* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on : 12th May 2026***
Pronounced on : 01st July 2026
Uploaded on : 02nd July 2026

\+ **MAC.APP. 532/2025**

SIMBAL SINGH .....Appellant

Through: Mr. Varun Sarin, Ms. Parul Dutta, Advocates.

versus

AMARJIT SINGH & ANR. .....Respondents

Through: Dr. Amit George, *Amicus Curiae* with Mr. Dushyant Kishan Kaul, Advocates for respondent no.1

Mr. Sameer Nandwani, Advocate for respondent no.2.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed by appellant/claimant assailing the impugned judgment dated 19th April 2025 passed by the Motor Accident Claims Tribunal, Patiala House Courts, New Delhi ('***MACT/Tribunal***') in MACT No. 224/2022 by which the claim petition of

appellant/claimant was dismissed. *Mr. Varun Sarin*, counsel appears on behalf of appellant/claimant; *Mr. Sameer Nandwani*, counsel appears on behalf of respondent no.2/insurer. By order dated 22nd August 2025 the Court appointed *Dr. Amit George*, Advocate as *Amicus Curiae* in the matter to assist the Court.

2. The principal issue and contention before the Court relates to whether, in circumstances where the driver of a motor vehicle is neither a paid driver nor the owner and the vehicle is insured with a Comprehensive/Package policy, would the insurer be liable or whether it would amount to contractual liability not amenable to the jurisdiction of MACT.

3. This issue arose in context of deceased, who was driving the vehicle insured with respondent no.2, being neither the paid driver nor the owner of vehicle, but a family member/*son* of the owner of vehicle and the claim was being pressed by his legal heirs basis that the deceased was an occupant/*third party* and would, therefore, be covered under third party insurance.

4. Appellant/Claimant is the mother of deceased/*Udey Singh alias Uday Jit Singh*. He was driving an *Innova* car bearing registration number DL-8C-AB-3069 (hereinafter, '***vehicle***'). Respondent no. 1/*Amarjit Singh* was the registered owner of vehicle and also the father of deceased and husband of appellant/claimant. Claim has therefore, been filed by appellant/claimant on behalf of her deceased son, who was

driving the vehicle registered in the name of respondent no.1-father, claiming insurance as an occupant/third party.

5. The collision took place when a truck (hereinafter, '***offending vehicle/truck***'), allegedly overtook the Innova car at high speed and hit it on its rear right side. Because of the impact, the Innova car first hit an Alto car and then dashed against a wall on the service road. Deceased was declared '*brought dead*' by doctors at the hospital. It was registered as a *hit and run* case, since, the offending vehicle could not be traced. Therefore, the claim was made against respondent no.2/insurer of the Innova car.

6. *Mr. Sameer Nandwani*, counsel for respondent no.2/insurer, submitted that the policy cover provided by them for Innova car was a Comprehensive/Package Policy which covered not only basic third-party liability, but personal accident cover for owner-driver and additional accident cover for seven passengers.

7. Issue before the Court was therefore two-fold. ***One***, whether deceased, who had borrowed the vehicle, stepped into the shoes of the registered owner and would, therefore, be within the ambit of an "*owner/driver*". That being so, the claim would fall in the category of personal accident cover for owner-driver and, therefore, would have to be satisfied through contractual policy and not through statutory liability under a third-party cover. ***Two***, whether deceased would qualify as a *third party* or an occupant and be entitled to receive compensation under the Motor Vehicles Act, 1988 ('***MV Act***').

8. In the impugned judgment, MACT placed reliance upon ***New India Assurance Co. Ltd. v. Sadanand Mukhi & Ors.*** (2009) 2 SCC 417, ***United India Insurance Co. Ltd. v. Davinder Singh*** (2007) 8 SCC 698, ***Ningamma & Anr. v. United India Insurance Co. Ltd.*** (2009) 13 SCC 710 and decision of this Court in ***National Insurance Co. Ltd. v. Ravi Prakash Mishra & Anr***. 2023 SCC OnLine Del 7081. MACT held that contractual liability was not enforceable under the purview of MACT, therefore the claim petition was dismissed and appellant/claimant was left to approach the competent forum.

Submissions on behalf of appellant

9. *Mr. Varun Sarin*, counsel for appellant/claimant submitted that there are certain undisputed aspects of the case, which could be delineated as under:

(i) Death of *Sh. Udey Singh* had taken place due to negligence of the offending truck.

(ii) Offending truck could not be traced or identified and no details were given by appellant/claimant.

(iii) The present claim was made under Section 166 of MV Act against respondent no.2/insurer of the Innova car.

(iv) The insurance policy was a Comprehensive/Package Policy with personal accident cover and third-party liability.

(v) The accident had taken place on 2nd January 2022, prior to the MV (Amendment) Act, 2019 coming into effect from 1st April 2022

and since the offending vehicle could not be identified, at best a claim under Section 163-A of MV Act could be made.

10. On this basis, the fundamental assertion made by *Mr. Sarin*, counsel for appellant/claimant, was the legal distinction between an Act Policy and a Comprehensive/Package Policy. He contended that, since there was a personal accident cover for owner-driver, deceased being the driver of vehicle was covered under the insurance policy and compensation could be awarded under the purview of MACT. He stated that deceased should be treated as a third-party occupant and would therefore, be covered under third-party liability.

11. Reliance was placed on the decision of Supreme Court in ***National Insurance Company Ltd. v. Balakrishnan & Anr.*** (2013) 1 SCC 731, to state that MACT had failed to appreciate the distinction between an Act Policy and a Comprehensive/Package Policy.

11.1. In this case, one, *Balakrishnan* met with an accident while travelling in a car belonging to another party, when it dashed against a bullock cart. He filed a claim under Section 140, 147 and 166 of the MV Act before the MACT, claiming compensation from the Insurance Company as well as owner of the vehicle. Claim was resisted by the Insurance Company basis that he could not be treated as a third party and the insurance policy taken by the Company, who owned the car, did not cover an occupant of the vehicle, but only covered the owner for a limited quantum.

11.2. While, MACT granted compensation to injured by treating him as a third party and holding the Insurance Company liable, High Court treated owner of the vehicle to be liable and held that, since injured was only an occupant of the car, Insurance Company was liable to indemnify.

11.3. On this basis, Supreme Court noticed a distinction between "*Act Only Policy*" and "*Comprehensive/Package Policy*". Reference was made to decision of this Court in ***Yashpal Luthra v. United India Insurance Co. Ltd***., 2009 SCC OnLine Del 4291 which recorded evidence of the competent authority of Tariff Advisory Committee ('***TAC***') and Insurance Regulatory and Development Authority ('***IRDA***') in the context of circular dated 16th November 2009 issued to all Insurance Companies. The circular was issued with respect to liability of Insurance Companies of a pillion rider on a two-wheeler and occupants in a private car under the "*Comprehensive/Package Policy*".

