IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 17th OF JULY, 2025

MISC. APPEAL No. 1456 of 2009

SMT.SAROJ AND OTHERS

Versus

PAWAN KUMAR AND OTHERS

Appearance:

Shri R.P.Gupta - Advocate for the appellants.

Nirendra Singh Tomar - Advocate for the respondent No.2.

Shri Arvind Kumar Agrawal- Advocate for the respondent No.3.

ORDER

This Miscellaneous Appeal has been preferred by the appellants for enhancement of the compensation amount of Rs.4,55,000/- against the award dated 24.07.2009 passed by Thirteenth Motor Accident Claims Tribunal, Gwalior, in Claim Case No.08/2009 whereby MACT has dismissed the claim petition of appellants/claimants.

2. Briefly stated, the facts of the case are that on 15.10.2006 at about 6 P.M., the deceased Rajkumar Jatav was travelling on his motorcycle bearing registration No.M.P.07/KK-1627 as a pillion rider from Gwalior to Banmore. The aforesaid motorcycle was driven by his brother, Basant Kumar. When they reached near Seema Hotel, Purani Chawani, A-B road, at that time, a truck bearing registration No.H.R./38H-0738, being driven rashly and negligently by the driver of the truck, dashed the motorcycle from the rear side. Due to which, deceased Rajkumar Jatav sustained grievous injuries and died on the spot.

3. It is submitted by the learned counsel for the present appellants that the learned tribunal has erroneously dismissed the claim petition. The learned tribunal has erred in not finding Issues Nos. 1 and 2 as against the appellants. The appellants by adducing oral and documentary evidence, have proved the factum of accident as claimed in the claim petition. The learned tribunal, while appreciating the witnesses, has concluded wrongly on Issues Nos. 1 and 2. The F.R. in criminal case cannot be a basis to disbelieve the factum of accident. The F.I.R. has been lodged promptly and bears the registration number of the offending vehicle. In alternative, he submits that Ex.D/8 is the policy of motorcycle. The deceased was the pillion rider on the motorcycle. Ex.D/8 reveals that the premium of Rs.50/- has been given in policy as P.A. cover, hence under Section 140 of Motor Vehicle Act, the claimants are entitled to get Rs.50,000/-, for which no negligency or other facts are required to be proved. He relied upon judgments of this Court in the case of **Oriental Insurance Company Ltd. Vs. Jamna Bai and Others, 2003 ACJ 127 and Remdei (Mahila) V. Nand Kumar and others, 1988 JLJ 412.** It is also submitted that the impugned award be set aside and appropriate compensation be awarded in favour of the claimants.

4. Per contra, the learned counsel appearing on behalf of the Oriental Insurance Company has submitted that the claim petition was filed initially under Section 163-A of the Motor Vehicle Act. Thereafter, it has been amended and Section 166, 140 of Motor Vehicle Act have been incorporated in the claim application. However, in that respect, no pleadings have been amended/incorporated. There is no allegation in the claim petition against the Oriental Insurance Company, which was the Insurance Company of the motorcycle on which the deceased was a pillion rider. Since there is no averment

against the Insurance Company, therefore, the Oriental Insurance Company cannot be made liable for payment of compensation even under Section 140 of the Motor Vehicle Act; the claimants are not entitled to get any compensation. The deceased himself was the owner of the motorcycle hence claimants and owner as against whom the claim petition is filed cannot be the same person. He relied upon the judgment of Hon'ble Apex Court in the case of **Surender Kumar Arora and another Vs. Dr. Manoj Bisla and Others, (2012)ACJ 1305** and judgments of this Court in the case of **Hemlata Sahu and Others Vs. Ramadhar and another, (2000) 1 ACJ 134** and **National Insurance Co.Ltd Vs. Sunita and Others, (2012)ACJ 2400.** He prays for the dismissal of the appeal.

