M.A.C. Case No. 19 of 2017 (290 of 2017)

Order No. 44
04.06.2026

Parties file their respective hajiras. Today, the case is fixed for hearing of application for maintainability filed by the OP No. 2 and W.O. if any.

The petitioner files written objection. Copy served.

Heard both sides. Considered.

The Ld. Advocate for the OP/Insurance Company submits that the claimant has filed this case for the death of her son who is the Opposite Party No. 1. The said deceased is the owner and insured of the vehicle. He is not a third party as per the definition of the M.V. Act. The Ld. Advocate for the Insurance Company referred Section 165 of the M.V. Act and submits that the instant application is not maintainable as the deceased/victim is the owner and insured of the vehicle involved.

The Ld. Advocate for the petitioner, by written objection, submits that the claimant has filed this case for the death of her son who is the victim of this case though the said son was the owner and the rider of the said vehicle. It is submitted that the status of the victim is different than the owner of the vehicle. As such, the instant application is maintainable. In support of his submissions, the Ld. Advocate referred the case-law in the case of Bimalesh and others Vs. New India Assurance Company Ltd., reported in (2010) 4 WBLR (SC) 64.

After hearing the parties, I have gone through the application u/s 163A of MV Act filed by the claimant and the petition for maintainability of the case and its written objection as well as the case-law filed by the Ld. Advocate. It is seen that the claimant, being the mother of the victim, filed this case, claiming compensation for the death of the victim against the owner of the vehicle, who is the victim in this case and the Insurance Company with whom the vehicle was insured.

It is seen that the OP No. 1, being the dead person, has been made party in the present case and the summon has not yet been served. The Insurance Company has claimed that as the victim himself was the owner and insured of the vehicle and not a third party, the case is not maintainable.

On perusal of the case-law, it is seen that the maintainability question with regard to the instant application can be determined along with the other issues involved in this case as the Insurance Company has not disclosed that the insurance was only for the third party interest. In this context, as the issues are required to be framed and can be decided in the light of the evidence produced by the parties, I am of the view that the petition filed by the insurance company at this stage is required to be disposed of with liberty to the OP/Insurance Company to raise the question of maintainability at the time of trial.

In doing so, the petition for maintainability is hereby disposed of on contest without any order as to cost, giving liberty to the Insurance Company to raise the question at the time of trial. As the OP No. 1 is a dead person, the petitioner is hereby directed to take proper steps by the date fixed.

To 31.08.2026 for steps and framing of issues.

Dictated and corrected by me.

Judge, 3rd M.A.C. Tribunal,
Burdwan.

Judge, 3rd M.A.C. Tribunal,
Burdwan.