11.4. The circular stated that liability of an insurer with respect to an occupant travelling in a private car and as a pillion rider on a two-wheeler was covered under the Standard Motor Package Policy. IRDA stated before the High Court that TAC had issued instructions to all Insurance Companies to cover the pillion rider of a two-wheeler under "*Comprehensive/Package Policy*". It was also admitted that Comprehensive Policy is presently called Package Policy. Observations of this Court in ***Yashpal Luthra*** (*supra*) were extracted by the Supreme Court as under:

> "*27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive / package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC"s directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case*."
>
> (emphasis added)

11.5. Therefore, Supreme Court held that there was no doubt that a '*Comprehensive/Package Policy'* would cover the liability of insurer for payment of compensation for an occupant in a car. But an '*Act Only Policy*' stands on a different footing, as it will not cover third-party risk of an occupant in a car. Therefore, decision of the High Court was set aside and the matter was remitted back to Tribunal to scrutinize the insurance policy from a proper perspective and for re-adjudication of the matter.

12. Reliance was then placed on ***United India Assurance Co. Ltd. v. Suraj Kala & Ors.*** 2023 SCC OnLine All 3729 and ***Valiben Laxmanbhai Thakore & Ors. v. Kandla Dock Labour Board & Anr.*** 2021 (4) GLH 77 to contend that once additional premium has been paid, liability of the Insurance Company cannot be restricted.

12.1. The Allahabad High Court in ***Suraj Kala*** *(supra),* held that in cases where the insurance policy is merely an '*Act Only Policy'* and no additional premium is paid, liability of insurer would remain limited to the statutory extent. However, once additional premium is paid for covering a wider risk, liability of Insurance Company becomes unlimited and it shall be liable to satisfy the award. Court drew a distinction between limited statutory liability and enhanced contractual liability arising out of the payment of additional premium.

12.2. In ***Valiben Laxmanbhai Thakore*** *(supra)*, the Gujarat High Court held that where additional premium is paid by the owner and same has been accepted, liability of Insurance Company stands extended under the MV Act. In facts of the case, insurance policy covered the risk of driver and cleaner, and additional premium was paid. Therefore, the coverage of risk was extended. Insurance Company cannot be absolved from liability by contending that claimants were not entitled to compensation, irrespective of negligence on the part of driver.

13. *Mr. Sarin*, counsel for appellant/claimant, submitted that, since the claim petition had been filed under Section 166 of the MV Act and not under Section 163-A, the principle of driver stepping into the shoes of the owner shall not be applicable to the case herein. Therefore, deceased would fall in the category of *third party*. In order to buttress his submissions, *Mr. Sarin*, relied upon decisions of various High Courts and Supreme Court.

Decisions of Supreme Court

14. In ***Manjusha & Ors. v. United India Assurance Co. Ltd. & Anr.*** 2025 SCC OnLine SC 1512, a recent decision by the Supreme Court, the Court was dealing with a case where deceased driver was brother of the owner of vehicle and was travelling in the car, along with family members. High Court restricted compensation to Rs. 2,00,000/- by treating the claim as one of contractual liability and not imposing statutory liability. Supreme Court set aside the finding and restored the award passed by the Tribunal. It was noted that the case was not about statutory liability, but contractual liability of a personal accident cover which formed the basis of the claim. The order of High Court was set aside on the basis that limited liability had not been claimed by Insurance Company, either before the Tribunal or in the appeal before the High Court, therefore, the Tribunal's award of compensation was upheld.

15. Further, the Supreme Court in its decision in ***New India Assurance Co. Ltd. v. Shanti Bopanna & Ors.*** (2018) 12 SCC 540 rejected the contention of Insurance Company that the deceased, an employee, travelling in a car would not fall within the category of a third-party. It was held that deceased was neither the insurer nor the insured, therefore, he would clearly fall within the ambit of a *third party*. However, it was noted that this was not a case where deceased was driving the vehicle, instead he was an occupant and the car was being driven by someone else. Claim was covered by the clause in insurance

policy and that it could not be excepted by virtue of the provisions of Section 147(1) of MV Act.

Decisions of High Courts

16. In ***National Insurance Company Ltd. v. Ravi Prakash Mishra & Anr.*** (*supra*), a Coordinate Bench of this Court observed that, while, the Insurance Company cannot be made liable to pay compensation for death suffered by owner or borrower or driver under Sections 163 or 166 of MV Act in an '*Act Only Policy'*, but the position will be different if the vehicle is covered under a '*Comprehensive/Package Policy*'. Court, however, noted that Insurance Company shall be liable to meet such a contractual liability.

17. In ***Ramchand v. Ghanshyam & Anr.*** 2022 SCC OnLine Bom 762, Bombay High Court was considering an argument raised by the insurer that the person driving a borrowed vehicle steps into shoes of the owner and therefore, could not maintain a claim. Court held that the principle of a driver stepping into shoes of the owner is applicable only in respect to claims filed under Section 163-A of the MV Act, but not applicable in case of claims filed under Section 166. Therefore, the person not being the insurer or insured is a *third party* and the claim would be covered under insurance policy. Not covering such persons would defeat the benevolent nature of legislation.

18. In ***National Insurance Company Ltd. v. Manju Singh & Ors.*** 2019 SCC OnLine All 5125, the Allahabad High Court noted that where

policy of the vehicle is a '*Comprehensive/Package Policy*', deceased who was driving the car, would also be an occupant and the risk of such occupants stands covered under the insurance policy. Reliance was placed on the judgment of Supreme Court in ***Balakrishnan*** (*supra*).

19. A Coordinate Bench of this Court in ***New India Assurance Company Ltd. v. Durga Prasad Bhusahal & Ors.*** 2017:DHC:4815 held that the insurance policy mentioned personal accident cover for owner, as well as, driver, therefore, the contention put forth by Insurance Company that the insurance policy would only apply when the owner himself was driving the vehicle, was rejected.

20. In ***United India Insurance Co. Ltd. v. Sudha Singh***, 2014 SCC OnLine Pat 78, the Patna High Court observed that deceased died due to his own negligence, while driving Tata Sumo vehicle and considering that the insured had paid a higher premium than an '*Act Only Policy*', insurer has a contractual obligation to cover all possible risks. It was held that deceased being neither the insured, nor the insurer, he would come under the purview of *third party*.

21. In ***Branch manager National Insurance Company Ltd. v. Master Suraj Subba & Ors.*** 2013 SCC OnLine Sikk 53, the Sikkim High Court held that the expression '*driver*' means any person including, insured, provided that person holds a valid and effective driving license. It was held that a person, who is not a party to the contract, will be treated as *third party*. Father of the claimant had died in a motor vehicle accident while driving the vehicle. The claim was resisted by Insurance Company

on the ground that it would not be covered under the meaning of *third party*. The Court held that other than the contracting party to the insurance policy, the expression "*third party*" would include everyone else. This was in context of the policy which was a *Package Policy* and not an *Act Only Policy*.

Submissions on behalf of Amicus Curiae

22. At the outset, *Dr. George*, *Amicus Curiae* submitted that the question of law involved is pending consideration before a larger Bench of the Supreme Court in ***Mohana Krishnan S. v. K. Balasubramaniyam & Ors.*** SLP(C) No.3433 of 2020 and *vide* order dated 25th August 2022, it was observed that, "*the question as to whether the third party includes all other persons other than the insured, who is the first party and the insurer, who is the second party. Therefore, all other persons who are neither the insured nor the insurer will be third party and will be covered by the Act Only policy*." However, it is noted that in the facts of the present case, the insurance policy is not an '*Act Only Policy'*, but includes additional premium, therefore, will be considered as a '*Comprehensive/Package Policy*.'