5. The learned counsel appearing on behalf of the National Insurance Company has submitted that it is a clear-cut case of false implication, in respect of which the learned tribunal has given detailed reasoning. Mere mention of registration number of the offending vehicle in F.I.R. is not sufficient to prove the factum of accident. The police after investigation, has found that the offending vehicle was not involved in the accident and, therefore, the F.R has been filed before the concerned criminal Court. No criminal case has been instituted on the basis of F.I.R. Ex.P/1. Witness Basant, who is said to have been the eyewitness of the accident, has categorically admitted in his cross-examination that he has not seen the registration number of the vehicle. Some persons present on the spot have informed him about the registration of the offending vehicle, but who are those persons? has not been clarified by this witness. The Insurance Company has examined Bharat Mishra, an employee of the Police department. He categorically described the police proceedings undertaken during the investigation and established the factum of filing of F.R. in this case. The Insurance Company has also examined U.S. Nigam, the Officer of the Insurance Company, and also

investigator Dikveer Singh Chouhan. In the light of the statement of this witnesses as well as the appreciation of evidence by the learned tribunal, no case is made out against National Insurance Company. He prays for dismissal of the appeal.

6. Heard the learned counsel for the parties and perused the record.

7. The eye witness to the incident Bansant Kumar (AW-2) though stated in his chief examination about factum of accident as stated in the claim petition, but in his cross examination he categorically admitted that he has not seen the registration number of the vehicle who has caused the accident. The registration number was intimated to him by the persons present on the spot. He cannot say if the persons present there have wrongly informed him the registration number of the truck. He also admitted that he has not seen the model of the truck, colour of truck and as to whether it was dumper or truck. He also admitted in the cross-examination in para 8 that he has not seen the truck who has caused the accident and he cannot say that the offending vehicle truck has caused the accident or not. The statement of this witness clearly indicate that he is not an eyewitness to the accident as narrated in claim petition. No other eyewitness to the accident has been examined on behalf of the claimants.

8. Subhash Chand (NAW-3) though has also supported the factum of accident, but he admitted in the cross-examination that he has not seen what name was stated on the truck and truck was related to which transporter. He stated that at the time of accident, he was standing 100ft. away from the place of accident near road. This witness has not been named in the F.I.R. as an eyewitness to the accident not he has been included in the list of witnesses in the charge-sheet Ex.P/10. Even Basant Kumar (AW-2) has also not stated the presence of this witness on the spot. Therefore, the statement of this witness does not inspire

confidence of the Court.

9. On claimants side, F.I.R. of the accident as Ex.P/1 has been filed. Though it bears the number of offending vehicle as HR 38L 0738 but mere mentioning of registration number of the vehicle in the F.I.R. is not *per se* is sufficient to prove the factum of accident. On the principle of preponderance probability, the factum of accident must be proved by cogent and reliable evidence. The documents Ex.D-10 to 15 which are the documents prepared during the investigation by the Police show that the concerned Police in the investigation have found that the truck bearing registration No.HR 38L 0738 was the ownership of Pawan Kumar, New Delhi, who has intimated the Police that the permit of said truck has not been issued of Madhya Pradesh. His truck is not used to go to Gwalior or elsewhere in the State of Madhya Pradesh. On the date of accident, the said vehicle was in Gangapur city, Rajasthan. He also submitted receipt and other evidence in respect of said contention and, therefore, Police has concluded that the offending vehicle was not present in the State of Madhya Pradesh or on the spot at the time of accident and, therefore, Police started searching the vehicle which caused the accident but since such vehicle could not be found out, F.R. has been submitted before the concerned Court as Ex.D-10. To prove this document, the Insurance Company has got examined Dikveer Singh Chouhan, the investigator, Subhash Chand, U.S. Nigam, the Officer of the Insurance Company and Bharat Mishra, who deposed regarding the investigation by Police in this case and they deposed about the factum that the offending vehicle was not at all involved in the accident. It has been falsely implicated in this Case.

