

GJJN210003492024



Received on 03-04-2024
Registered on 03-04-2024
Decided on 08-04-2026
Duration YY-MM-DD
02 - 00 - 05

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL [AUX.]
AND ADDITIONAL DISTRICT COURT,
KESHOD

M. A. C. P. No. 08 of 2024

Ex.-29

Heirs of the deceased Aakash Ramabhai Parmar,

1. Ramabhai Pithabhai Parmar,
Aged Abt: 50 Yrs. Occupation: Labourer work,
Religion: Hindu,
2. Laxmiben Ramabhai Parmar,
Aged Abt: 49 Yrs. Occupation: Household,
Religion: Hindu,
R/o. Both at Malia-Hatina village,
Tal. Malia-Hatina, Dist. Junagadh.

Claimants...

Versus

Owner & Insurance Company of MotorcycleNo. GJ-11-CN-3773 :-

1. Bharatbhai Rambhai Parmar,
Age : Adult, Occupation: labourer work,
Religion: Hindu,

R/o. Ambedkar Nagar,
Tal. Malia-Hatina, Dist. Junagadh.

2. Bajaj General Insurance Company Ltd.
Through: Divisional Manager,
Office at; Anant the work space building,
Kalavad road, Rajkot.

Opponents....

Subject :- To obtain Compensation of Rs.5,00,000/- U/s.164 of
the M. V. Act.

Appearance :

For the applicants.	Ld. Adv. Mr. K.L.Sanchela.
For Opponent No.1.	None.
For Opponent No.2.	Ld. Adv. Mr. V.S.Jethava.

~: J U D G M E N T :~

1. The present claim petition under section 164 of the Motor Vehicle Act and has been preferred by the heirs of the deceased Aakash Ramabhai Parmar for obtaining compensation of **Rs. 5,00,000/-** (Rupees Five Lakhs Only) with cost and interest from the opponents towards the accidental death of on **22/02/2024**.

2. The brief facts of the case is as under :-

[A] Accident as described :

On 22/02/2024, at approximately 08:00 AM, the deceased, Aakash, was riding a motorcycle (No. GJ-11-CN-3773) from Mangrol toward Keshod. Near Royal

Sofa, the vehicle—owned by his brother (joined as Opponent No. 1)—suffered a sudden mechanical failure. This defect caused the motorcycle to veer off the road and collide with a stationary Bolero. Aakash sustained grave injuries and was rushed to the Government Hospital in Junagadh, where he succumbed during treatment. The accident was a direct result of the vehicle's mechanical instability and the owner's failure to maintain it in a roadworthy condition.

[B] Reasons for the claim :

3. As a result, the deceased sustained **grievous injuries**, to which he **subsequently succumbed**. The heirs of the deceased stated that the applicant was 19 years age and was earning Rs. 3,300/- per month by way of laborer work. The deceased was very hard working and sincere. The applicants have suffered the loss of future income. The applicants have expended huge amount as funeral expense. The applicants sustained mental pain, shock and suffering. The deceased could have earned more income for them, if he had been alive. The deceased could have earned much income but due to the accidental death of the deceased the applicants have lost the same. The applicants have expended huge amount for transportation to take the dead body to their native. So, the present applicants have claimed **Rs. 5,00,000/-** as compensation along with interest at rate of **18%** per annum from opponents.

4. The opponents were duly served with the notices of this claim petition. Opponent No. 1 did not choose to appear before Court and not contended the claim petition.

- 4.1 The Opponent No.2 has appeared through its ld. Advocate and has filed written statement vide Exh.-15, wherein this opponent has denied the averments and allegations made by the applicants, and has also denied the facts of the accident, age, income and other particulars in toto and other information of the applicants; that the interest of Bharatbhai Ramabhai Parmar in vehicle No.GJ-11-CN-3773 was covered at the material time under the policy of insurance issued by this respondent subject to the terms and conditions; it is submitted that the driver of the said vehicle was not holding valid and effective driving license at the time of the accident; without prejudice to any of the contentions raised above. This opponent further submits that the statement made at paras 1 to 16 of the claim petition regarding age and income of the deceased, time, place and date of accident, involvement of vehicle in the accident, names and address of driver, owner and insurer of the said vehicle and all other statements made in these paras are not within our personal knowledge and hence the same are denied hereby and applicants is hereby called upon to prove all these statement by leading appropriate evidence; that the applicants are not entitled for getting compensation from

owner of the vehicle since the deceased himself was the driver of Motorcycle No.GJ-11-CN-3773; that the primary responsibility of the Opposite party of the Motor Vehicle to pay compensation to the third party victims of the accident arising out of use of the motor vehicle and submitted that as per sec. II liability to Third parties, sub sec. 3 of Insurance Policy by way of contract of indemnity, the insurance company insures the liability of the driver towards third party hence the petition is not legally maintainable and it is liable to be dismissed.

