



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. _____ of 2025

(@SPECIAL LEAVE PETITION (CIVIL) NO.15191 OF 2020)

THE NEW INDIA ASSURANCE
COMPANY LIMITED

...APPELLANT(S)

VERSUS

USHA DEVI AND OTHERS

...RESPONDENT(S)

WITH

CIVIL APPEAL NO. _____ of 2025

(@SPECIAL LEAVE PETITION (CIVIL) NO.9460 OF 2022)

NATIONAL INSURANCE COMPANY LIMITED

...APPELLANT(S)

VERSUS

USHA DEVI AND OTHERS

...RESPONDENT(S)

J U D G M E N T

Aravind Kumar, J.

1. Leave granted.
2. By these appeals to special leave, the Insurance Companies have laid challenge to the order dated 12.02.2020 passed in *Usha Devi & Ors. v. Chatar Pal Singh Yadav & Ors.* passed by the High Court of Punjab & Haryana, whereunder the award of the tribunal which had dismissed the application for grant of compensation came to be set aside and awarded a lumpsum compensation of Rs.15 lakhs with interest @ 9% p.a. Hence, these appeals by the insurers of both the vehicles involved in the accident, on whom joint several liability is fastened.
3. Facts essential for the adjudication of the present matter are briefly narrated. On the unfortunate night of 15.11.2006, Mr. Surender Singh was driving a truck bearing No. HR-38L/6727, and his vehicle was hit by the dumper bearing registration No. HR-38H-9100 in the area of Pali Crusher Zone, and due to the impact he sustained serious injuries, and was rushed to GTB Hospital, Delhi, where he expired away on 22.11.2006 while being

treated. FIR No. 411 dated 15.11.2006 came to be registered u/s 279/337/304-A IPC, 1860 at Police Station Ballabgarh against the driver of the dumper. A claim petition under Section 163A of the Motor Vehicles Act, 1988 came to be filed by the dependents of deceased seeking compensation of Rs.15,00,000/- alleging Mr. Islam, driver of the offending vehicle namely crusher bearing registration No. HR-38H-9100 was driving the vehicle in a rash and negligent manner and had caused the accident. It was also contended that at the time of the accident, deceased Surender Singh was working as a truck driver and drawing monthly salary of Rs. 3,000/- and was aged 35 years. It was also contended that he was survived by six dependents, i.e., his wife Smt. Usha Devi, four children and his aged mother.

4. The Motor Accidents Claims Tribunal, Faridabad (hereinafter referred to as 'Tribunal') by its judgment and award dated 15.10.2011 dismissed the claim petition on the ground that it was not maintainable as claimants had failed to prove that the accident was caused on account of rash and negligent act attributable to Mr. Islam i.e., the driver of the crusher i.e., offending vehicle and hence did not proceed to compute compensation.

5. Aggrieved by the said judgment and award dated 15.10.2011, the claimants filed an appeal u/s 173 of the Act before the Punjab & Haryana High Court. The High Court *vide* impugned judgment dated 12.02.2020 allowed the appeal in part and awarded a lump sum compensation of Rs. 15,00,000/- with interest @ 9% p.a. to the claimants and directed that compensation amount should be paid jointly by all the respondents therein and directed both the insurance companies to indemnify the award initially and reserved their rights to recover it from the owners of the respective vehicles if permissible under the respective policies.

6. It is against this judgment of the High Court dated 12.02.2020 these two appeals have been filed by both the Insurance Companies namely SLP (C) No. 15191/2020 has been filed by The New India Assurance Co. Ltd. (the Insurer of the Vehicle- truck bearing registration No. HR-38L/6727 driven by the deceased Mr. Surender Singh) and SLP (C) No. 9460/2022 has been filed by the National Insurance Co. Ltd. Company (the Insurer of the Offending Vehicle dumper/crusher truck bearing registration No. HR-38H-9100 driven by Mr. Islam).

7. Mr. Ranjan Kumar Pandey, the Ld. Counsel for Appellant/The New India Assurance Co. Ltd. contended, inter-alia that the compensation awarded to the claimants is exorbitant and against the settled law and hence it ought to be reduced. He has also contended that awarding of a lump sum compensation is against the scheme of S. 163A of the Act, since compensation has to be determined as per the Second Schedule of the Act only. He further contended that no amount can be provided under the heads of loss of 'love and affection' and 'physical/mental pain and agony', as the same are not provided under Second Schedule of the Act. He has further contended that no additional compensation can be awarded for loss of love and affection, as that forms an integral part of loss of consortium as per the Constitution Bench judgment of *National Insurance Co. Ltd. v. Pranay Sethi & Ors.*¹ Lastly, he contended that u/s 163A of the Act, the liability of the insurer is limited and must be split equally between the insurers of both vehicles.