10. Having considered the oral and documentary evidence on record, it is found that the learned Tribunal did not err in finding the factum of accident

proved in Issue No.1. The learned tribunal has rightly observed that Subhash Chand (AW-3) has suppressed the factum that he was a real brother of the deceased, while Basant Kumar (AW-2) in cross-examination stated that Subhash Chand is his brother and name of Subhash Chand is not placed in the witness list in charge-sheet Ex.P/10. On the strength of the documentary and oral evidence on record, it is found that the claimants have utterly failed to prove the factum of accident on the principle of preponderance of probability by cogent and reliable evidence.

11. So far as the argument in respect of the compensation under Section 140 of Motor Vehicle Act is concerned, in case of **Oriental Insurance Co. Ltd., Indore Vs. Jamnabai, 2003 ACJ 127,** it is held that the co-owner of the vehicle sustained fatal injuries when he was hit by the vehicle driven by the driver appointed by the other co-owner. It is held that since deceased was not travelling in the vehicle, therefore deceased is a 'third party' and insurance company is liable for payment of compensation. Paragraph 4 of the judgment is reproduced as under:-

> *"**4.** Shri Pramod Meetha, learned counsel for the appellant forcefully contended that award is liable to be set aside against the appellant, since claimants cannot claim compensation for the death of deceased who himself happen to be the owner of the Vehicle. Learned counsel placed reliance on ACJ 2000 134, Hemlata Sahu v. Ramadhar and 1998 ACJ 1336, United India Insurance Company Limited v. Valliammal in support of the contention. This contention is opposed by Shri Neema learned counsel for the claimants. Counsel for the claimants drew our attention to decisions like 1998 ACJ 952, New India Assurance Company Limited v. Doredla Satynarayana, 1991 ACJ 505, Laliya Bai v. Ramesh and (2000) 6 SCC 622 : AIR 2000 SC 2532, Chimajirao Kanhojirao Shirke v. Oriental Fire and General*

Insurance Company Limited. The first question to be considered in this case is, whether the place where accident took place, falls within the definition of "Public Place" under section 2(34) of Motor Vehicles Act, 1988. The Claims Tribunal has come to the conclusion that the accident took place near the field owned by Shivgiri Mahraj. The definition of "Public Place" has to be construed liberally, broadly and pragmatically and not in a pedantic and narrow sense with a view to advance the cause of justice and not to defeat the same. Assuming, the vehicle may have crossed the "Public Place" to some extent, and was getting to the field of Shivgiri Mahraj, it cannot be construed that the field of "Shivgiri Mahraj" was private place in the strict sense of the term. Generally, fields in villages may be owned and possessed by a particular landowner but that does not mean that no one can pass through the same unless there is a specific prohibition from doing so. We do not feel any difficulty in holding that the place where the accident took place was a "public place" and the contention to the contrary is liable to be rejected. Next question is whether the claimants are entitled to claim compensation for the death of the deceased who is stated to be the owner of the vehicle along with Apa. The case of Valliammal (supra) is not applicable to this case since it is distinguishable on facts. There deceased himself was driving the vehicle and his loss was not covered by the Policy. In Hemlata Sahu's case (supra), this court exonerated the Insurance Company from the liability because evidence did not suggest payment of premium for the purpose of covering the risk of the owner himself. Therefore, this case is also distinguishable and would not be of any help to the appellant. In Doredla Satyanarayan's case (supra), it has been held that Insurance Company is liable to pay compensation for the death of owner of truck in case he happens to travel in the vehicle along with his goods. It would be appropriate to quote paragraph 14 of the Judgment which explains the issue in comprehensive manner:

> *"Let us take a case where the owner of a vehicle walking on a highway was knocked down by his own vehicle driven rashly and negligently by a duly appointed driver having a*

