 417.**
- 3) United India Insurance Co. v. Vijayaraja & Ors.
2009 (2) TNMAC 454 DB Ker.**
- 4) S.Danapal v. A.Jerome & Ors.
2007 (1) TNMAC 165 Mad.**
- 5) Dhanraj v. New India Assurance
AIR 2004 SC 4767.**
- 6) Oriental Insurance Co. v. Juma Saha & Ors
2007 (2) TNMAC 56.**
- 7) United India Insurance Co. v. Ravi & ano.
2010 (5) Madras Law Journal Page 406.**



CLAIM BY BORROWER OF VEHICLES

The Supreme Court has held in a case called Ningamma's case reported in 2009 (13) SCC 710 SC by holding that a person who has borrowed a motor vehicle of another person and causes accident by his own negligence would step into the shoes of owner of the vehicle and thus not a third party. As such, he cannot claim compensation from himself and to pay himself.

“A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein a victim died or whether he was permanently disabled due to an accident arising out of motor vehicle in the event of the liability to make the payment of compensation is on the insurance company or owner, as the case may be, as provided under Sec. 163(a).

But if it is proved that the driver is the owner of the motor

EFFECT OF NON-OBSTANTE CLAUSE

Fervent attempts are often made by the claimants and owners of the vehicles to take shelter under the non-obstante clause of Section 163-A of the Motor Vehicle Act. The provision begins as under:-

- “Notwithstanding anything contained in this Act or any other law for the time being in force

“the owner of the motor vehicle **or** the authorized insurer

and it is not

the owner of the motor vehicle **and** the authorized insurer.”

Since there is a specific reference to Section 163-A of the M.V.Act within Sec. 149(1), it follows by necessary implication that the defense enumerated in Sec. 149(2) would be available to the insurer even in a claim under Section 163-A. If the intention of the Parliament was to preclude the insurer from raising the defense available under Sec. 149(2) in a claim under Section 163-A, the words in Section 163-A ought to have been “the owner of the motor vehicle **and** the authorized insurer” only and not “the owner of

CONCEPT OF INDEMNIFICATION

Only when there is a vicarious liability on the part of the owner of the vehicle, the insurance company could be called upon to indemnify such an owner of the insured vehicle. In other words, unless and until the owner of the vehicle is found liable vicariously, there can be no indemnification of such liability by the insurer.

This legal position has been clearly held by the Supreme Court in a case between Oriental Insurance Co. v. Sunitha Rathi & Ors., reported in 1998 ACJ 121. Inasmuch as Sec. 149(1) makes it clear that the liability under the provisions of Section 163-A is also covered, it is not correct to state that on invocation of Section 163-A of the M.V.Act, all other provisions of the M.V.Act including Sec. 147 and 149 would be kept away. In order to adjudge the claim under the M.V.Act, the Tribunals

- The liability of the insurance company would emanate only from Sec. 147 of the M.V.Act, according to which a stranger to the policy of insurance can directly sue the insurance company. A duty is cast upon the insurer to satisfy the judgment and awards in respect of third party risks by Sec. 149 of the M.V.Act. The defense available to the insurer is enumerated in Sec. 149(2) of the M.V.Act. All other procedures concerning the Tribunals while

FINANCIAL CAP

A financial cap of Rs. 40,000/- per annum is fixed by the Second Schedule to invoke Section 163 A of the M V Act. What was the rate fixed in 1994 cannot be applied now in view of the change of economic scenario the nation faces. Several directions are issued by the Supreme Court to the Union Government to amend the second schedule to bring it at par with the current financial ambience. But nothing has happened so far for the reasons not made known public. In view of sub section 3 of Section 163 A, a duty is cast only on the Central Government to amend the Schedule and I do not find any reason for an Act of the

The verdict of the Supreme court of India in Puttamma's case (Puttamma and others Vs K.L. Narayana and others reported in 2013 (15) SCC 45) is pertinent.

“ 29. Thus, it will be evident from the provisions of the Act that the Structured Formula as prescribed under Second Schedule and the Multiplier mentioned therein is not binding for claims under Sec.166 of the Act, 1988.



Applicability of Second Schedule in the present scenario:

By Act 54 of 1994, Section 163-A Special Provisions as to payment of Compensation on Structured Formula basis has been inserted with effect from 14.11.1994. Section 163-A, envisages that notwithstanding anything contained in the Act or in any other law or instrument having the force of law, the owner of the motor vehicle 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 victims, as the case may be. The purpose of Section 163-A, and the Second Schedule is to avoid long-drawn litigation and delay in payment of Compensation to the victims or his heir, who are in dire need of relief. Sub-section (2) of Section 163-A, envisages that the Claimant shall not be required to plead or establish that the

45. In Deepal Girishbhai Soni (supra), this Court having regard to inflation and fall in rate of Bank interest observed that it is desirable that the Central Government bestows serious consideration to amend the Second Schedule and made following observation:

“72. Section 163-A, was introduced in the year 1994. The Executive Authority of the Central Government has the requisite jurisdiction to amend the Second Schedule from time to time. Having regard to the inflation and fall in the rate of Bank interest, it is desirable that the Central Government bestows serious consideration to this aspect of the matter.”

52. Keeping in view the cost of living, the Central Government is required to amend the Second Schedule [See Section 163-A (3)]. The Second Schedule was enacted by Act 54 of 1994 w.e.f. 14th November, 1994. Now more than 19 years have passed but no amendment has been made. Cost of living has gone up manifold.

56. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A (3), but it failed to do so for 19 years inspite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule Table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately.

Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163-A of the Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 15 years shall be entitled for fixed Compensation of Rs.1,00,000/- (Rupees one lakh) and persons more than 5 years of age shall be entitled for

Reference to larger bench:

The dispute under review before the three member bench of the Supreme Court in Deepal Girishbai Soni's case was not about the maintainability of the claims by the wrong doers under Section 163-A of the Act. The question addressed and adjudged was whether the claim under Section 163 A of the Act was final or interim in nature. But while passing the verdict the Bench has held, as a passing remark, that the claim by the tortfeasors is maintainable without any rider. But the verdict in Sinitha's case has not mentioned about the view of the previous one in Deepal Girishbai Soni's case. Hence subsequent Bench of the Apex Court delivering orders in United India Insurance Co Ltd Vs Sunil Kumar and another (reported in 2014 (1) SCC 680) has referred the issue to the Larger Bench. The reference is still pending. As per the law of precedents in vogue the latest law

CONCLUSION

In fine, the following conclusions are inevitable.

- ✓ A claim by a wrong doer in Sec. 163-A of the M.V.Act is maintainable.
- ✓ The liability of the insurer or the owner of the vehicle under Section 163-A is not compulsory on no fault basis.
- ✓ Such a claim can be defeated by the insurer or the owner when it is proved that the victim himself had caused the accident by adducing evidence.
- ✓ The claim under Section 163-A is not maintainable when it is laid by the wrong doer who happened to be the owner of the vehicle (owner-cum-driver).
- ✓ The claim by the person or his legal representatives who had borrowed the vehicle from the insured and causes the accident by his own negligence is not

- ✓ It is not correct to state that all the provisions of the M.V.Act are kept in abeyance and suspended when Section 163-A of the M.V.Act is invoked.
- ✓ The effect of the non-obstante clause would be to determine the quantum of compensation in strict adherence to the Second Schedule and not otherwise.
- ✓ The financial cap of Rs.40,000/- stipulated under Section 163-A and the Second Schedule appended thereto has become stale and out dated.
- ✓ The financial cap should be enhanced to a