5. The Claimants have previously sought multiple adjournments to produce the documentary evidence vide Exh. 17, 18, 20, 24, 25, 26, and 27, all of which were granted. Notably, while granting the adjournment vide Exh. 26, the Court specifically stated that it was the 'last date' allowed. Despite this, a further adjournment was granted vide Exh. 27. Today, the Claimants have again moved an adjournment application vide Exh. 28, which is hereby rejected."
6. Ld. Advocate for the Opponent No.2 has filed the written argument vide Exh.-23 and It is respectfully submitted that the present claim petition filed under Section 164 of the M.V. Act is not maintainable against the Insurance Company. The deceased, Aakash, was driving the motorcycle (No. GJ-11-CN-3773) owned by his Brother (Opponent No. 1); thus, in the eyes of the law, the deceased "stepped into the shoes of the owner." Since the

policy is a "**Liability Only Policy**," it is designed to indemnify the owner against claims from "Third Parties." A victim cannot simultaneously act as the claimant and the recipient/insured. As the deceased was neither a third party nor was any additional premium paid for personal accident cover for the borrower-driver, the risk is not covered statutorily under Section 147 or contractually liability under the insurance policy; Furthermore, the primary liability to pay compensation under the Motor Vehicles Act rests upon the owner for a tortious act. In the absence of a second offending vehicle being identified or joined, and since the deceased was the driver of the very vehicle insured by this respondent, there is no underlying liability for the owner to pay himself or his legal heirs. Consequently, the Insurance Company cannot be directed to indemnify a liability that does not legally exist. As the deceased was the driver-cum-borrower of the vehicle, the petition fails the fundamental test of "Third Party" risk, making the insurer a non-necessary party to these proceedings.

The Opponent No. 2 places reliance on the following settled legal principles:

- ***Ningamma & Ors. vs. United India Insurance Co. Ltd. (2009 ACJ 2020)***: The Hon'ble Supreme Court held that LR's of a person driving a borrowed vehicle are not entitled to claim compensation under Sec. 163-A as the borrower steps into the shoes of the owner.

- ***New India Assurance Co. Ltd. vs. Sadanand Mukhi (2009) 2 SCC 417***: Confirmed that the insurer is not liable for the death of the owner or the son of the owner driving the vehicle under a statutory policy.

- ***National Insurance Co. Ltd. vs. Hiteshbhai Sureshbhai Patel (2011 (2) GLR 1007)***: The Hon'ble Gujarat High Court held that the driver of a vehicle is not a "Third Party," and the insurance company is not liable to pay compensation for his death or injury in a self-accident.

7. In view of above pleadings, the following issues have been framed at Ex.16 & Further Order at Exh.-16 for the determination of this claim petition.

1. Whether the claimant who are legal representatives of a deceased driving a vehicle after borrowing it from the owner meets with an accident without involving any other vehicle would be entitled to claim compensation under Section 164 ?

2. Whether it is proved that the deceased sustained injuries and succumbed to death on account of rashness or negligence in driving on the part of the driver of the vehicle involved in the accident ?

3. What amount, if any, the claimants are entitled to by way of compensation and from which of the opponents ?

4. What Order ?

8. My findings on the above issues are as under: -
- (1) As per final order.
 - (2) As per final order.
 - (3) As per final order.
 - (4) As per final order.

:: REASONS ::

9. **Issue No.1 for Negligence:-**

Negligence is implicit in an accident. The liability to pay compensation arises only on proof of negligence and the claimant is to show that the driver of the offending vehicle was negligent or at fault. However, the claimant is not required to prove factum of negligence as it is required to be proved in a criminal case.

The claimant has not produced any documentary evidence or oral evidence to prove the contention of the claim petition.

10. The Opponent No.2 has filed written argument vide Exh.-23, and argued the matter as per the written statement and has prayed to reject the claim petition against it as the it is found that the claimant was himself negligent and the accident occurred only on account of his negligence, therefore the claimant cannot claim any compensation. Consequently, the Insurance Company cannot be directed to indemnify a liability that does not legally exist. As the deceased was the driver-cum-

borrower of the vehicle, the petition fails the fundamental test of "Third Party" risk, making the insurer a non-necessary party to these proceedings.

11. In the Motor Vehicles (Amendment) Act, 2019, Section 164 has replaced the old Section 163A. The issue of negligence under Section 164 is no longer a matter of debate or evidence. Below is the legally phrased "Issue of Negligence" and its reasoning, adapted to the new Act.

"In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt 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."

Irrelevance of Negligence: In view of the settled legal position (***relying on United India Insurance Co. Ltd. vs. Sunil Kumar***), the insurer is strictly prohibited from raising the defense of "negligence" or "contributory negligence" in a proceeding under Section 164 or 163-A. Even if negligence is mentioned in the Complaint (FIR), the Claim Petition, or the Written Statement, it is immaterial to the adjudication of a claim under this section.