> *valid licence. Is it permissible for the insurer of the said vehicle to avoid its liability to satisfy the claim laid against it by his legal representatives on the ground that the policy of insurance does not cover owner's risk? In our considered view, the answer could only be 'no', particularly in the tight of the principle enunciated in Skandia's case, 1987 ACJ 411 (SC). We have, therefore, no hesitation to add that the same principle will apply in all fours to the facts of the case in C.M.A. No. 1041 of 1990.*

In Lalia Bai's case, it has been held that the Policy taken by the Insurance Company does not end with the death of the insured. It passes on successors along with benefits. Successors can claim the benefits including those which pertain to the death of insured. The decisions of Punjab and Haryana High Court in Kusum Sood case (supra) also supports the claim of the respondents (See also AIR 2000 (SC) 2532, Chimajirao Kanhojirao Shirke v. Oriental Fire and General Insurance Company Limited.) Facts of this case suggest that the deceased was owner of the vehicle along with Apa. Actually he was not travelling by vehicle. It was being driven by driver appointed by Apa and was injured when the tractor was being taken towards the land. Apart from the fact that insured does not stand excluded simply because he happens to be the owner of the vehicle, deceased in this case falls within the definition of third party. Further, the policy of insurance also supports the case of the claimants. Apart from the payment of normal premium towards damage of the vehicle, the deceased has paid Rs. 150/- against "Own Damages". Learned counsel for the appellant contends that this amount pertains to damage to the vehicle. This does not appear to be so, because for damages to the vehicle, an amount of Rs. 1,570/- has been paid. Explanation that payment of Rs. 150/- against "Own Damage" is towards basic premium is nowhere in the evidence recorded in the case and the tariff document shown to us for the first time does not change our assessment of the matter. For this reason as well we hold that the Insurance Company is liable to pay compensation for the death of Umraosingh."

12. In case of **Ramdei (Mahila) (supra)**, it is held by co-ordinate Bench of

this Court that application under Section 110-A cannot be dismissed without acting under Section 92-A. It is held that the tribunal should act *suo motu* to award a compensation. No prayer or pleading are necessary for the purpose. Paragraphs 3, 4 and 7 are reproduced as under:-

> *"3. I have consistently taken the view that a statutory duty is cast on the Tribunal to act suo motu under Section 92-A and if that view is correct and not to be departed from, it is difficult not to hold the impugned (order) to be illegal, unconstitutional and void. Indeed, how can the claim petition itself be dismissed without the Tribunal acting under Section 92-A. Because, the final award on the application preferred under Section 110A can be made under Section 110-B of the Act on proof of tortious liability while Section 92-A contemplates explicitly "no fault" liability- Claimant's right to have an award under Section 92-A cannot, therefore, be killed by the Tribunal adopting to leap-frog procedure to dismiss the claim-petition made under Section 110-A and denying itself the jurisdiction to act under Section 92-A. It may be that no prayer had been made in the instant case for grant of relief under Section 92-A but till such lime as the lis was pending there was a jurisdiction vested in the Tribunal and a duty cast on it first to act under Section 92-A before proceeding to dispose of in any manner the claim-petition. Indeed, the application made under Section 110-A could not have been dismissed on any ground whatsoever till the Tribunal had exercised its jurisdiction one way or the other under Section 92-A. Sub-section (2) of Section 92-B itself explicitly contemplates this position by requiring that the claim "under Section 92-A shall be disposed of as aforesaid in the first place" and also, "as expeditiously as possible".*
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> *4. Now, a few more reasons why I say that the Tribunal has a duty to act suo motif under Section 92-A. Firstly, because, this Court, in the case of New India Assurance Co. v. Phoolwati MANU/MP/0043/1986, took the view that Section 92-A becomes live and generates sufficient power in Courts to help the helpless and helpless, the moment it is found by a court or Tribunal on material available to it that one or more motor vehicle/motor vehicles is or are involved in the accident. Indeed, in Shahzad Khan (1986) 1 MPWN 28, I had also taken the view that a claimant is not to be seen as a plaintiff in terms of C.P.C. and he is not to be saddled, therefore, with the onerous and explicit obligation imposed on a plaintiff by the Code. He is to be aided by the Tribunal, adopting reasonable and benevolent procedure in trying his cause, as be conformable to the mandate of Article 39A of the Constitution. Times without number, in different matters coming at different times to this Court, it has been repeatedly emphasised that to enforce the legislative*

