

Presented on : 30.08.2022  
Decided on : 22.04.2026  
Duration : 3-Y, 7-M, 21-D.

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL,**  
**MUMBAI.**

(Presided Over by Smt. R. R. Patwari, Member, C.R. No.5.)

**APPLICATION NO.1217 OF 2022**

**EXH.**

Mr. Pankaj Prabhu Kumar Gupta  
aged : 19 years.  
R/A.Mahatama Jyotibha Phule Nagar,  
Room No.21, Budwar Park, Captain Prakash,  
Pethe Marg, Cuff Parade, Colaba Mumbai-400005  
PH.7045504653  
...Claimant.

**VERSUS**

Dr.Gaurav Mahajan  
552 A, New Bank Colony,  
Pathankot, Punjab, Pathankot  
Punjab-145001.  
(Owner of offending vehicle)  
...Opposite Party.

**AND**

National Ins. Co.Ltd.  
TP HUB, National Insurance Building,  
1<sup>st</sup> floor, 14, J.T.Road,  
Churchgate, Mumbai-400020  
Policy No.42220031216160000308  
Valid from: 07.08.2021 to 06.08.2022  
... Insurer.

**Appearance:**

Advocate T.R.Shingte - for the Claimant.  
Advocate A.A.Hamdani, for the Opposite Party.  
Advocate P.B.Nair- for the Insurer.

**Claim-** Under Section 164 of the Motor Vehicles Act, 1988.

**JUDGMENT**

**(Delivered on 22<sup>nd</sup> April, 2026.)**

This is an application for compensation under Section 164 of the Motor Vehicles Act, 1988.

**Briefly stated facts are:**

2. On 19.06.2022, the claimant was riding pillion on the motorcycle No.MH-04-EE-8123 driven by his friend carefully, with due caution. At around 22.00 hrs., a motor Car bearing No. DL-10-CD-4965 came from opposite direction at high speed, in rash and negligent manner and struck their motorcycle. As a result of the impact, claimant and his friend fell off the motorcycle and suffered injuries.

3. The accident was occurred at Cuff Parade, within the jurisdiction of the Cuff Parade Police Station, Mumbai. Therefore, Crime No.426/2022 dated 22.06.2022 came to be registered in the said police station against driver of the motor Car bearing No. DL-10-CD-4965 (hereinafter referred to as “the Car”) for causing the accident due to rash and negligent driving.

4. At the relevant time of the accident, the claimant was 19 years old, a student (SYJC) of Hinduja College, Mumbai. He sustained laceration over right foot over the posterior aspect of ankle, laceration over 2<sup>nd</sup> toe, right side Achilles tendon rupture and other injuries in the accident. He was admitted in the J. J. Hospital from 20.06.2022 to 04.07.2022 and was discharged after treatment. He incurred medical expenditure of Rs.95,000/-

for treatment. He has suffered mentally, physically and financially. Therefore, he has claimed just compensation, under pecuniary and non-pecuniary heads.

5. The Car belonged to the opposite party and it was insured with the insurer, the National Insurance Co. Ltd. The insurance policy of the Car was effectively in force on the date of the accident on 19.06.2022. Therefore, the owner and the insurer are liable to pay compensation, jointly and severally.

6. The opposite party filed written statement vide Exh. 11 and resisted the claim-application on the ground that the accident occurred due to sheer negligence of the motorcycles as they were three, riding the motorcycle drunk, without wearing helmet and without holding driving license. The motorcycle rider was riding the motorcycle at a high speed, he drove the vehicle on wrong side and struck right side of the Car. Thus, the accident occurred due to rash and negligent driving of the motorcycle and there was no negligence at all on the part of his vehicle-Car. The driver of his Car helped all the motorcycle riders to the Asvini Hospital immediately and provided them medical treatment and reported the accident to the Cuff Parade Police Station that the accident occurred due to motorcycle rider. Therefore, neither owner nor insurer of the Car are liable to pay any compensation. It is further contended that the claimant has sustained only minor injuries and therefore, he is not entitled to any compensation as claimed.

7. The insurer, National Insurance Co. Ltd. has filed written statement vide Exh.15 and resisted the claim-application

on the ground that the accident occurred due to rash and negligent driving of the motorcycle and there was no fault at all on the part of the driver of the insured vehicle-Car. There is no cause of action arose to the claimant against the insurer. The claim-application is bad for non-joinder of driver, owner and insurer of the motorcycle which was at fault. It is further contended that the insurer is liable only when there is strict compliance of the terms and conditions of the insurance policy.