8. Mr. Ambhoj Kumar Sinha, the Ld. Counsel for the Appellant/National Insurance Co. Ltd. has contended that the deceased was not a third party, hence not covered under the policy. He argued that it is settled law that the insurance company cannot be held liable to pay compensation in a case like the present

¹ 2017 SCC OnLine SC 1270

one, in which the victim was the driver himself and he cannot be treated as a third party within the ambit of Section 147 of the Act, because he steps into the shoes of the owner while driving the vehicle. He has further contended that in a case where the insured himself cannot be fastened with any liability under the provisions of the Act, the insurer would not be held liable to indemnify the award only on the ground that accident occurred due to the use of the insured vehicle. Hence, he prays for appellant being exonerated from paying the compensation.

9. *Per Contra*, Mr. V. Elanchezhian, the Ld. Counsel for the Respondents/Claimants contended that compensation awarded by the High Court is just, fair and reasonable. It is also contended that FIR marked as Ex. P3 would reveal the accident had occurred due to rash and negligent driving of dumper/crusher vehicle and this fact was sufficiently corroborated by the testimony of PW2 Constable Lalit Kumar and it is also proved that deceased expired due to the injuries sustained in the accident in question and he was a 'third-party' in so far as dumper/crusher is concerned. To buttress his argument, learned counsel has also drawn the attention of this Court to the certified copy of Award marked Ex. P2 before the Tribunal, whereunder the dependents of deceased Islam, namely, the driver of the offending dumper, was awarded

compensation. He has further submitted that the computation of compensation by the High Court was done on the basis of the judgment of this court, titled *National Insurance Co. Ltd. v. Pranay Sethi & Ors.* (supra) and there being no error in the same, he has prayed for dismissal of the appeals.

10. We have heard the learned advocates appearing for the parties and perused the record and we are of the considered view that following point would arise for our consideration:

Whether the impugned judgment calls for interference at the hands of this Court?

11. At the outset, it must be stated that the High Court was correct insofar as setting aside the order of dismissal of the claim petition passed by the Tribunal, whereunder the tribunal had recorded a finding that claimants had failed to prove that deceased expired on account of the injuries sustained in the accident caused by the driver of the dumper/ crusher namely the offending vehicle. The High Court took note of the fact that there was collision between two vehicles, as the claim petition had been filed under Section 163A of the Act does not require any proof of negligence for seeking compensation. While entertaining a claim petition u/s 163A of the Act, the question of negligence

cannot be looked into. This court in the case of ***United India Insurance Company Ltd. V. Sunil Kumar & Anr.***² has held:

“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 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 163-A(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 understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A 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 were taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the act on a par with the proceeding under Section 166 of the Act which would not only be self-contradictory but would also defeat the very legislative intention.”

12. It would be apposite to note the judgment of this Court in ***National Insurance Co. Ltd. v. Sinitha***³ whereunder it has been held that Section 163 A has an overriding effect on all other provisions of the Act and it has been further held:

“17. As against the aforesaid, at the time of incorporation of Section 163-A of the Act, Sections 140 and 144 of the Act

² (2019) 12 SCC 398

³ (2012) 2 SCC 356

were already subsisting, as such, the provisions of Section 163-A which also provided by way of a non obstante clause, that it would have by a legal fiction overriding effect over all existing provisions under the Act as also any other law or instrument having the force of law “for the time being in force”, would have overriding effect, even over the then existing provisions in Chapter X of the Act because the same was already in existence when Section 163-A was introduced into the Act.

18. The importance of the instant aspect of the matter is that Section 163-A of the Act has overriding effect over all the provisions/sections taken into consideration by this Court while deciding the controversy in Hansrajbhai case [(2001) 5 SCC 175 : 2001 SCC (Cri) 857] . It is therefore clear, that none of the provisions taken into consideration in the decision relied upon by the learned counsel for the respondents can override the legal effect of the mandate contained in Section 163-A of the Act.”

