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**(2012) 05 DEL CK 0236**  
**In the Delhi High Court**  
**Case No : MAC. APP. 895 of 2011**

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| Khazan Singh and Another          | Vs | APPELLANT  |
| Virender Singh @ Pappu and Others |    | RESPONDENT |

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**Date of Decision :** 17-05-2012

**Acts Referred:**

Constitution of India, 1950 — Article 21  
Motor Vehicles Act, 1988 — Section 140, 163A, 163A(2), 166, 40

**Citation :** (2012) 05 DEL CK 0236

**Hon'ble Judges :** G.P. Mittal, J

**Bench :** Single Bench

**Advocate :** S.N. Parashar, for the Appellant; Kanwal Chaudhary, for R-3, for the Respondent

**Final Decision :** Allowed

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## Judgement

G. P. MITTAL, J.—The Appellants, who are the parents of the deceased Raju impugn a judgment dated 04.04.2011 whereby while awarding a compensation of `4,48,000/-, the Motor Accident Claims Tribunal (the Claims Tribunal) directed the Appellant to recover 50% of the compensation awarded from the driver, owner and Insurer of the truck No.HR-38F-6139. It may be noticed that a Claim Petition u/s 163-A of the Motor Vehicles Act, 1988 (the Act) was preferred by the Appellants. It was alleged that deceased Raju, a young unmarried boy of 20 years, was on board a truck No.HR-38F-6139 as a helper at the time of the accident on 12.10.201. The truck was loaded with stones and was proceeding from Anang Pur, Faridabad to Noida. When the truck reached near Vikas Properties in Village Lakkarpur, the driver did not notice the dumper No.HR-38D-5267 parked on the road. The truck rammed into the dumper. Raju suffered serious injuries which proved fatal.

2. The driver of the dumper contested the Claim Petition disputing his negligence. He took up the plea that the accident was caused on account of the rash and negligent driving of truck No.HR-38F-6139.

3. The Claims Tribunal held that the Appellant did not implead the driver, owner and Insurer of the truck in which Raju was travelling as a helper. The drivers, owners and Insurers of both the vehicles involved in the accident were equally liable and, therefore it directed payment of 50% of the awarded compensation by Respondents No.1,2 and 3. The Respondent No.3 Insurance Company was directed to satisfy the award to the extent of 50% of the compensation awarded. Rest 50% was held to be recoverable from the driver, owner and insurer of the truck.

4. It is urged by the learned counsel for the Appellants that since negligence is not required to be proved in a Petition u/s 163-A of the Act, the Claimants can recover the compensation from the owner/Insurer of either or both the vehicles involved in the accident.

5. On the other hand, it is urged by the learned Counsel for Respondent No.3 that since the Claimant is not required to prove the negligence, the liability of the vehicles involved in the accident would be equal.

6. Section 163-A enables a Claimant to claim compensation without proving any negligence on the part of the owner of the vehicle involved in the accident and there is no indication in the provision as to from which owner/insurer the Claimants would claim the compensation, if more than one vehicle is involved in the accident. Since in the case of composite negligence, the Claimants can elect to sue and recover compensation from all or any of the tortfeasors. Thus u/s 163-A of the Act also it would be at the option of the Claimant to claim compensation from all or any of the owner/insurer of the vehicles involved in the accident. Moreover, a perusal of the provision of Section 163-A shows that the compensation can be recovered from the owner or authorized insurer of the vehicle. Although, the legislature must be presumed to be aware of the fact that more than one vehicle could be involved in any accident, the use of the word "vehicle" would show that the compensation can be recovered from the owner/insurer of any or all the vehicles involved in the accident. The main reason for this is that the legislature wanted the compensation to be paid to the victim without proof of the wrongful act, neglect or default of the owner of the vehicle or vehicles involved in the accident. Thus, in sub-section (1) of Section 163-A the term vehicle and in sub-section (2) of Section 163-A the term "vehicle" or "vehicles" have been used. Since the negligence is not required to be proved and every vehicle is required to be compulsorily insured under the Act, the legislature did not intend to apportion the liability in any ratio as the compensation in case of insurance would be paid by the authorized insurer who is obviously in the business of insurance and has undertaken insurance of a large number of vehicles.