23. *Dr. George,* A*micus Curiae* assisted the Court in traversing the salient provisions of the MV Act particularly on the following points:

i. Scheme of the Act, specifically, *Chapter XI*, covers '*Insurance of motor vehicles against third party risks*', introduced in the Motor Vehicles Act, 1939 and was interpreted in a liberal manner after

the enactment of the MV Act, 1988. *Third parties*, who are otherwise not signatories to the insurance contract, are protected by such contract and are entitled to recover, as long as there is an insurance policy in respect of the vehicle involved in the accident.

ii. *Section 146* of the MV Act, proscribes use of a motor vehicle in a public space, unless there exists an insurance policy against third party risk that complies with requirements of *Chapter XI* of MV Act. Effectively, it mandates third-party insurance for all vehicles operating in public places. *Third parties* can claim damages from owner of the vehicle, which is not dependent upon the financial condition of the driver who caused the injuries.

iii. *Section 147* of the MV Act sets out requirements of such policies and the limits of liability, which forms the bedrock of what is termed as '*Act Only Policy*' under the MV Act. This provision does not require Insurance Company to assume risk for death or bodily injury to owner of the vehicle. However, this provision covers death or bodily injury to any passenger of a public service vehicle arising out of use in a public space, but excludes liability arising out of and in the course of employment, except those which arise under the Workmen's Compensation Act, 1923. *Amicus Curiae* highlighted that within the precinct of *Section 147* of MV Act, it has to be seen whether deceased falls within the meaning of a third party covered under the '*Act Only Policy*' or whether the

deceased stepped into the shoes of the owner and is, therefore, not a *third party* under the '*Act Only Policy*'.

iv. *Section 149* of MV Act (*Post Amendment Section 150*) inures to the benefit of *third parties* and enables them to obtain recoverable amounts expeditiously, and provides that insurer must satisfy the decree or award of the Court or Tribunal on claims by *third parties* in respect of such third-party risk "*as if he were the judgment debtor*".

v. Under *Section 149(2)(a)(ii)* of MV Act, Insurance Company can defend a claim filed under Section 163-A (*post Amendment Section 164*) or Section 166 of MV Act by citing breach of policy conditions by owner of vehicle.

24. *Amicus Curiae* pointed out that there is no contractual relationship between the Insurance Company and the *third party* and it is only the deeming fiction under Sections 147 and 149 (*post amendment Section 150*) that create liabilities and obligations relatable to third parties. Victim of a road accident or legal heirs of deceased can proceed either under Section 163A or Section 166 of the MV Act and burden of proving negligence in a claim made under Section 166 of MV Act has been crystallised as a principle by the Supreme Court in ***Oriental Insurance Company Ltd. v. Meena Variyal and Ors.*** (2007) 5 SCC 428. Distinction has to be made between statutory liability under the provisions, as noted above, opposed to contractual liability and the respective fora under which they must be agitated.

25. It was pointed out that though, the MV Act deserves a liberal construction, one cannot travel beyond the scope of the statute by extending benefits to those who are not covered by it. Principles of purposive construction must be applied while interpreting these provisions in the Act. In other words, an '*Act Only Policy'* falls within the confines of the MV Act and vests jurisdiction with the MACT. However, consumer courts are the competent fora to adjudicate upon contractual liabilities. While there are three parties before the MACT- insurer, insured and the victim, before the consumer protection forum, the consumer simply claims compensation from the insurer for consideration paid under the policy.

26. *Amicus Curiae* made a persuasive argument on '*fetishizing*' specialised jurisdiction like the MACT by gradually over-extending their remit. He submitted that, this weakens the ability of Tribunals like MACT to disburse swift compensation. He argued against undue enlargement of the remit of MACT to cover contractual disputes as also the risk of making it an omnibus *quasi-adjudicatory body*. He, therefore, submitted that special legislation cannot be allowed to extend beyond what is expressly stated in the Act.

27. Elaborating on this issue of *fetishization*, reference was made to the *Micro, Small and Medium Enterprises Development Act, 2006* ('***MSMED Act***') which is a specialized forum for adjudicating disputes pertaining to sale of goods or services. However, it is not to be extended for damages or claims of compensation even those arising out of a

contractual relationship between the parties. Telecom Disputes Settlement Appellant Tribunal ('***TDSAT***'), which is a forum to adjudicate disputes specified in the *Telecom Regulatory Authority of India Act, 1997* ('***TRAI Act***'), also does not extend its jurisdiction to the appointment of an Arbitrator in an Arbitration Petition.

28. *Amicus Curiae*, drew attention to a matter before this Court, ***Geeta Anand v. Tanya Arjun and Another*** 2024 SCC OnLine Del 2327, where a similar submission on jurisdiction and *fetishization* of specialized jurisdiction was made in the context of the specialized adjudicatory bodies set up under the Family Courts Act, 1984. Claims such as seeking possession or injunctive relief were not to be placed before the Family Courts, considering that they cease to exercise jurisdiction, as jurisdiction of civil courts is not ousted.

29. In order to assert the difference between statutory liability and contractual liability, *Amicus Curiae* drew attention of this Court to the following judgments:

(i) ***New India Assurance Co. Ltd. v. Rula and Ors.***, (2000) 3 SCC 195: Supreme Court emphasized that principles governing ordinary insurance contracts are different from insurance contracts involving motor vehicles.

(ii) ***New India Assurance Co. Ltd. v. Sadanand Mukhi & Ors***, (*supra*): Factual matrix of the case involved son of the insured, who was driving the motorcycle met with an accident and died as a result of it. Claim petition was filed by the owner of insured

vehicle and was resisted by Insurance Company, who stated that due to the relationship between deceased and owner *i.e.* father and son, deceased could not be considered as a third party. Considering the provisions in Chapters XI and XII of the MV Act, particularly Section 146, 147 of the MV Act, the Supreme Court noted that, "*The provisions of the Act, therefore, provide for two types of insurance - one statutory in nature and the other contractual in nature. Whereas, the Insurance Company is bound to compensate owner or driver of the motor vehicle in case any person dies or suffers injury as a result of an accident, in cases, involving owner of the vehicle or others are proposed to be covered, an additional payment is required to be paid for covering their life and property*." Relevant paragraphs are extracted as under:

> *"13. Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium payable for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an `act policy', the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is to be accepted, then to a large extent, the provisions of*

the Insurance Act become otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.

14. Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms and the guidelines.

15. Keeping in view the aforementioned Parliamentary object, let us consider the fact of the present case so as to consider as to whether the insurer is liable to pay the amount of compensation in relation to the accident occurred by use of the vehicle which was being driven by the son of the insured. We may, for the said purpose, notice certain decisions covering different categories of the claims. In United India Insurance Co. Ltd. v. Tilak Singh, [(2006) 4 SCC 404] this Court considered the provisions of the Motor Vehicles Act, 1939 as also 1988 Act

> *and inter alia opined that the insurance company would have no liability towards the injuries suffered by the deceased who was a pillion rider, as the insurance policy was a statutory policy which did not cover the gratuitous passenger."*
>
> (emphasis added)

Therefore, Supreme Court held that the Insurance Company was not liable to pay compensation and relied upon the decision in ***National Insurance Company Ltd. v. Laxmi Narain Dhut***, (2007) 3 SCC 700, wherein distinction between a statutory policy and a contractual policy was made out.

