

**Ranju Rani Alias Ranju Devi and ors. Vs. Branch Manager, the New India Assurance Company Limited**

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**Court :** Patna

**Decided On :** Sep-19-2002

**Judge :** Nagendra Rai, J.

**Acts :** [Motor Vehicles Act, 1988](#) - Sections 163A

**Appeal No. :** Civil Revision No. 790 of 2002

**Appellant :** Ranju Rani Alias Ranju Devi and ors.

**Respondent :** Branch Manager, the New India Assurance Company Limited

**Disposition :** Rev. dismissed

**Prior history :** Nagendra Rai, J. 1. This Civil Revision is directed against the order dated 1-5-2002, passed by the Motor Vehicles Accident Claims Tribunal (for short 'the Tribunal') rejecting the claim made by the petitioners as not maintainable under Section 163A of the Motor Vehicles Act, 1988 (for short 'the Act') 2. The Office has reported that the Civil Revision is not maintainable. The office note is not correct. A Full Bench of this Court in the case of Anirudh Prasad Ambasta v. State of Bihar, rep

**Judgement :**

**Nagendra Rai, J.**

1. This Civil Revision is directed against the order dated 1-5-2002, passed by the Motor Vehicles Accident Claims Tribunal (for short 'the Tribunal') rejecting the claim made by the petitioners as not maintainable under Section 163A of the [Motor Vehicles Act, 1988](#) (for short 'the Act')
2. The Office has reported that the Civil Revision is not maintainable. The office note is not correct. A Full Bench of this Court in the case of Anirudh Prasad Ambasta v. State of Bihar, reported in AIR 1990 Patna49, in paragraph 23, has held that the District Judge, who is functioning as a Claims Tribunal, is not only within the administrative control of the High Court but also subordinate to it under Section 115 of the Code of Civil Procedure. Thus, it is held that the Civil Revision is maintainable.
3. The question, which falls for consideration in this case, is as to whether the accident, for which the compensation has been claimed under the provisions of the Act, arose out of the use of motor vehicle. The Tribunal, by the impugned order, has held that the death of the deceased was a murder simpliciter and as such it cannot be termed as a death or permanent disablement due to accident arising out of the use of motor vehicle entitling payment of compensation in terms of Section 163A of the Act.
4. The petitioners, who are relations of deceased Suman Yadav, filed Claim Case No. 17 of 2002 against the Branch Manager of the New India Assurance Co. Ltd.. Bhagalpur Branch, Bhagalpur. Their case is that on 2-7-2001 at about 10.15 a.m. deceased Suman yadav along with Manoj Yadav going to Bhagalpur from Kahalgaon on a motorcycle bearing registration No. BR-10B-4332. When they reached near Khankitta culvert, one Ramashish Singh fired upon Suman Yadav, which resulted into his instantaneous death. As the said accident arose out of the use of a motor vehicle, the claimant-petitioners are entitled to compensation in terms of the aforesaid provision.
5. It is an admitted position that a fardbeyan was lodged by the other occupant of the motor-cycle Manoj Yadav. In the fardbeyan, it has been clearly stated that the

motive for the occurrence is that prior to the alleged date of occurrence, an altercation had taken place between the deceased and accused Ramashish Singh on the point of filing tender and the accused had threatened to kill the deceased. The Tribunal, after having taken note of the aforesaid fact, held that the death of the deceased was not caused due to an accident arising out of the use of a motor vehicle.

6. Learned Counsel appearing for the petitioners submitted that the Tribunal at the very threshold was not justified in dismissing the claim application as the death of the deceased occurred due to use of a motor vehicle and as such it was an accident arising out of the use of the motor vehicle. The deceased was murdered because he was travelling on a motorcycle, which, admittedly, was insured and the Insurance Company is liable to pay compensation in terms of the provisions of the Act.

7. Admitted fact is that the vehicle was ensured with the opposite party. If Prima facie, it is found that the death was an accident and the same arose out of use of a motor vehicle then the Tribunal cannot dismiss the claim at the threshold and has to decide the matter in accordance with law.

8. Section 163A of the Act contains special provisions as to payment of compensation in case of death or permanent disablement due to accident arising out of the use of motor vehicle. The amount of compensation is indicated in the schedule. The claim of the petitioner is maintainable once it is proved that the accident arose out of the use of motor vehicle.

9. The word 'accident' has not been defined under the Act, but the same has been the subject matter of interpretation and decision by the Apex Court in several

cases. The direct case, which has bearing on the question involved in this case, is the case of Rita Devi v. New India Assurance Co. Ltd., reported in AIR 2000 Supreme Court 1930: 2001 (1) PUR (SC) 30. There, the deceased was a driver of an autorickshaw, which was registered as public carrier vehicle and used for hire by passengers. Some unknown persons hired the said autorickshaw on the 22nd of March, 1995, from rickshaw stand at Dimapur between 5 to 6 p.m. The

aforesaid autorickshaw was, thereafter, stolen and the dead body of the driver was found, but the autorickshaw was not traced. The Insurance Company allowed the claim of the owner for the loss of the autorickshaw. The heir of the deceased, the holder of the Power of Attorney, claimed compensation under Section 163A of the Act. The Tribunal allowed the claim, but the High Court held that the case was of a murder and not an accident arising out of the use of the motor vehicle and rejected the claim case. The matter went before the Apex Court and there it was held that the death of the driver of the autorickshaw was an accident within the meaning of the Act and as that accident arose out of use of motor vehicle, claimants were entitled to compensation. It was further held that the question whether the murder is an accident or not within the meaning of the Act has to be determined on the proximity of the cause of murder. If the dominant intention was to commit murder then such accident is not an accidental murder but is murder simpliciter. However, if the cause of murder was originally not intended but the same, was caused while committing other crime then such murder is an accidental murder. In this connection, it is useful to refer to paragraph 10 of the judgment, which runs as follows:

'The question, therefore, is can a murder be an accident in any given case? There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a 'murder' which is not a accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.'

It was further held in that case that when such an accident had connection with the use of the motor vehicle even it may not be direct or immediate, the claim of compensation is maintainable under Section 163A of the Act.

10. The question for consideration is as to whether the murder of the deceased was a murder simpliciter or it was an accidental murder. According to the FIR, it is not the case of the claimants that the accused wanted to loot away the motor-cycle and in that process on protest the deceased was murdered. The clear case as evident from the FIR is that there was an animosity between the deceased and the accused and on the date of occurrence while the deceased was going on a motorcycle, the accused fired at him resulting into his instantaneous death. Thus, the dominant intention of the accused was to commit murder of the deceased and, thus, the killing is not an accidental murder. It is a murder simpliciter, as a result of the motive attributed in the FIR. Therefore, the murder of the deceased even at the time of use of the motorcycle cannot be a ground to award compensation under the provisions of the Act. In my view, the Tribunal has rightly rejected the claim of the petitioners.

11. In the result, I find no merit in this Civil Revision and it is, accordingly, dismissed.

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