

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

MA No. 24/2014

The New India Assurance Co. Ltd.

.....Appellant(s)/Petitioner(s)

Through: Mr. Vipin Gandotra, Advocate

Vs

Ghulam and another

..... Respondent(s)

Through: Mr. R. K. S. Thakur, Advocate for R-1.
None for R-2.

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

ORDER

31.03.2022

(Oral)

01. The claim petition under Section 166 of the Motor Vehicles Act has been filed by the respondent No. 1, before the Motor Accident Claims Tribunal, Ramban, who claimed himself to be the father of the deceased Manzoor Ahmad Malik, who was alleged to have died on 10.09.2007 in an accident at Shopian, while the deceased was himself driving the vehicle in rash and negligent manner as the driver of the said vehicle.

02. The appellant herein has filed a detailed reply, objecting maintainability of the claim petition. After considering the objections and pleadings the learned Tribunal framed the following issues:-

- 1) Whether deceased Manzoor Ahmad Naik died as a result of injuries received in a Road Traffic Accident on 10.09.2007 at Shopian, within the jurisdiction of Police Station Shopian, involving offending vehicle No.

JK01C/3355, driven by its driver in a rash and negligent manner? (OPP)

- 2) Whether the petitioners are entitled to receive compensation in terms of MV Act, and if so, to what extent and from whom? (OPP)**
- 3) Whether the offending vehicle was being driven at the time of accident in contravention of terms and conditions of the insurance policy and driver was not holding valid licence, thus respondent insurance company was not liable to pay compensation? (OPR)**
- 4) Relief?**

03. After perusing the record, the learned Tribunal passed the interim award dated 21.10.2013 amounting to Rs. 50,000/- under 'No Fault Liability'

04. Aggrieved of the said order, the appellant filed the instant appeal on various grounds, including one that the learned Tribunal had passed the order impugned against the provisions of law. It is averred that law is well settled law that a claim petition under Section 166 of the Motor Vehicles Act is an action in tort and the legal representatives of deceased have to establish that there was no negligence on the part of the deceased and the deceased was not responsible for the accident that claimed his life.

05. Mr. Gandotra, learned counsel for the appellant vehemently argued that once the record available on the file establishes that the deceased himself was a tortfeasor, his dependents cannot maintain a claim petition under Section 166 of Motor Vehicles Act, and, therefore cannot claim compensation from the owner of the vehicle or insurance company.

06. It is also asserted by Mr. Gandotra, learned counsel for the appellant that even otherwise the application under Section 163 A of the Motor Vehicles

Act, the Tribunal cannot grant interim maintenance. In support of his assertion, he has placed reliance upon the judgement passed by the Hon'ble Supreme Court in **Civil Appeal No. 9393 of 2019** decided on **07.01.2020** in case titled **“Ramkhiladi and others Vs The United India Insurance and others.”**

07. On the other hand, Mr. R. K. S. Thakur, learned counsel appearing on behalf of respondent No. 1 resisted the appeal and referred paragraph Nos. 10 & 64 of the three Bench judgement passed by the Hon'ble Supreme Court in **“Deepal Girishbhai Soni and others Vs United India Insurance Co. Ltd.”** reported in **(2004)5 SCC 385**. Paragraph Nos. 10 & 64 of this judgement is reproduced hereunder:-

“10. The learned counsel would urge that the said Act being a beneficent legislation deserves liberal construction and in that view of the matter the remedy available to a claimant against a tortfeasor for obtaining a 'just' compensation in terms of Section 166 of the Act cannot be taken away only because an interim award has been made in terms of Section 163-A of the Act as in the said proceeding actual loss suffered by the victim is not adjudicated upon and merely 'adequate compensation' on a structured formula is to be paid thereunder.

64.In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a nonobstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of.”

08. It is further submitted by the learned counsel appearing for respondent No. 1 that the aforesaid judgement passed by the three Bench has not been considered by the Hon'ble Supreme Court in the judgement relied upon by the learned counsel for the appellant in **Ramkhiladi's** case (supra).

09. Be that as it may, without going into the merits of the case, I am of the opinion that the matter is required to be re-considered by the Tribunal afresh. Accordingly, the impugned award is *set aside*. The matter along with the record file is remanded back to the Tribunal, who shall consider the same afresh after hearing learned counsel for the parties and pass appropriate orders. The Tribunal is also requested to decide the claim petition at the earlier possible time.

10. The amount deposited by the appellant before the Registry of this Court be also refunded back to the appellant.

11. The appeal is *disposed of* accordingly.

12. A Copy of this order be sent to MACT, Ramban.

(Tashi Rabstan)
Judge

Jammu
31.03.2022
Muneesh

Whether the order is speaking :	Yes / No
Whether the order is reportable:	Yes / No