30. *Amicus Curiae* also made reference to the 85th Report and 149th Report of Law Commission of India, where the Law Commission made certain recommendations after examining the legislative intent behind MV Act. Under the 149th Commission Report, the Commission reaffirmed the clear legislative intent to exclude contractual liability from compulsory insurance coverage. It recommended that proviso to Section 147 (1) of MV Act be simplified to declare that "*a policy shall not be required to cover any contractual liability*", emphasizing that contractual risk should remain beyond the scope of protection of MV Act.

31. Distinction between an '*Act Only Policy*' and a '*Comprehensive/Package Policy*' was also made, as highlighted by the Supreme Court in ***Balakrishnan*** (*supra*). Reference was made to decision of this Court in ***Sanjay Sharma v. New India Assurance Co.***

Ltd. and others, 2023 SCC OnLine Del 3404, wherein a conceptual distinction was provided. The aspect of a '*Comprehensive/Package Policy*' was reiterated in ***Ravi Prakash Mishra*** (*supra*) and ***Yashpal Luthra*** (*supra*).

32. In addition to this, reference was made to the decision of High Court of Madras in ***Cholamandalam MS General Insurance Company Limited v. Ramesh Babu***, 2020 SCC OnLine Mad 2164, where a preliminary issue as to the maintainability of the claim petition before the MACT depending on the nature of the insurance policy was raised. It was observed that adjudicatory power of MACT was confined to statutory policy and could not be invoked from a contractual policy.

33. It was pointed out that while, the term '*third party'* has been given a wide meaning, an '*Act Only Policy'* does not cover occupants/gratuitous passengers or drivers of a private vehicle, unless an additional premium is paid. It was submitted by *Amicus Curiae* that third party under MV Act was not intended to cover driver, occupant and gratuitous passengers of a private vehicle. The moment a driver borrows the vehicle for permissive use, he steps into the shoes of the owner and, therefore, to seek coverage, an additional premium must be paid, but same cannot be within the definition of a *third party*.

34. It was highlighted that in the present case, the MACT had observed that no fault liability under Section 163-A (*now Section 164*) of MV Act may have come to the rescue of claimants, since there was no

requirement to plead negligence. Therefore, claim can be made as a *third party qua* the offending vehicle.

35. Reliance was placed on decision of Supreme Court in ***Ningamma*** (*supra*), where the Court was dealing with a situation where the deceased was not the owner of motorcycle and had borrowed it. If it is proved that driver is the owner, then the owner could not himself be a recipient of compensation under Section 163-A of MV Act. Therefore, since the deceased stepped into shoes of the owner, legal representatives are precluded from raising a claim under Section 163-A of MV Act.

36. Reference made to ***Sadanand Mukhi*** (*supra*), a decision rendered before ***Ningamma*** (*supra*), that reflected the consistent position where driver of a vehicle was held not to be a *third party*. In ***Ningamma*** (*supra*), the claim petition was filed under Section 163-A of MV Act and not under Section 166, where negligence has to be proved.

37. It was therefore asserted that drivers, occupants and gratuitous passengers are not covered under third-party risk. When an additional plea has been made to cover the risk, the competent forum is not MACT.

38. Therefore, in the present case, it was submitted that deceased borrowed the car from respondent no.1/owner of the vehicle, his father, therefore, deceased could not be considered a *third party* under Motor Vehicles Act and cannot seek cover under a '*Comprehensive/Package Policy*'. Insurance Policy provides a personal accident cover only to the driver-owner, which does not cover the deceased. In any event, it was up

to appellant/claimant to seek compensation under a '*Comprehensive/Package Policy*' since additional premium had been paid, which is a claim to be pursued before the competent forum.

Submissions on behalf of respondent no.2

39. *Mr. Nandwani*, counsel appearing on behalf of respondent no.2/insurer, at the outset, drew attention of this Court to the insurance policy to contend that the cover was restricted to owner-driver and deceased-son would not be covered under the personal accident cover.

40. He concurred with the submission put forth by *Dr. George, Amicus Curiae,* that MACT is not the competent forum for adjudicating contractual disputes and the MACT rightly dismissed the claim petition on that ground.

41. A distinction between the proof of negligence under Section 163-A and Section 166 of MV Act was drawn to contend that, since in the present case, the offending vehicle could not be located, no negligence *qua* the offending vehicle was established. Therefore, a claim under Section 166 in that sense, cannot subsist.

Analysis

42. Victim of a motor accident, being an occupant in a vehicle which has been accidented in a collision with another vehicle can have a claim for compensation on two fronts:

43. ***First***, by claiming that they were *third parties* in an accident due to negligence of the other vehicle/offending vehicle and, therefore, owner/driver of the offending vehicle or insurer, in case the vehicle is insured, would be liable to pay the compensation. This could either be a claim under Section 166 of MV Act, where negligence has to be proved and a higher compensation can be awarded or a claim under Section 163-A of the Act, where only involvement of the offending vehicle is to be proved, and not negligence. Compensation in case of insured offending vehicle would be fastened on the insurer of offending vehicle, subject to other limitations, particularly pleas in defence raised by the Insurance Company.

44. ***Second***, a claim made by an occupant of a car against the insurer of the vehicle in which they are travelling can only arise under Section 166 of MV Act, where negligence is alleged on the driver/owner of vehicle who was driving negligently. The occupant would, therefore, possibly be a *third party qua* the owner of vehicle and, therefore, the insurer of the vehicle in which they are travelling. Such situations arise where an occupant in a vehicle claims compensation due to negligent driving of the vehicle, therefore, ultimately transferring the liability on insurer of the vehicle.

45. Liability under Section 166 of MV Act is based on the tort of negligence and liability would be on the tortfeasor, following the proof of negligence. As noted above, negligence is either asserted of driver of the offending vehicle or against driver of vehicle in which the claimant

was travelling. In either case, liability would follow proof of negligence and if the vehicle is insured, it would ultimately have to be covered by the insurer.

46. In a situation where the offending vehicle is untraced and negligence cannot be proved against the offending vehicle, the option would be to file a claim under 163-A of MV Act, which requires only proof of involvement of the offending vehicle. Even under Section 163-A (now Section 164) of MV Act, the claim can be sustained against the insurer of the vehicle, if the accident has arisen out of the use of motor vehicle, but there is no requirement to establish any wrongful act or neglect or default on the owner of vehicle.

47. However, in the instant case before this Court, legal representative of deceased-driver of the vehicle itself seeks compensation, not on the basis of negligence of offending vehicle, which was untraced, but on account that he would be a *third party*/occupant and, therefore, would be covered under the personal accident cover, as per the '*Comprehensive/Package Policy*' for which additional payment has been paid by the owner.

48. Evidently, this being a claim under Section 166 of MV Act, emanating out of a plea of negligence, legal representatives of deceased-driver cannot claim that he himself was negligent and, therefore, they be entitled to compensation. This would result in an illogical absurdity and amount to somebody trying to lift themselves by their own bootstraps.

49. In this case, the claim petition has been filed under Section 166 of MV Act and, therefore, has to be based on a proof of negligence. Considering that the offending vehicle was untraced, there was no proof of negligence of offending vehicle and therefore, the only other negligence which can be claimed is of the driver of vehicle, which is the deceased himself.