13. In the light of aforesaid exposition of law enunciated by this Court which we are also in agreement, and as such we are of the considered view that compensation cannot be determined as prescribed under Section 166 of the MV Act as sought for by the claimants, but on the other hand it requires to be determined under Section 163A read with Second Schedule of the Act, particularly when claim petition is filed under the said provision.

14. A perusal of the claim petition filed before the tribunal would indicate that it is a petition filed under Section 163A of the M.V. Act, 1988 claiming compensation of Rs.15,00,000/-. Though it is contended that the deceased was

working as a driver and his monthly income was Rs.3,000/- or Rs.36,000/- p.a. which has been accepted by the High Court, we are of the considered view that having regard to the number of dependents being 6 the income of the deceased as prescribed in Second Schedule has to be held as Rs.40,000/- per annum and after deducting 1/3 towards personal expense i.e. 13,333/- the annual loss of income to the claimant would be Rs.26,667/-. The deceased was aged 35 years, hence the appropriate multiplier to be adopted as per Second Schedule is 17 and when so adopted the compensation that becomes payable would be Rs.4,53,339/- (Rs.26,667/- X 17).

15. The general damages that would be payable as prescribed under Second Schedule is Rs.2,000/-, Rs.5,000/- and Rs.2,500/- towards loss of consortium, funeral expenses and loss of estate and same is hereby awarded. The claimants have contended the amount spent towards medical expenses was around Rs.1,00,000/-. However, Second Schedule restricts the same to Rs.15,000/- and we have no hesitation in awarding Rs.15,000/- towards the same and accordingly it is awarded. Thus, in all Claimants would be entitled to a sum of Rs.4,77,839/- which shall carry interest @ 8% p.a. from the date of petition till date of payment or deposit whichever is earlier.

16. In the instant case, the High Court has directed the award amount to be paid jointly and severally by all the respondents and entire compensation has been ordered to be paid initially by the insurers of the two vehicles and reserving their rights to recover if so permissible under their respective insurance policies. The Tribunal had dismissed the claim petition, as already noticed herein above on the ground that the FIR Ex. P-3, which was registered on the strength of the statement of Shakil Ahmad who is none other than brother of Islam (driver of the crusher) had stated that accident had occurred due to rash and negligent driving of deceased himself. Undisputedly the said Shakil Ahmad who was shown to be an eye witness to the accident was not examined before the Tribunal. Thus the mode, method and manner in which the accident had occurred has remained a mystery. Criminal proceedings against the deceased initiated on the strength of FIR registered had stood abated. The insurer of the offending vehicle namely, the dumper bearing registration No. HR-38H-9100 did not examine the above stated Shakil Ahmad who has been shown as an eye-witness to the accident before the tribunal. In fact the driver of the said vehicle namely, dumper bearing registration No. HR-38H-9100 who had also sustained grievous injuries had succumbed to the said injuries and the claim petition No: MACT 60/2009 filed by his dependents had been allowed and awarded compensation by the jurisdictional tribunal and the award dated 17.05.2010

passed in their favour was marked as Ex P-2 before the tribunal in these proceedings.

17. In the absence of any positive evidence being placed by the insurer of the offending vehicle to prove the manner in which accident occurred, we are of the considered view that the deceased in the instant case would be a 'third party' in so far as offending vehicle (dumper truck bearing No.HR 38H 9100) is concerned and thus the insurer and the insured of the offending vehicle would be liable to pay compensation jointly and severally the insurer of the offending vehicle would be liable to indemnify the award namely the National Insurance Company Limited would be liable to indemnify the claim and accordingly the appeal is allowed in part.

18. Having regard to the fact that the accident had occurred 30 years back, the award amount is ordered to be released in favour of the claimant Nos. 1 to 6 in the ratio of 50:10:10:10:10:10 respectively. It is made clear in the event of respondent No.6 i.e., the mother of the deceased not being alive, her share shall go to the first claimant.

19. As a result , the appeals stand allowed in part and the amount deposited in Special Leave Petition (Civil) No.15191 of 2020 with accrued interest shall be refunded to the appellant/ petitioner therein. The amount deposited in Special Leave Petition (Civil) No.9460 of 2022 to the extent above referred shall be transmitted to the jurisdictional tribunal with accrued interest thereon to be disbursed in favor of claimant as ordered herein above with proportionate accrued interest and balance and shall be refunded to the appellant/petitioner (National Assurance Company Limited) with proportionate accrued interest.

....., J.
[J.K. MAHESHWARI]

....., J.
[ARAVIND KUMAR]

New Delhi;
July 14, 2025.