8. The insurer has disputed age and occupation of the claimant as also the accidental injuries, hospitalization and any loss suffered by him on account of the accidental injuries. According to it, the claim is liable to be dismissed.

9. In order to substantiate the claim, the claimant has examined himself as AW1 vide Exh. 17 and Dr. Naresh Khanna as AW2 vide Exh.26 and closed evidence vide Purshis Exh.29. The claimant has relied upon the following documents:

<b>Sr. No.</b>	<b>Documents</b>	<b>Exhibits</b>
1.	Certified Copy of FIR	Exh.18
2.	Certified Copy of Spot Panchanama	Exh.19
3.	Certified Copy of statement of claimant dated 19.06.2022 given to the police	Exh.20
4.	Certified copy of the Insurance Policy	Exh.21
5.	Verified copy of Adhar Card	Exh.22
6.	Discharge Summary of Grant Government Medical College and Sir J.J. Group of Hospitals	Exh.23
7.	Disability Certificate issued by Dr. Khanna	Exh.27

10. In support of his defence, the opposite party examined himself as OW1 vide Exh.32, driver of his vehicle Dr. Hardeep Kaur as OW2 vide Exh.40 and closed evidence vide Exh.41 and closed evidence vide Purshis Exh.41. The opposite party has placed reliance on the following documents:

<b>Sr. No.</b>	<b>Documents</b>	<b>Exhibits</b>
1.	Certified Copy of FIR	Exh.33
2.	Certified Copy of Examination and Injury Report of the motorcycle driver.	Exh.34
3.	Certified Copy of Certificate of Alcohol Test of driver of the motorcycle No.MH-04-EE-8123	Exh.35
4.	Certified Copy of Certificate of Alcohol Test of driver of the Car No. DL10-CD-4965	Exh.36
5.	Certified Copy of final report filed in Crime No.426/2022.	Exh.37
6.	Verified copy of driving license and Aadhar card of driver of the Car (OW2)	Exh.38 colly
7.	RC Book of the vehicle-Car	Exh.39

11. The insurer, has not led any evidence in support of its contentions.

12. I have heard learned Advocates appearing for the parties and also gone through the written notes of arguments filed by the claimant vide Exh.43 and by the opposite party vide Exh.45. They have argued according to their pleadings. I have perused the record.

13. Learned Advocate appearing for the claimant has submitted that the accident occurred due to rash and negligent driving of the offending Car and there was no negligence at all on the part of the motorcycle rider. Moreover, the claimant was riding pillion, therefore, he cannot be held responsible for the accident. The claimant has sustained serious injuries in the accident and therefore he is entitled to compensation. The defense of opposite side parties is that the accident occurred due to wrongful and negligent act of the motorcycle rider and therefore the claimant is not entitled to any compensation. However, since the claim is under Section 164 of the M.V. Act, which is based on No Fault Liability, the defence of fault is not available to the owner or the insurer against the claimant. In such claims, the claimants are required to prove the accident arising out of use of motor vehicle and not accident caused by motor vehicle. The liability of owner and insurer is absolute and therefore they be held liable to pay compensation to the claimant.

14. Learned Advocate for the claimant has placed reliance on the following judgments :

- 1) Riyana Ishaque Kazi and ors. Vs. Pushpa R. Sheva and another, 2015 ACJ 2539
- 2) United India Insurance Co. Ltd. Vs. Sunil Kumar and Anr., 2018 ACJ 1
- 3) Shivaji and Anr. Vs. Divisional Manager, United India Insurance Co. Ltd and Ors., 2018 ACJ 2161
- 4) Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd. 2004 ACJ 934
- 5) Khemchand Vs. Uma Devi and Ors., 2011 ACJ 74
- 6) Mohammed Siddique and another Vs. National Ins. Co. Ltd. And Ors., 2020 ACJ 751

7) Manoj Rathaur Vs. Anil Raheja and Ors., 2012 ACJ 1459

15. On the other hand the Advocate appearing for opposite party has submitted that the claimant and his two friends were riding on one motorcycle at the time of accident. All were drunk. None of them were wearing helmet. The motorcycle driver was not holding driving licence. Thus, the motorcycle riders have committed breach of traffic rules in all possible ways. The driver of Car is a doctor. She was driving the vehicle with due care and caution. She did not give dash to a motorcycle but the motorcycle driver gave dash to her vehicle. Therefore, the driver of the Car cannot be held responsible for the accident. The claimant has not sustained any serious injury in the accident to claim compensation. Therefore, his claim-application is liable to be dismissed.