50. Genesis of the claim would fail on this ground itself, since driver of the vehicle cannot sever himself from the fact that he was driving the vehicle and, therefore, any negligence, if at all, would be of himself. From the perspective of the deceased driver, there cannot be severability from owner of the vehicle, considering that the driver had borrowed the vehicle from respondent no.1/owner, in this case being his father and, therefore, was responsible for driving the vehicle in a diligent manner. If he did so and another offending vehicle was negligent, the claim has to be made against the insurer of offending vehicle. If he himself was negligent in driving the vehicle, the claim can be made by other third parties who may have sustained injuries or died, due to his negligent driving. This is where the issue of *third party* liability comes into picture.

51. Respondent no.2/insurer of vehicle in which the deceased was driving can only cover statutory liability for third parties and not the driver or owner himself. This is the reason why an additional premium is taken by insurance company in order to create coverage for the owner-

driver, which in this case was done as part of a '*Comprehensive Package Policy*'.

52. However, the claim made under the insurance policy is not a claim arising out of negligence of a party, but merely a claim where the risk of bodily injury or death of owner-driver is covered by the Insurance Company. This takes the claim into a purely contractual arena, with insurance policy being the contractual document.

53. Therefore, it is not within the remit of MACT to deal with this, which is a creature of the statute, but for a consumer court or civil court to assert to prove that the claim should be satisfied under the four corners of the contractual policy providing the personal accident cover.

54. To reiterate and emphasize what has been discussed above, admittedly, claim petition was filed by the appellant/mother of deceased against respondent no.1/father of deceased and respondent no.2/insurer under the Comprehensive/Package Policy covering third parties and occupants of the car.

Section 166 of MV Act and Negligence

55. Reliance was placed on the personal accident cover taken in favour of owner-driver, which would therefore cover the deceased who was driving the vehicle. Claim was, however, filed under Section 166 of MV Act. The logic which forms the basis of a claim filed under Section 166 of the MV Act has been usefully enunciated by the Supreme Court in its decision in ***Meena Variyal*** (*supra*).

56. Supreme Court categorically states that, "*a third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made*."

57. Claim made by a third party is, therefore, inextricably intertwined with proof of negligence of the driver of offending vehicle. If that causation is not established, followed by proof of negligence, the link for a *third party* claimant breaks in claiming compensation in tort, covered by the insurer of offending vehicle. Relevant paragraph of the decision of Supreme Court in ***Meena Variyal*** (*supra*) is extracted as under:

> "10. *Before we proceed to consider the main aspect arising for decision in this Appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is*

> *liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed?"*
>
> (emphasis added)

58. Section 166 resides in Chapter XI of MV Act, which bears a heading, "*Insurance of motor vehicles against third party risks*". Definition of *third party* as provided under Section 145 (g) of MV Act, 1988 and Section 145 (i) of MV Act, 2019 is inclusive in nature. The sequence and logic that permeates Chapter XI, which relates to insurance cover against *third party* risks is that it is based on a mandate that no one must use a vehicle in a public place, unless they have an insurance policy which complies with provisions of that chapter. A useful traversal of these provisions has been provided by *Amicus Curiae,* which has been narrated above in *paragraph 23* and is therefore, not being repeated here for the sake of brevity.

59. An insurance cover would be triggered only if there is a liability to pay by the insured to a third party. According to the Black's Law Dictionary (Second Edition), "*liability is responsibility; the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts either express or implied, or in consequence of torts committed*." Liability is a legal construct and is borne out of a fault, negligence or any act or omission that has legal consequences. Insured has to be first held liable, which will be then covered by the insurer. However, if the liability does not arise, in the first place, insurer's duty to cover would also not be triggered.

60. In the present case, respondent no.1/father of the deceased was the insured and owner of the vehicle. There is no claim of negligence or infraction against the insured *i.e.* father of deceased. Therefore, the question of his liability does not enter into the foray. Claim has been made on behalf of deceased, claiming that he was in the shoes of owner/driver or otherwise a third party, with respect to the personal accident cover, which the Insurance Company had provided due to the payment of additional premium by the insured. However, this does not come within the confines of liability emanating in a claim under Chapter XI of MV Act.

61. In this context, the necessity of proof of negligence has further been emphasized by the decision of Supreme Court in ***Minu B. Mehta v. Balkrishna Ramchandra Nayan,*** (1977) 2 SCC 441. Some useful extracts from the said decision are as under:

"27. This plea ignores the basic requirements of the owner's liability and the claimant's right to receive compensation. The owner's liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The Claims Tribunal is a tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence if accepted would lead to strange results.

28. Section 110(1) of the Act empowers the State Government to constitute one or more Motor Accidents Claims Tribunals for such area as may be specified for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death or bodily injury to persons. The power is optional and the State Government may not constitute a Claims Tribunal for certain areas. When a claim includes a claim for compensation the claimant has an option to make his claim before the civil court. Regarding claims for compensation therefore in certain cases civil courts also have a jurisdiction. If the contention put forward is accepted so far as the civil court is concerned it would have to determine the liability of the owner on the basis of common law or

torts while the Claims Tribunal can award compensation without reference to common law or torts and without coming to the conclusion that the owner is liable. The concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of a vehicle in a public place cannot justify fastening liability on the owner. It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable. The proof of negligence remains the linch pin to recover compensation. The various enactments have attempted to mitigate a possible injury to the claimant by providing for payment of the claims by insurance."

(emphasis added)

Decisions relied upon by counsel for appellant/claimant

62. Aside from this fundamental legal flaw in the argument having been pressed by *Mr. Sarin*, counsel for appellant/claimant, the decisions relied upon by him need to be examined for the sake of completeness.

63. Reliance has been placed on the decision of Supreme Court in ***Balakrishnan*** (*supra*). Facts of this case have been synopsized in *paragraphs nos. 11.1* to *11.5* above and are not being repeated *herein* to avoid repetition.

64. Evidently, the claim in ***Balakrishnan*** (*supra*) was filed by the injured claimant against the owner of vehicle in which he was travelling

(*the company in which he was a Managing Director*) and, therefore, the Insurance Company, basis that the accident had occurred due to rash and negligent driving of driver of that vehicle. High Court treated the claimant as a passenger and, accordingly, liability was fastened on the driver and, therefore, the insurer.

65. The point of dispute was whether, he being the Managing Director of the company which also owned the car and a signatory in the Registration Certificate (*RC*) book could maintain a claim as a *third party*. Supreme Court deliberated upon the difference between a *Comprehensive/Package Policy* and an *Act Only Policy* and opined that, since it was a *Comprehensive/Package Policy*, liability of occupants of a car would be covered.

66. The attempt made by counsel for appellant/claimant to extend this opinion to the facts of the case at hand is completely untenable. In ***Balakrishnan*** (*supra*), liability of the company being the owner of vehicle in which the claimant was travelling was established on the basis of negligence of the driver of the vehicle, who was a different person from the claimant. The fundamental basis of insurance cover being triggered was the liability on driver of the insured vehicle and, therefore, the company vicariously.

67. Claimant was claiming as a third party *i.e.* as an occupant of the car. Even otherwise, the Supreme Court had set aside the finding of High Court and Tribunal as regards the liability of insurer and remitted the

matter back to the Tribunal to scrutinize the insurance policy in a proper perspective.