12. The second question for determination is which of the Opponents is liable to compensate the heirs of the deceased. Regarding this question, it is an admitted fact

that at the time of the accident, the deceased, was riding the motorcycle. Critically, it is admitted that the motorcycle belonged to a Opponent No. 1, who is the Brother of the deceased, and the deceased had borrowed the vehicle. Consequently, in view of the settled legal position, the deceased had ***“stepped into the shoes of the owner' of the vehicle.”***

13. The Insurer argues that the deceased was not a "Third Party" as defined under the Motor Vehicles Act. Relying on **Ningamma & Anr. vs. United India Insurance Co. Ltd. (2009 ACJ 2020 SC)**, the company contends that since the deceased borrowed the motorcycle from a relative, he ***"stepped into the shoes of the owner."*** Legally, an owner cannot be both the claimant and the person liable ; therefore, a claim under Section 164 is not maintainable.

Absence of "Third Party" Status (The "Shoes of the Owner" Doctrine): The primary reason for rejection is that the deceased, Aakash, cannot be classified as a "Third Party" under Section 147 of the M.V. Act. Since the deceased was the brother of the owner and was driving the vehicle with his brother's permission, he effectively **stepped into the shoes of the owner**. Under the law of indemnity, an owner (or the person acting as the owner) cannot be both the "tortfeasor" (the one who committed the act) and the "claimant" (the one seeking compensation)

against their own insurance policy.

The Hon'ble Supreme Court in the case of **Ningamma vs. United India Insurance Co.** has settled that Section 163-A (164) is intended to provide relief to victims of accidents involving *another* offending vehicle where negligence does not need to be proven. However, if the accident occurs while the deceased is driving the borrowed vehicle himself—without the involvement of any other identified vehicle—the legal heirs are not entitled to claim compensation from the insurer of that very vehicle. The contract of insurance is to protect the owner from liability toward *others*, not toward himself.

Upon perusal of the conditions of insurance policy produced vide Mark 22/1, it is observed that the cover is limited to "**Two Wheeler Liability Only.**" This statutory policy covers only the risks mandated by Section 147, which excludes the owner/driver. Since the claimants failed to prove that an additional premium was paid for "**Owner-Driver Personal Accident Cover**" or that such cover extends to a borrower who is not the registered owner, the Insurance Company has no contractual obligation to indemnify the death of the driver in this specific instance.

The incident is treated as a **self-accident**. As held in **New India Assurance Co. Ltd. vs. Sadanand Mukhi**, the Insurance Company is not a general hit-and-run insurer for the owner's own family members when the insured vehicle itself is the only vehicle involved in the mishap.

14. In case on hand it is admitted fact that Motorcycle bearing No.GJ-11-CN-3773 was insured to the opponent no. 2 but at the time of the accident the Motorcycle was being driven by the deceased himself. The deceased had borrowed the said Motorcycle from the owner I.e Opponent No.1. The Hon'ble The Supreme court and Hon'ble High Court has settled that when a person riding a vehicle after borrowing it from the owner meet with the accident without involving any other vehicle would not be entitle to claim compensation u/s. 163-A or 164 (New) of the M.V.Act.

Section 147 of the M.V.Act, in simple term, outlines the requirements for insurance policies related to Motor Vehicles, particularly focusing on '**third party liability**'. It essentially says that a valid insurance policy must cover death bodily injuries or property damage to third party caused by the insured vehicle. The cure of section 147 is insuring that if someone's vehicle harms to someone else (a third party), their losses are covered by his/her insurance.

Furthermore, it is a settled principle of law that for a claim to be maintainable against an Insurance Company, there must be a valid contractual obligation to indemnify the owner. Therefore, this Tribunal finds that the **claim lacks maintainability** against the Insurance Company, and the petition is hereby dismissed for want of statutory and contractual liability." In the circumstances the Insurance Company has nothing to indemnify the opponent no. 1. Hence, this petition is not maintainable and the Insurance Company cannot be fixed with any liability.

15. "In view of the settled legal position and the factual matrix of the case, it is held that since the deceased was the brother of the owner and was driving the vehicle at the time of the accident, he effectively **stepped into the shoes of the insured**. Consequently, the deceased cannot be categorized as a 'Third Party' under Section 147 of the M.V. Act. Following the ratio laid down by the Hon'ble Supreme Court in **Ningamma vs. United India Insurance Co. Ltd.**, a claim under Section 164 is not maintainable when the victim is the borrower-driver of the insured vehicle and no other offending vehicle is involved. As the insurance policy in question is a 'Liability Only' policy and does not cover the personal risk of the owner-driver's family in the capacity of a third party, this Tribunal finds no legal or contractual basis to hold the Insurance Company liable for compensation.

16. Under the facts and circumstances discussed hereinabove, I pass following final order for issue nos. 1 to 4 in interest of justice:

:: ORDER ::

1. This claim petition No. 08/2024 hereby stands rejected.
2. The party shall bear their own cost.
3. Award be drawn accordingly.

Signed and pronounced in open Court today, this 08th day of April, 2026.

Date : 08/04/2026.
Place: Keshod.

#PK

[Harsh Balkrishna Trivedi]
M.A.C.T. [Aux.] and
Additional District Judge,
Keshod. Dist. Junagadh.
[UIC No. GJ-00576]