HC-KAR

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 6TH DAY OF JULY 2026

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO.106481 OF 2024 (MV)

BETWEEN:

CHOLA MS GENERAL INSURANCE COMPANY LTD.,
REPRESENTED BY THE MANAGER,
BRANCH AT # 208, CTS 4818/9B,
NABBUWALE BUILDING,
BEHIND S.P.OFFICE, S.P.OFFICE ROAD,
SHUBASHNAGAR,
BELAGAVI-590016,
NOW REPRESENTED BY ITS
AUTHORISED SIGNATORY.

...APPELLANT

(BY SRI.SUBHASH J. BADDI, ADVOCATE)

AND:

1. SHRI. R. SHIVANNA
S/O. SRI. H.RUDRAPPA,
AGE: 55 YEARS,
OCC: PHOTOGRAPHER.

2. SMT. G.S.GEETHA
W/O. SRI. R.SHIVANNA,
AGE: 48 YEARS, OCC: HOUSEHOLD WORK,
BOTH ARE R/O. #224, JAIN GALLI,
PASCHAPUR, TQ: HUKKERI-591309.

3. SRI. SAMMED A.GHALI
AGE: MAJOR, OCC: NOT KNOWN,
R/O. H.NO.768, JAIN GALLI,
A/P. PACHHAPUR, TQ: HUKKERI,
DIST: BELAGAVI-591309.

...RESPONDENTS

(BY SMT.GEETA K.M. @ PAWAR, ADVOCATE FOR R1 AND R2;
NOTICE TO R3 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED 26.07.2024 PASSED IN MVC NO.315/2021 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE AND ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, BELAGAVI, AWARDING COMPENSATION OF RS.5,00,000/- WITH INTEREST AT 8 PERCENT P.A. FROM THE DATE OF PETITION TILL ITS REALIZATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.06.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, COURT PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE MRS JUSTICE GEETHA K.B.

CAV JUDGMENT

1. This is the appeal filed under Section 173 (1) of the Motor Vehicles Act, 1988, challenging saddling liability on the insurer by passing Judgment and Award dated 26.07.2024 in MVC No.315/2021 on the file of V Additional District and Sessions Judge and Additional MACT, Belagavi (hereinafter referred to as 'the Tribunal', for short) by the insurer/respondent.

2. Parties would be referred with their ranks as they were before the Tribunal for the sake of convenience and clarity.

3. The claim petition was filed under Section 164 of the Motor Vehicles Act, 1988, seeking compensation on account of death of the son of claimants Sri.Jeevankrishna in the road traffic accident involving motorcycle bearing registration No.KA-49/Y-5828 on 08.04.2021 in between 08.30 and 08.45 p.m. at Mavanur – Paschapur Road.

4. The case of the claimants in nutshell is that, the deceased, who was the rider of motorcycle, had lost control over the same, dashed against electric pole and caused the accident, sustained injuries and succumbed to those injuries at the spot. The first respondent is owner and second respondent is the insurer of the said Bajaj Pulsar vehicle. Claimants have filed this claim petition under 'no fault liability'.

5. Second respondent filed its objection statement wherein it is admitted that the policy was in force as on the date of accident. But the liability is subjected to terms and conditions of the policy. The accident involving Bajaj Pulser vehicle, as pleaded by claimants, is because of the rashness and negligence of the deceased. Hence he being the *tortfeasor*, petitioners cannot claim compensation. They stepped into the shoes of the owner. He is not third party. Policy does not cover the risk of third party. There is

violation of terms and conditions of the policy. Hence he prayed for dismissal of the petition.

6. After framing issues, recording evidence, verifying the appeal papers, the Tribunal came to the conclusion that the accident has taken place due to rashness and negligence on the part of rider of the motorcycle; however, the rashness and negligence cannot be criteria to decide the petition under Section 164 of Motor Vehicles Act, 1988. The only point to be decided is whether the motor vehicle in question is involved in the accident, whether in use of said motor vehicle the accident has taken place. It is established that the accident has taken place due to use of the motor vehicle. Hence the Tribunal has awarded the compensation of ₹5,00,000/- as per Section 164 of the new Motor Vehicles Act, 1988 (2019 amendment).

7. Aggrieved by the said judgment, the appellant/insurer is before this Court.

8. Learned counsel for appellant Sri. Subhas J. Baddi, would submit that, claimants cannot be called as third party. In this regard learned counsel for insurer relied upon some judgments of Hon'ble Supreme Court and prayed for dismissal of the claim petition by allowing the appeal.

9. Learned counsel for respondent/claimant Smt. Geeta K.M. would submit that, there was valid insurance policy coverage to the owner of the motorcycle. Hence the claim of claimants is covered under the Act. Thus, relying on Section 164 of the amended Motor Vehicle Act, 1988 (2019 amendment), as the accident has taken place after commencement of the amended Act, the Tribunal has properly assessed the compensation at ₹5,00,000/-, which requires no interference. Hence prayed for dismissal of the appeal.