68. Further reliance has been placed on the decision of Supreme Court in ***Shanti Bopanna*** (*supra*), which is also misconceived. In that case, the deceased, on whose behalf the claim had been pressed, was travelling in a car belonging to his employer and the car was being driven by another person. It was in this context that the claimant was treated as an occupant and was held to be a third party, since he was neither the insurer nor the insured.

69. Supreme Court rejected the contentions raised by the Insurance Company that the deceased was not a *third party*, on the basis of the categorical term in the insurance policy which covered death or bodily injury to any person, including occupants carried in the vehicle since he was an employee, sitting in the car. Facts of the instant case are clearly different, where the deceased himself was driving the vehicle, and there cannot be any claim of negligence on the part of owner of the vehicle, who was not involved in the accident.

70. Reliance has also been placed on the decision of Supreme Court in ***Manjusha*** (*supra*), where claimant was the driver and owner of the vehicle and was travelling along with the family, who were the occupants. Due to a tyre burst, the car resultantly went out of control and no negligence of the driver was attributed.

71. Tribunal granted compensation, which was assailed by the insurer, stating that the driver himself was the tortfeasor. The High Court found that there was no case for imposing a statutory liability, but it would be covered by the Comprehensive/Package Policy to a limited extent. In appeal, Supreme Court noted that the cases cited before it, were with respect to statutory liability, whereas, the issue was regarding liability under the personal accident insurance cover.

72. In particular, it noted that, "*what assumes significance in the present case is that it is not the statutory liability, but the contractual liability of a personal accident cover which forms the basis of the claim raised.*" The question before Court was only whether liability was limited or not, and in that context, the decision of Tribunal was restored, considering that the Insurance Company had not pleaded limited liability either before the Tribunal nor in the appeal before High Court. The decision of Supreme Court in no way opines or advocates that such claims can be considered under the MV Act, even though the issue is one of contractual liability.

73. *Mr. Varun Sarin*, counsel for appellant/claimant, has also relied upon decisions from various High Courts, which can be clearly distinguished either on facts or for not addressing the issue in question.

73.1. In ***Suraj Kala*** (*supra*), the High Court of Allahabad, was dealing with a claim under Section 163-A of the MV Act made by the driver, who was also an employee of the owner of the vehicle. The judgment was passed in context of the liability arising under the *Workmen's*

Compensation Act, 1923 and the extent to which it could be awarded by the MACT. Discussion in the judgment does not come to the benefit of appellant/claimant, since there was no relationship of employer-employee between the owner and driver.

73.2. In ***Valiben Laxmanbhai Thakore*** (*supra*), the Full Bench of High Court of Gujarat was answering a reference concerning a claim made under Section 163-A of the MV Act, by an employee of the owner, who was driving an ambulance and met with an accident during the course of employment and succumbed to his injuries. The High Court arrived at the conclusion that when additional premium to cover paid driver or conductor has been paid by the owner, the Insurance Company shall be liable to cover such risk. This discussion does not have any relevance to the case at hand.

73.3. In ***Ravi Prakash Mishra*** (*supra*), a Coordinate Bench of this Court, was adjudicating a claim where the vehicle being driven by an employee of the owner had hit a divider due to heavy fog. The Court held that since, the insurance policy was a Comprehensive/Package Policy, the Insurance Company would be liable to pay up the amount limited as per the policy to Rs. 1,00,000/-. Reliance on this case shall also not be sustainable.

73.4. *Mr. Varun Sarin*, vehemently relied upon decision of a Single Judge of the High Court of Bombay in ***Ramchand*** (*supra*). In this case, claim was made by the driver who had borrowed the vehicle, from its owner and claimed compensation under the Comprehensive/Package

Policy. Court considered the issue of maintainability, however, only to the extent as to whether a driver would step into shoes of an owner in a claim made under Section 166 of MV Act and held that it was applicable only with respect to claims filed under Section 163-A of the MV Act by relying upon the decision of Supreme Court in ***Ningamma*** (*supra*). The Court did not go into the issue of, whether such a claim can be pursued as a contractual claim filed under Section 166 of MV Act. *Mr. Varun Sarin*, relied upon *paragraph 55* of the said decision, which reads as under:

> "*55. If what is canvassed before me by the learned counsel for the insurance company is taken to be true, the same will lead to an absurd interpretation where a large class of driver driving vehicle will be excluded from the insurance coverage, which will not only be against sprit of the provisions but also contrary to benevolent Scheme of the Act*."
>
> (emphasis added)

However, this Court is not agreement with the simpliciter view taken by the High Court of Bombay, that a claim made under Section 166 of the MV Act would be successful against the Comprehensive/Package Policy taken by owner of the vehicle, even if the person on whose behalf the claim has been made was driving the vehicle. Nature of these claims would be covered under contractual liability and not a claim under Section 166 of MV Act which presupposes a finding on proof of negligence.

73.5. In ***Manju Singh*** (*supra*), the High Court of Allahabad was dealing with a claim made on behalf of the deceased who was driving the vehicle, under the Comprehensive/Package Policy. Court allowed the claim, since it was made under the '*Comprehensive/Package Policy*' and not under the '*Act Only Policy*', however, there was no discussion on the issue of negligence or otherwise.

73.6. A Coordinate Bench of this Court in ***Durga Prasad Bhusahal*** (*supra*) had provided Rs. 1,00,000/- on account of personal accident cover which covered the owner, as well as, the driver of offending vehicle. However, no discussion has been made by the Court on the issue canvased before us.

73.7. In ***Sudha Singh*** (*supra*), the High Court of Patna was dealing with a claim filed on behalf of the deceased driver who was travelling in a vehicle belonging to owner. Insurance Company had raised the issue of maintainability in the appeal. The High Court however, took into account that the insurance policy is a Private Car/Package Policy and due to the payment of additional premium, the insurer had taken contractual obligation to cover the risk of all persons boarded on the vehicle. Court held that the claim for compensation would be successful and maintainable under Section 165 (1) of the MV Act and that the claimant will be a *third party*, as they are neither the insured nor the insurer of vehicle.

73.8. In ***Suraj Subba*** (*supra*), the High Court of Sikkim held that the driver of vehicle, which was owned by another person, would be a third

party since he is neither the insured nor the insurer. However, discussion by the Court does not include the required precondition of finding of negligence.

Decisions relied upon by Amicus Curiae

74. Continuing this discussion on statutory liability versus contractual liability and the maintainability of a claim under Section 166 of MV Act, decisions which have been relied upon by *Amicus Curiae* are instructive and useful for our determination.

75. Reliance was placed on the decision of Supreme Court in ***Sadanand Mukhi*** (*supra*), where claim was filed by the owner of a motorcycle insured with the Insurance Company. The motorcycle was being driven by son of the owner, who met with an accident and died as a result of it. The Insurance Company raised an issue on maintainability, considering that it was a father-son relationship, claimants could not seek compensation, since the deceased was not a *third party*. The Tribunal held the Insurance Company liable and the High Court dismissed the appeal.

76. A number of issues were framed by the Tribunal, *inter alia,* whether the claim was maintainable and the deceased was a *third party*. Since, the Tribunal and High Court did not express an opinion, the issue was therefore, analyzed by the Supreme Court, where it was categorically stated that the MV Act provides for two types of insurance:

statutory and contractual. The former requires the Insurance Company to compensate the owner or driver of motor vehicle, in case any other person dies or suffers injury as a result of the accident. Whereas, in the latter, an additional premium is required to be paid for covering the life and property of the owner of vehicle.