intent of Section 92-A is the constitutional duty of the Tribunal and indeed of this Court also, otherwise the salutary provision would become a dead-letter. The legislative intent is very clearly spelt out in contemplating "no fault liability" so that for making an order under Section 92-A a simple finding only has to be recorded by the Tribunal on materials available to enforce the right to claim compensation for death or for permanent disablement which resulted from an accident arising out of use of a motor vehicle or motor vehicles.

7. I propose to add another word on the constitutional complexion of the interpretation of Section 92-A because the constitutional position that obtains today in the country following the decision in Olga Tellis A1R 1986 SC 180 is that right to livelihood has to be considered a fundamental right embraced by Article 21 of the Constitution. The death or permanent disablement of an earning member of the family is almost likely in alt cases to seriously infringe right to livelihood of claimants who are widows and minors and lack earning capacity. Section 92-A has to be read as conferring a statutory right on them to prevent their destitution and physical extinction. Therefore, according to me, the power to act suo motu under Section 92-A has to be seen as a constitutional necessity because the reasonable procedure to dispose of a claim which arises under Section 92-A would be when the Court acts suo motu to exercise of jurisdiction thereunder to prevent and preempt utter destitution."

13. In case of **Surendra Kumar (supra),** it is held that the victim of an accident has given an option either to proceed 166 of Act or under Section 163-A of the Act. Once they approached the tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of driver or the owner of the vehicle concerned. If they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the schedule without calling upon the victim or his dependents to establish any negligence on the part of owner of the vehicle or the driver of the vehicle.

14. In case of **Hemlata Sahu and Others(supra)** the Division Bench of this Court has held in paragraphs 10, 11 and 12 as under:-

***10.** The Claims Tribunal has laboured under the impression that since it is a comprehensive policy, therefore, the claimants can be compensated*

on account of death of the insured. This view taken by the learned Claims Tribunal is erroneous and against the decision of the Apex Court. Suffice it to say that Apex Court in the case of National Insurance Co. Ltd. v. Jugal Kishore, 1988 ACJ 270 categorically laid down that a comprehensive policy means it covers third party risk and it cannot cover unlimited or higher than the statutory liability fixed under sub-section (2) of section 95 of the M.V. Act. It was observed that the special agreement has to be arrived at between the Insurance Company and the insured and separate premium has to be paid on the amount of liability undertaken by the Insurance Company in this behalf. Now, in the present case, there is no evidence to show that any separate premium was paid for the purpose of covering risk of the owner himself. Under the comprehensive policy, the owner can only claim reimbursement of damages suffered by the vehicle. This preposition has been accepted by the various Courts in all over the country including this Court also. In this connection, a reference may be made to Karnataka High Court in the case of M. Akkavva v. New India Assurance Co., 1988 ACJ 445. In that case, the vehicle in question was a goods vehicle and son of the owner of the goods vehicle was accompanying of the goods of his father being carried in the vehicle and the vehicle met with accident due to the negligence of its driver. The question arose whether the son of the owner of vehicle is to be compensated. Their Lordships answered in negative that the owner of the vehicle who has the benefit of indemnity is himself not covered and his representative is in no better position unless he be an employee covered by the first proviso to section 95(1)(b). The idea behind this ratio was that the son is in no better than that owner i.e. father. In that case, the son of owner of goods vehicle was accompanying the goods and not as an employee. It was observed that 'basically, a contract of motor insurance seeks to indemnify the owner of the vehicle against liability arising out of claims of third parties arising against the insured owner out of the use of the motor vehicle. A contract of insurance which stipulates to pay compensation for the death of the insured person himself cannot be said to be a contract of indemnity. If the