16. Learned Advocate for opposite party has placed reliance on the following Judgments :

- 1) Minu B.Mehta Vs.Balkrishna (AIR 1977 SC 1248)
- 2) Oriental Insurance Co.Ltd. Vs. Meena Variyal (2007) 5 SCC

17. The Advocate appearing for the insurer has submitted that the accident occurred due to negligence of the motorcycle rider and there was no fault at all on the part of driver of the Car. He further submitted that the insurance policy was issued subject to terms and conditions and since, the insured has committed breach of policy terms and conditions, the insurer cannot be held liable to pay compensation.

18. Considering the rival contentions, learned Predecessor framed following issues vide Exh.16 on 20.09.2024. I have recorded my findings thereon for the reasons to follow.

Nos.	Issues	Findings
1	Whether the applicant proves that he sustained grievous injuries and permanent disability in the vehicular accident occurred on 19.06.2022 at about 22.00 hrs. at Cuff Parade, Mumbai, due to rash and negligent driving of motor car no.DL-10-CD-4965 ?	Yes.
2	Whether the application is bad for non joinder of the driver of the motor cycle no.MH-04-EE-8123 ?	No.
3	Is the applicant entitled to compensation ? If yes, to what extent and from whom ?	Yes, as per final order.
4	What order ?	As per final order.

### REASONS

**Issue Nos. 1 to 3:** [All issues are interlinked hence, taken together for discussion to avoid repetition.]

19. The occurrence of the accident and involvement of the Car in the accident are not disputed. The dispute is to the extent of allegations of rash and negligent act of driver. There are counter allegations. According to the claimant, the accident occurred due to rash and negligent driving of driver of the Car whereas, according to the opposite party and the insurer, the accident had occurred due to rash and negligent driving of driver of the Motorcycle.

20. The claimant has filed the claim under Section 164 (corresponding old Section 163-A) of the Motor Vehicles Act, 1988. In any claim for compensation made under Section 164 (1) of the Motor Vehicles Act, 1988, the claimant is not 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 negligent or default of the owner of the vehicle or vehicles concerned, or of any other person. Therefore, so far as issue regarding rash and negligent act of the driver of the Car is concerned, it is expected to prove only involvement of the said Car in the accident in question.

21. In the case of *Riyana Ishaque Kazi and others vs. Pushpa R. Sheva and another, 2015 ACJ 2539*, the Hon'ble **Bombay High Court** has observed that,

*3. There is no dispute that the principle of no fault liability is in favour of the applicant against the owner/driver of the offending vehicle when application is filed under Section 163-A of the Act. The applicant is absolved from the burden of proving any negligence on the part of the driver or the owner of the vehicle concerned."*

22. It is alleged by the opposite parties that the driver of the motorcycle was driving the vehicle with two persons on pillion seat, drunk and without holding driving license. He has committed breach of traffic rules. Therefore, the claimant is not entitled for compensation.

23. The FIR regarding the accident was lodged by both the drivers of vehicles involved in the accident. In the FIR (Exh.18) filed by Joshua Jonson, the driver of the motorcycle No. MH-04-EE-8123, it is stated that on 19.06.2022, the informant

Joshua and his friends Pankaj Gupta (the claimant herein) and Melwin Swami had bear and then went to R. C. Church, Nofra by motorcycle No. MH-04-EE-8123. The informant was driving the said motorcycle without having any driving license and along with his two friends on pillion seat. The FIR sufficiently indicates there was total breach of motor vehicle rules committed by the motorcycle riders. They were riding three on a motorcycle. All were drunk. The driver was not holding driving license. It is, therefore, contended by the opposite parties that they cannot be entitled to get any compensation for their own wrongful and negligent act. However, when the claim is under Section 164 (old Section163-A) of the Act, defence of 'fault' is not available to the owner/insurer against the claimant. That apart, the claimant in this case was not driving the vehicle but was riding pillion.