77. Since the claim petition was filed under Section 166 of MV Act and an *Act Only Policy* was taken, the Supreme Court held that the victim of an accident arising out of use of the insured vehicle, could not be covered with respect to a contract of insurance. Findings of the Supreme Court are extracted as under:

> "*13. Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium payable for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an `act policy', the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is to be accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is*

uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.

14. Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms and the guidelines."

(emphasis added)

78. The Supreme Court held that the Insurance Company was not liable, since the deceased was not covered as a third party by the statutory policy.

79. Further reliance was placed on the decision of Supreme Court in ***Ningamma*** (*supra*). In this case, a claim under Section 163-A of MV Act was made by legal heirs of deceased, who sustained fatal injuries in an accident while travelling on a motorcycle borrowed from the owner. Tribunal allowed the claim petition and awarded compensation. Appeal was preferred by the Insurance Company before the High Court, stating that the accident occurred due to fault of deceased and the claim petition was not maintainable under Section 163-A of MV Act, since no other

vehicle was involved in the accident. High Court allowed the appeal holding that the claim was not maintainable, since no tortfeasor was involved.

80. A Review Petition was filed by the claimants which was dismissed by the High Court, thereafter, which they appealed before the Supreme Court. Insurance Company argued that in order to award compensation under Section 163-A of MV Act, the person who suffered a loss must be a *third party* and since the deceased was not the *third party*, the High Court was therefore, correct in its view.

81. The provisions of 163-A of MV Act were examined by the Supreme Court in fair detail. The provision stated that the owner of a motor vehicle or authorized insurer would be liable to pay compensation in case of death or permanent disablement arising out of the use of a motor vehicle. Claimant would not be required to prove or establish that death or permanent disablement had taken place due to any wrongful act or neglect of owner of the vehicle.

82. Supreme Court arrived at the conclusion that deceased was not the owner of the motorcycle in question and he had borrowed the motorcycle. He also cannot be held to be an employee of the owner of the motorcycle, even though he had been authorised by the owner to drive the motorcycle. He would, therefore, step into shoes of the owner of the motorcycle, basis the explicit provision of Section 163-A of MV Act. If it was proved that driver was owner of the motor vehicle, in that case, the owner himself could not be a recipient of compensation, as the

liability to pay is on the owner. Therefore, the Supreme Court held that legal representatives of the deceased have stepped into shoes of the owner of the motorcycle.

83. Supreme Court additionally examined whether a claim for compensation could have been made by the legal representatives under Section 166 of MV Act. A critical observation was made by the Supreme Court which is emphasized as under:

> "*25. When an application of the aforesaid nature claiming compensation under the provisions of Section 166 is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 162, by determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs*."
>
> (emphasis added)

84. Supreme Court, therefore, clearly states that a claim under Section 166 of MV Act cannot subsist if the deceased was himself responsible for the accident due to his rash and negligent driving. The Supreme Court also notes ***Sadanand Mukhi*** (*supra*), in the following terms:

> "*33. There are indeed cases like New India Assurance Company Limited vs. Sadanand Mukhi and Others, (2009) 2 SCC 417, wherein, the son of the owner was driving the vehicle, who died in the accident, was not regarded as third party. In the said case the court held that neither Section 163-A nor Section 166 would be applicable. The matter was reminded back to the High Court for dealing with open issues of fact as to whether that there was rash and negligent driving on the part of the deceased and whether the claimants would be governed by the terms and conditions of insurance policy*."
>
> (emphasis added)

85. No doubt, ***Ningamma*** (*supra*) did not rule out the possibility of seeking compensation under Section 166 of MV Act. However, the claim petition was filed under Section 163-A of MV Act, where the consideration was materially different. *Amicus Curiae* has pressed the position of law as laid down in ***Sadanand Mukhi*** (*supra*), which drew out a distinction between contractual policy and statutory policy and ultimately held that driver of the motor vehicle was not a *third party* under the MV Act.

86. Reliance may also be placed upon the decision of Madras High Court in ***Ramesh Babu*** (*supra*), where a preliminary issue regarding maintainability of the claim petition was framed. A claim was filed under Section 163-A of MV Act by the owner who was driving a taxi and had suffered injuries after dashing against a palm tree. The claim petition was resisted by the Insurance Company, stating that the claimant was not a *third party*.

87. The High Court noted that the claim petition was actually filed under Section 166 of MV Act, but had been incorrectly noted as one under Section 163-A of the MV Act by the Tribunal. The Court held that in a *Package Policy*, if a policyholder specifically seeks a claim against the personal accident cover, then nature of the insurance policy, as well as terms and conditions have to be taken into account and, such claims cannot be adjudicated by a Tribunal. If there was no statutory liability on the part of insurance company, provisions of the MV Act could not be invoked, nor could an adjudication be done before the Tribunal.

88. The High Court stated that, "*mere contractual liability are not enforceable before the Motor Accidents Claims Tribunal. The very purpose and object of the Motor Accident Claims Tribunal are to adjudicate the claim petitions and grant* '*just compensation*' *with reference to the provisions of the Motor Vehicles Act.* Relevant findings of the Court are extracted as under:

> "*33. Reading of the conditions stipulated in the said Package Policy with reference to the Personal Accident Cover for owner-cum-driver, it is contractual in nature. The contract is between the owner of the vehicle as well as the Insurance company concerned. There is no third party involvement with reference to the Personal Accident Cover. The conditions / claim of Personal Accident Cover is also well enumerated in the policy because Clause IV deals with the coverage. Once, the terms and conditions stipulated in the Personal Accident Cover is satisfied, then alone, the owner-cum-driver is entitled to get the compensation as fixed in the Personal Accident Cover.*

...

35. It is important to note that the terms and conditions stipulated in the Insurance policy are of paramount importance for the purpose of deciding the liability as well as to fix the quantum of compensation to be paid. In the event of no coverage under the policy, then the Insurance company cannot be held liable to pay compensation. The policy being contractual in nature, the person claiming benefit under the policy must establish that he is entitled for compensation with reference to the terms and conditions agreed between the parties in the signed contract. Undoubtedly, no person is entitled to claim any benefit beyond the scope of the terms and conditions agreed between the parties. Thus, nature of policy, terms and conditions stipulated, which all are agreed upon are the factors to be ascertained preliminarily by the Courts for the purpose of entertaining the Claim Petitions as well as to fix the liability to pay compensation.

36. The Motor Vehicles Act being a Special legislation and the Motor Accident Claims Tribunal is constituted to deal with the Accident Claims specifically and under the provisions of the Motor Vehicles Act, the Tribunal have no jurisdiction to deal with all other policies issued by the Insurance company, which all are contractual in nature and the terms and conditions agreed between the parties specifically. Such contracted policy cannot raise any right to the parties to file Claim Petition under the Motor Vehicles Act and such claims are to be made before the competent Forum namely before Consumer Forum or before the competent Civil Court of Law. The enforceability of the terms and conditions cannot be adjudicated as such contractual policies are unconnected with the scope of the provisions of the Motor Vehicles Act, more

specifically, under Section 147 of the Motor Vehicles Act.