owner of the vehicle, who has the benefit of indemnity is himself not covered by the policy, his representatives, unless he be an employee covered by the first proviso to section 95(1)(b), is in no better position in relation to the insurer's obligation or the absence of it'. Similarly, in the case of Mathew Koshy v. Oriental Insurance Co. Ltd., 1989 ACJ 21, the Kerala High Court took the same view that the right to receive compensation can only be against a person who is bound to compensate due to failure to perform legal obligation; compulsory insurance is to indemnify the owner of the vehicle from the liability, if any, but if the owner himself suffers an injury in an accident, he does not acquire any right to get compensation from the Insurance Company. In the case of United India Insurance Co. Ltd. v. Lakshmi, AIR 1990 Mad. 108, the Madras High Court has held that the owner of the lorry or the insured having himself died in the accident, caused by his own driver, and there being no liability on his part or on the part of his legal representatives, towards any third party, the insurance company's liability does not at all arise. A similar view has been taken by the Bombay High Court in the case of United India Insurance Co. Ltd. v. Kantabai, 1991 ACJ 22 and in that case, the vehicle was insured by the partnership firm and one of the partner was travelling in the jeep when the jeep met with an accident due to its rash and negligent driving and it was submitted that individuality of the partner is separate and distinct from the character of the firm and the Insurance Company should be held liable. The Court answered in negative and held that the partner of the firm was owner of the vehicle and the owner is not covered by the expression 'any person' or 'third party' appearing in section 95(1)(b)(i) and, therefore, the liability has not been extended to include the risk to the owner by paying extra premium. It was also held that meaning of comprehensive policy is that the owner can claim reimbursement of loss or damage to the vehicle or the liability of third party risk but not to himself. Similar view has been taken by Allahabad High Court in the case of Oriental Fire and General Insurance Co. Ltd. v. Sakuntala Devi, 1991 ACJ 177 and it has been held that section 147(1)(B) of the M.V. Act, what is covered is liability of third party not

insured himself.

11. On survey of the aforesaid decisions, it becomes more than apparent that the Insurance Company only insures the liability arising out of the insured and it does not ensure the insured. In the present case, though the policy was comprehensive policy, but it did not cover the insured and as per section 147(1), it clearly transpires that a policy of insurance must be a policy which insures the person or classes of person specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Therefore, the view taken by the learned Claims Tribunal for awarding compensation to the claimants of the deceased insured was totally against the provision of law and the Tribunal has completely misdirected itself. Therefore, the appeal filed by the Insurance Company being Misc. Appeal No. 774/98, is allowed and the award passed by the Tribunal on 23-4-1998 is set aside.

12. Since the claimants are not entitled to any compensation; therefore, the appeal (Misc. Appeal No. 814/98) filed by the claimants for enhancement of compensation is misconceived and the same is dismissed. The appeal (Misc. Appeal No. 58/98) filed by the Insurance Company against the order dated 29-8-1997, with regard to no fault liability is concerned, the same is also allowed because of the fact that the insured himself has died in the said accident and when the Insurance Company is not liable to indemnify the insured, the Insurance Company is not liable to pay a sum of Rs. 25,000/- towards no fault liability. The appeal filed by the Insurance Company against the interim award/order dated 29-8-1997 is allowed and the interim award/order passed by the tribunal dated 29-8-1997 is also set aside. It will be open for the Insurance Company to make recovery of the aforesaid amount in accordance with law.

15. There is no dispute as regards the law laid down in **Ramdei (Mahila) (supra)** that application under Section 163-A, 166 of Motor Vehicles Act cannot be dismissed without acting under Section 140 of Motor Vehicle Act. The Tribunal *suo moto* to award compensation. In that regard, no prior pleading are necessary. But, here in this case, the claimants are the L.Rs. of the deceased who was the owner of the offending veicle motorcycle M.P.07/KK-1627.