24. In the case of *Riyana Ishaque Kazi and others vs. Pushpa R. Sheva and another, 2015 ACJ 2539*, similar issue was raised before **the Hon'ble Bombay High Court** that "*Under Section 163-A claimant need not prove or establish that the driver of the offending vehicle was at fault or negligent. If the insurer or owner takes stand that victim himself was negligent, then is it permissible under section 163-A or not?*". While addressing the issue, the Hon'ble Bombay High Court has observed in paragraph No. 13 as follows,

*'13. If such defence is allowed to be taken by the owner of the vehicle or insurance company, then by way of denial, the victim may have to take a stand that the driver or the owner of the driver was negligent. A defence may involve attack in such situation. A shield of rebuttal automatically gets converted into a sword of attack. While taking stand*

*of rebuttal, one cannot just block the attack and while arresting the attack, in most of the situations it would lead in proving the fact of negligence or default of the driver or owner of the offending vehicle. If by way of rebuttal a claimant is required to prove wrongful act or negligence of the driver/owner of the vehicle concerned, then that particular defence can be restricted as it is crossing a border of no fault liability which is a privileged area of the claimant protected under section 163A of the Act. There may be a very few instances that a rebuttal may not lead to prove neglect of the owner/driver of the other vehicle, however, they are minor aberrations for which purposive interpretations of the statute cannot be sacrificed. Thus, I am of the view that under section 163A, unlike sub-section (4) of Section 140 of the Act, there is no express bar on the respondents to take defence of default or neglect of the victim. However, there is an implied bar due to principle of no fault liability which runs in favour of the victim and against the respondents. Therefore, by virtue of this implied bar, the defence of neglect or default available against the victim to the insurance company or the owner is non-available as the claimant in rebuttal is required to prove a default or wrongful act of the owner or driver of the vehicle concerned.”*

25. In the case of ***United India Insurance Co. Ltd. vs. Sunil Kumar and another, 2018 ACJ 1***, the Hon'ble Supreme Court has observed in paragraph Nos. 8 and 9 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 under-*

*stand 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 163A of the Act which would not only be self-contradictory but also defeat the very legislative intention.*

*9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim..”*

26. In the case of ***Shivaji and another vs. Divisional Manager, United India Insurance Co. Ltd. and others, 2018 ACJ 2161***, the Hon’ble Supreme Court has observed in paragraph No. 5 as follows,

*“5. The issue which arises before us is no longer res integra and is covered by a recent judgment of three judges of this Court in United India Insurance Co.Ltd. V.Sunil Kumar and Anr.,<sup>1</sup> wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is “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”. The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163A of the Act, it would “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”. Consequently, it was held that in a proceeding under Section 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation.”*

27. In the case of ***Khem Chand vs. Uma Devi and others, 2011 ACJ 74***, the Hon’ble High Court of Himachal Pradesh at Shimla observed in paragraph No. 4 as follows,

*“4. The law is very well settled that a claim which falls within the purview of an Act Policy, i.e., a liability falling within the ambit of Section 147 of the Motor Vehicles Act, 1988 ("the Act") can only be contested by the insurance company on the grounds available to it u/s 149 of the Act. It is not permitted to contest the proceedings on any other ground. Intoxication of the driver is not a ground available to the insurance company u/s 149 of the Act. Therefore, the liability, which is statutory u/s 147 of the Act, has to be satisfied by the insurer. It may be clarified that in case the insurer in addition to the liability which it is bound to cover under the Act covers other liability then in case of such extended liability, it may raise the defenses available to it as per terms of the policy, but as far as statutory liability is concerned, the insurer has no authority to incorporate any term in the policy which is not contemplated in terms of Section 149 of the Act. Therefore, the insurance company could not have been permitted to raise this defense and it could not be permitted to recover the awarded amount from the insured.”*

28. Thus, considering the ratio laid down by the Hon’ble Supreme Court and various Hon’ble High Courts, it is clear that the claim under Section 163-A (new Section 164) of the Motor Vehicles Act is based on no fault liability and defence of ‘fault’ is not available to the owner/insurer against the claimant and the

adjudication is required to be made without any requirement of any proof of negligence of the driver/owner of the offending vehicle. It is therefore, not necessary to discuss the evidence led by the opposite party to prove negligence on the part of the motorcycle riders.