37. It is relevant to consider that the Motor Vehicle policies are issued by the Insurance company for the purpose of grant of compensation and the language employed is "Compensation". However, the Personal Accident Coverage Policy reveals that it is "benefit" is to be granted. Thus, the word "Compensation" adopted under the Motor Vehicle Policy cannot be equated with the "benefit" to be granted under the Personal Accident Policy, which is independent and unconnected with the provisions of the Motor Vehicles Act as well as the compensation to be assessed and granted under the Motor Vehicles Act. There is a difference between the Motor Vehicle Policy and Personal Accident Coverage Policy. Motor Accident Policies are strictly within the ambit of the provisions of the Motor Vehicles Act. The Personal Accident Coverage Policy is strictly in accordance with the terms and conditions agreed between the parties. The contractual liability or obligations cannot be adjudicated by the Motor Accident Claims Tribunal under the provisions of the Motor Vehicles Act and in such an event, the Motor Accident Claims Tribunal are usurping the powers of the competent Civil Court, which is impermissible. If such contractual liabilities are adjudicated before the Motor Accident Claims Tribunal, then the Tribunal are exercising excess jurisdiction, which is not contemplated nor conferred under the provisions of the Motor Vehicles Act."

(emphasis added)

89. The observation made by the Madras High Court in that, if contractual liability is adjudicated before the MACT, then this would

result in Tribunals exercising excess jurisdiction not confirmed by the MV Act, is an aspect which was covered by the *Amicus Curiae* under the epithet of *fetishizing* specialised jurisdictions of Tribunals which has been referred to above in *paragraphs 26* to *28*.

90. This aspect does appeal to the Court, considering that the jurisdiction of a specialised Tribunal constituted under a particular Act with a specific remit cannot be expanded beyond the confines of the Act, nor can they be twisted and contorted in order to accommodate all kinds of claims.

91. A resonant view has been taken by the Single Judge of the Madras High Court in a recent decision in ***Reliance General Insurance Company Ltd. v. Karthika and Ors***. 2026 SCC OnLine Madras 3108. A claim was made on behalf of the deceased, who was travelling on his own bike who met with an accident and died as a result of it. His legal representatives filed a claim under Section 166 of MV Act, which was resisted by the insurance company, stating that deceased himself was the cause of accident and also, the owner of the vehicle.

92. Claimants relied *inter alia* on the decision in ***Manjusha*** (*supra*) and deliberated in detail regarding the difference between a personal accident cover and statutory coverage. Relevant discussion made by the Court is extracted hereunder:

> "*10. Admittedly, the deceased is the owner of the two wheeler, which met with an accident and that he is responsible for the cause of the accident as per the*

FIR. The Tribunal also arrived at a conclusion that the deceased is responsible for the accident. Undoubtedly, Personal Accident cover is available. However, the personal accident cover is not a statutory coverage and therefore, separate claim is to be made strictly in accordance with the terms and conditions stipulated in the policy, which are all agreed between the parties. The Personal Accident coverage policy is a contractual policy and there is no statutory coverage. Thus, the claim petition filed under Motor Vehicles Act, 1988, is not maintainable. If there is statutory coverage under Section 147(1) of the Motor Vehicles Act, 1988, the claim petition can be maintainable before the Motor Accident Claims Tribunal. In respect of all other contractual policies, the aggrieved person has to approach the competent forum and not the Motor Accident Claims Tribunal. The benefits to be granted under the contractual obligations cannot be equated with the compensation to be granted under the provisions of the Motor Vehicles Act, 1988, which is of statutory character. The benefits agreed between the parties under a contract is not akin to that of the statutory liability and payments of compensation contemplated under the provisions of the Motor Vehicles Act, 1988. Thus, the Tribunal had committed an error in not adjudicating the preliminary issue of maintainability and proceeded on the basis that there is a policy coverage and accordingly granted a sum of Rs.1,00,000/- under the Personal Accident cover.

11. Even for grant of Personal Accident cover, the terms and conditions stipulated in the policy is to be verified. However, the Tribunal has proceeded and fixed the liability based on the statutory provisions and granted compensation. The personal accident cover is a separate policy and the terms and conditions for the same are provided separately, which were agreed

> *between the parties. Therefore, in the absence of any statutory liability under the policy, the Tribunal ought not to have entertained the claim petition filed under Section 166 of the Motor Vehicles Act*."
>
> (emphasis added)

93. Reliance was also placed upon ***Ramesh Babu*** (*supra*) and the Court held as under:

> "*13. In view of the legal principles settled by this Court, in the judgment cited supra, and the said legal principles squarely applies to the facts and circumstances of the present case on hand, this Court has no hesitation in arriving a conclusion that the award of the Tribunal is perverse. However, it is open to the claimants to directly approach the insurer on the basis of the Personal Accident cover. In case, the Insurance Company fails to compensate him, it is well open to him to approach the Consumer Forum or any other appropriate Forum."*
>
> (emphasis added)

The Present Case

94. No doubt, courts have entertained claims under Section 166 of MV Act in view of awarding *just and reasonable* compensation, where additional premium has been paid by the owner. However, in the opinion of this Court, a claim which is covered by payment of additional premium is not made on the basis of statutory mandate. Therefore, it would not be a claim made under Chapter XI of MV Act, *i.e.* within the remit of MACT.

95. No doubt, there are differing views of various Benches of other Courts on this issue, however the decisions vary since there are various permutations and combinations of facts involved in each of the matters. In some cases, the issue concerns an '*Act Only Policy'* versus '*Comprehensive/Package Policy*' and a claim is made under Section 163-A and not under Section 166 of MV Act. In some cases, the claim is made by owners, if they suffered injuries or through their legal representatives if they died due to the accident and a claim is made with respect to their own insurance policy whereas, in others, the vehicle was either driven by family of the owner or by a gratuitous driver claiming against the insurance policy taken by the owner.

96. What is quite clear to this Court is that in the facts of this case, deceased-son had taken the car from his father (respondent no.1) and was driving the vehicle which was involved in the accident. A claim made under Section 166 of the MV Act involves proof of negligence against driver of the vehicle, which, in this case, was the deceased himself and, therefore, liability could not have been placed on respondent no.1/owner, which would be then covered by respondent no.2/insurer.

97. It is necessary for a claim made under Section 166 of MV Act to establish a tortfeasor in order to place liability. The tortfeasor, in this case, cannot claim claim liability as a '*third party*.'

98. On the other hand, the claim, if made under the personal accident cover of the insurance policy, would be tested on the terms and conditions of the insurance contract and, therefore, would not be within

the remit of MACT. Whether the benefit of insurance could extend to the death of a driver of the car, who was not the owner, but had borrowed the vehicle from the owner, would be an issue, which would then have to be addressed under the terms and conditions of the Insurance Policy and, therefore, it would be up to the claimants to approach the insurer and in case the claim is defeated, their remedies would be open before the consumer forum or any other competent forum. Expanding the jurisdiction of MACT to cover claims of this nature would be extending the motor accidents jurisprudence to an illogical extremity.

99. Accordingly, the appeal stands dismissed.

100. Pending applications (if any) are rendered infructuous.

101. Judgment be uploaded on the website of this Court.

ANISH DAYAL
(JUDGE)

JULY 1, 2026/ak/rk/*sp*