16. In case of **Sunita and Others(supra)** the co-odinate Bench of this Court has held in paragraphs, 6,7,8, 10 as under:-

> *"6. Having heard the counsel, keeping in view their arguments, after perusing the aforesaid cited cases, I am of the considered view that this appeal deserves to be allowed in view of Apex Court decision in the matter of Oriental Insurance Company Limited v. Rajni Devi (supra) in which it was held as under:—*
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> > *"7. It is now a well-settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner of another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle.*
> > *11. Liability of the insurer Company is to the extent of indemnification of the insured against the respondent, or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured,*

therefore, does not arise."

7. I would like to mention here that while deciding the aforesaid case by the Apex Court;, the earlier case laws of the Apex Court in the matter of Dhanraj (supra) cited by Mr. Sapre, was also taken into consideration for giving the interpretation to the provision of sections 163-A, 165, 166 and 168 of the Act.

8. Besides the aforesaid, at subsequent stage on arising the occasion, the Apex Court again considered such aspect and answered in the matter of Ningamma (supra) in which taking into consideration the aforesaid case of Smt. Rajni Devi (supra) it was held as under:—

> *"20. It was held in Oriental Insurance Co. Ltd. case that section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of section 163A of the MVA."*

10. In the available facts as stated above and in view of the said legal position, I am of the considered view that even after happening the unfortunate incident in the family of the respondents in which their predecessor Purushottam Patel, the registered owner and the insurer of the present offending tractor had died, they did not have any authority to file the claim petition in the Motor Accident Claims Tribunal under section 163-A of the Act. Therefore, in such circumstances, the question which were raised on behalf of appellant on some merits of the facts, in the lack of jurisdiction, could neither be considered by the Tribunal nor the same could be considered by this Court. At this stage, respondents' counsel Shri Sapre prayed that on allowing this appeal and setting aside the impugned award then in the available circumstances instead to dismiss the claim petition of the respondents along with their cross-objection filed in this appeal, the same be directed to be returned

them by extending a liberty to approach the appropriate forum under the Consumer Protection Act, 1986 or some other appropriate forum permissible under the law to file their claim on the grounds stated in the claim petition, and cross-objection also with other available grounds.

17. The law laid down in case of **Hemlata and others (supra)** is categorical on the point that the Insurance Policy if do not cover the insured as per Section 147, then the insured or legal representative of the insured are not be entitled to get the compensation from the Insurance Company. The policy of Insurance must be a policy which insures the person or classes of persons specified in the policy to the extend specified in sub-section (2) against any liability which may be incurred by him. Since the claimants are not entitled to any compensation, therefore, the Insurance Company is also not liable to pay even the sum towards no-fault liability.

18. It is also established the principle in light of the law laid down in the case **Sunita and Others(supra)** that the compensation is claimed for the death of the owner, the contract of insurance being governed by the contract qua contract, the claim of insurance company would depend upon the terms thereof. The accident wherein the owner of vehicle himself is involved, the liability under Section 163-A of Motor Vehicle Act is on the owner of the vehicle. So a person cannot be both a claimant as also a recipient with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of section 163-A of the Motor Vehicle Act.

19. Having considered the law laid down on the judgements of **Sunita and Others (supra)** as well as **Hemlata and Others(supra)**, since in this case, the claimants are legal representatives of the deceased owner of the vehicle, therefore they are not entitled to get compensation inasmuch as the owner of the vehicle is

insured and is not covered in the Insurance Policy (Ex.D/5) wherein no extra premium has been paid for covering the owner's risk. Therefore, in the considered opinion of this Court, the Claimants are not even entitled to get compensation even for no-fault liability under Section 140 of Motor Vehicle Act, 1988.

20. In the light of back drop of foregoing discussion, the appeal on behalf of the claimants is found to be meritless. The impugned award is not found to be perverse or illegal.

21. Therefore, while affirming the impugned award, this appeal, being bereft of merit, is hereby dismissed.

(RAJENDRA KUMAR VANI)
JUDGE

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