29. In so far as injuries suffered by the claimant in the accident are concerned, admittedly, after the accident driver of the Car had helped all the persons riding the motorcycle to the Asvini Hospital for treatment. The owner and driver of the Car are husband and wife, respectively and both are doctors. Both of them have admitted that the claimant had sustained injury in the accident. However, they have disputed that the claimant has suffered any serious or grievous injury.

30. The claimant has produced discharge summary and short case record of the Grant Govt. Medical College & Sir JJ Group of Hospitals, Mumbai (Exh.23) where he was admitted from 20.06.2022 to 04.07.2022 which show he had suffered right tendo Achilles injury and he was operated for Achilles tendon repair right side on 24.06.2022. The short case record shows the claimant was advised strict bed rest for three months and no weight bearing on the right lower limb for three months.

31. The claimant has examined Dr. Naresh Khanna (AW2) who has issued disability Certificate (Exh.27) after examining the claimant on 12.01.2023 for assessment of physical disablement suffered by him on account of the accidental injuries. AW2 has stated in his evidence affidavit that the claimant has suffered laceration over right foot, posterior aspect of ankle, tendo Achilles not intact, laceration over 2<sup>nd</sup> toe plantar

aspect. The claimant was operated in the form of right-side Achilles tendon repair as he had suffered right side Achilles tendon rupture. On clinical and radiological examination, AW2 found the claimant has suffered grievous injury and permanent partial physical disability to the extent of 34%. In cross-examination, AW2 has admitted that the claimant has not sustained fracture or any bony injury. However, he has denied the suggestion that the claimant has not suffered any kind of physical disablement. Apart from that, nothing contrary to the version of AW2 could be brought on record.

32. OW1, the opposite party (owner of the Car) has stated in his cross-examination that the term 'rupture' means 'break'. He further stated that rupture of bone is serious, not the rupture of vein. He or OW2 (driver of the Car) have not brought on record anything to show that the injuries suffered by the claimant are minor in nature and would not result in permanent physical disablement. Therefore, considering the medical evidence brought on record by the claimant, his longer period of admission in the hospital, physical disablement suffered by him and that he was strictly advised complete bed-rest for three months, he is entitled for a compensation of a sum of two and a half lakh rupees as provided under Section 164 (1) of the Motor Vehicles Act, 1988. The claimant has stated on affidavit that apart of the instant claim-application, he has not filed any other claim-application seeking compensation in respect of the said accident in any other Court or Forum. I have answered all the issues accordingly.

33. The claimant has not produced his bank account details and photocopy of bank passbook duly verified by his banker. Therefore, it is necessary to give alternative directions to the opposite party and the insurer to deposit the amount. In the result, I proceed to pass the following order,

**ORDER**

1. The claim-application is allowed with cost.
2. The opposite party and the insurer shall pay, jointly and severally, to the claimant Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand Only) along with interest @7.5% from the date of the application till realization of the entire amount.
3. The amount of compensation be transferred directly in the bank account of the claimant, as above, within a period of six weeks from today.
4. The Claimant to provide particulars of his separate bank account along with the requisite documents in support thereof, within a period of two weeks from today.
5. In case the claimant fails to furnish particulars of his bank account and requisite documents within the stipulated period, the opposite party and/or the insurer, as the case may be, are at liberty to deposit the compensation amount in the bank account of this Tribunal by NEFT/RTGS, in compliance of this order. The details of the bank account of this Tribunal are as under:

<b>Account Name</b>	MOTOR ACCIDENT CLAIMS TRIBUNAL MUMBAI
<b>Account No.</b>	00000040777482356

**IFS Code** SBIN0030002

**MICR Code** 400002273

6. The Accounts Officer, MACT, Mumbai shall transfer the compensation amount in the bank account of claimant, by NEFT/RTGS, on due verification and as per rules, after furnishing necessary details by the claimant as follows:
  - a) Full name and address,
  - b) Name of Bank and Branch,
  - c) Bank Account Number,
  - d) Bank IFSC code,
  - e) Copy of first page of bank passbook containing photograph of account holder duly attested by the concerned bank, and
  - f) Self attested copies of Aadhar card and PAN card.
7. Pending interim applications, if any, in this proceeding stand disposed of.
8. The claimant shall deposit deficit court fees, if any, within 8 days, from this order.
9. Award be drawn accordingly.

Sd/-

Date: 22.04.2026.

(Smt. R. R. Patwari),  
Member, C.R.No.5,  
M.A.C.T., Mumbai.