10. Heard arguments and records are perused.

11. The admitted facts are that the present petition is filed under Section 164 of Motor Vehicles act, 1988.

12. As per the recent judgment of Hon'ble Apex Court in the case of ***Ramkhiladi and Another vs. United India Insurance Co. Ltd.,***[1] it is held as under:

> *"A. Motor Vehicles Act, 1988 – 163-A and 147- Claim petition under S.163-A, held, not maintainable by borrower/permissive user of vehicle against owner and/or insurer of said vehicle, as such borrower/permissive user steps into shoes of owner, and owner cannot both be claimant and recipient -In a claim under S. 163-A, deceased/victim has to be a third party in relation to vehicle in question - Mere own-use of motor vehicle by owner/ borrower/permissive user does not entitle such person(s) to maintain S. 163-A petition against insurer of their own/borrowed vehicle - Owner/borrower /permissive users are not "third parties" in relation to their own/borrowed vehicle and hence are not covered by statutory insurance under S. 147 - Thus, claim of owner/borrower/permissive user would be*

[1] (2020) 2 SCC 550

limited to personal accident coverage re own-use of the vehicle, if any, strictly as per contract of insurance covering the borrowed vehicle

- Fact that S. 163-A claim is based on no-fault liability principle only means that fault or negligence or wrongful act, neglect or default of driver/owner of offending vehicle does not need to be established for award of compensation under S. 163-A/Sch. II- This does not mean that it is unnecessary to even file S. 163-A petition against driver/owner/insurer of offending vehicle which caused the accident

- Deceased driver was travelling in a vehicle (borrowed vehicle) which met with accident with another vehicle which was the cause of the accident (offending vehicle) - Appellant claimants claimed compensation from owner and insurer of borrowed vehicle - Though allegations of rash and negligent driving were made against driver of offending vehicle, no claim was made against driver/owner/insurer of offending vehicle

- Held, in present case, it is not established that deceased driver was in employment of owner of borrowed vehicle -

Therefore, deceased can be said to be borrower/permissive user of borrowed vehicle - Appellant claimants could have claimed compensation and/or filed claim petition under S. 163-A against driver, owner and insurance company of offending vehicle, deceased being a third party with respect to offending vehicle - However, no claim under S. 163-A was filed against driver, owner and/or insurance company of offending vehicle - It is an admitted position that claim under S. 163-A was only against owner and the insurance company of borrowed vehicle, which was borrowed by deceased driver from owner - Deceased driver cannot be said to be a third party with respect to the insured vehicle (borrowed vehicle) - Hence, claimants are restricted to personal accident cover strictly as per terms of insurance contract covering borrowed vehicle, which is sum of Rs 1 lakh - Therefore, deceased driver, who stepped into shoes of owner shall be entitled to a sum of Rs 1 lakh only with interest @ 7.5% p.a. from date of the claim petition till realisation - Tort Law Strict/No-fault liability (Paras 9 and 10)

B. Motor Vehicles Act, 1988 - S. 163-A - Fact that S. 163-A claim is based on no-fault liability principle only means that fault or *negligence or wrongful act, neglect or default of driver/owner of offending vehicle does not need to be established for award of compensation as per Sch. II - That does not mean that it is unnecessary to even file S. 163-A petition against driver/owner/insurer of offending vehicle which caused the accident - Hence, held, owner/borrower/permissive user cannot maintain S. 163-A claim in relation to use of their own vehicle - Tort Law - Strict/No-fault liability* ***(Paras 9 and 10)"***

13. It is the case of claimants that the deceased, who was the rider of motorcycle, had lost control over the same, dashed against electric pole and caused the accident, sustained injuries and succumbed to those injuries at the spot. Thus, claimant himself is a *tortfeasor*.

14. Under Section 164 of amended Motor Vehicles Act, 1988, claimant need not prove the rashness and negligence on the part of rider of the motorcycle. However, it does not mean that the *tortfeasor* himself can claim compensation. If the vehicle in

question is validly insured with the Insurance Company and if there is coverage of the rider/owner of the vehicle, then to that limited extent claimant would get the compensation under Section 164 of Motor Vehicles Act, 1988.

15. Thus, according to this provision the deceased has borrowed the vehicle from respondent No.1 or he was in permissive possession of the vehicle. Under those circumstances, he stepped into the shoes of the owner and thus according to ***Ramkhiladi's*** case cited supra the claimants are entitled for compensation under Section 164 of the Motor Vehicles Act, 1988.

16. The deceased was either the permissive user or borrower of the vehicle in question and thus can maintain the petition against the insurer only if there is policy coverage to owner cum rider of the vehicle.

17. Even though the judgment of *Ramkhiladi's* case cited supra is under Section 163-A of the Motor Vehicles Act, 1988, it is under 'no fault liability' it squarely applies to the present case which is filed under amended section 164 of the Motor Vehicles Act, 1988.

18. In the instant case, as per the terms and conditions of the policy, risk of owner-cum-driver is covered, that is personal accident cover for owner cum driver under Section IV (CSI) at ₹15,00,000; compulsory deductions under Section 1: ₹100 per claim.

19. Learned counsel for appellant would vehemently submitted that policy coverage is only to owner-driver and thus the person who was in permissive possession is not covered. However said argument is not acceptable one for the reasons assigned above.

20. Under amended Section 164 of Motor Vehicles Act, 1988, in case of death, his LR's are entitled for fixed

compensation of ₹5,00,000/- is to be awarded. Considering this aspect, the Tribunal has awarded compensation of ₹5,00,000/-. Hence the judgment and award of Tribunal needs no interference. Accordingly this Court passes the following:

ORDER

i. Appeal is ***dismissed.***

ii. Judgment and award Judgment and Award dated 26.07.2024 passed in MVC No.315/2021 on the file of V Additional District and Sessions Judge and Additional MACT, Belagavi, is hereby confirmed.

iii. Draw decree accordingly.

Sd/-
(GEETHA K.B.)
JUDGE

gab
CT:VH
List No.: 2 Sl No.: 2