7. Similar view was taken by a Division Bench judgment of Kerala High Court in United India Insurance Company Ltd. Vs. Ratheesh, wherein while relying on United India Insurance Company Ltd. v. Madhavan, 2011 (3) KLT 452 and after analyzing the provisions of Section 140 and 163-A of the Motor Vehicles Act, the

Division Bench held as under:

13. The legislature in 1994 introduced S.163A into the Statute book. While under S.140 even without proving any fault only a specific amount alone could be claimed, under S. 163A comprehensive claim can be staked for compensation by the victims who have suffered permanent disablement or legal heirs of a deceased victim.

14. Provisions of S.40 of the M.V. Act make it clear that payment under S.140 is only ad hoc and interim. The claimants are entitled, even after claiming the amount under S.140 of the M.V. Act, to claim the entire amount of compensation which would otherwise be payable by resort to S.166 of the M.V. Act. The only stipulation is that the amount paid under S.140 must be adjusted towards the amount that would be payable under S.166 of the M.V. Act.

15. The legislature, with long experience of working S.140, and its predecessor provisions had introduced 163A into the Motor Vehicles Act in 1994 and in S.163A of the M.V. Act significantly there is no reference at all to the nature of liability of owners/insurers if there is plurality of vehicles involved in the accident. The difference is significant. It would not be an inadvertent omission. S.140 speaks of the arrangement when plurality of vehicles are involved. The liability is declared to be joint and several. But when it came to S.163A of the M.V. Act the legislature did not incorporate such a stipulation.

16. Why? The query is pored. We have already noted that it could not be an inadvertent omission and this is eminently clear from S.163A(2) of the M.V. Act which eloquently conveys to the court that the legislature was cognizant and seized of the possibility of plurality of vehicles being involved in the accident wrongful act, neglect or default of the owner of the vehicle or vehicles concerned or of any other person need not be proved in a claim under S.163A of the M.V. Act, it is declared in S.163A(2). This definitely reveals to the court that it was a conscious deviation from the scheme that was stipulated under S.140 of the M.V. Act.

17. So far as S.140 of the M.V. Act is concerned, it is now trite that claim can be raised against either or both owners/insurers of the vehicles. The decision in *Oriental Insurance Co. Ltd. v Lakshmikutty Amma & Ors.*, 1999 ACJ 597 (D.B.) makes the position clear that the Tribunal need not identify at the stage of award of compensation under S.140 of the M.V. Act all the vehicles (persons) liable to pay compensation. It is therefore evident that a claim under S.140 can be staked against the owner of either vehicle. The insurer consequently will be liable to indemnify the owner of the vehicle liable.

18. We requested the learned counsel to advance arguments at the Bar as to why totally different semantics and dynamics have been employed by the legislature while enacting S.163A of the M.V. Act. Significantly it is not even mentioned in S.163A that the liability is joint and several. Even under S.140 of the M.V. Act claim can be staked against either or both the owner/owners of the

vehicle. It therefore appears to us to be evident that in a claim under S.163A also the choice/option must be for the claimant to stake claim against either or both owner/insurer of the vehicles involved in the accident.

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22. We are unable to find any other reason as to why a different language is used under Ss.140 and 163A of the M.V. Act by the legislature so far as the nature of the liability of the owner/insurer is concerned, when plurality of vehicles are involved. Consequently, therefore, it appears to us, that the option is entirely on the claimant to stake his claim against either or both owners/insurers of the vehicles involved in a claim under S.163A of the M.V. Act. That right/option of his got to be protected.

8. The Division Bench had posed before it a question whether this will lead to innocent owners or insurers being compelled to pay the compensation and the guilty/offending owners/insurers to go scot free. It was held that since Section 163-A was introduced as a social measure, the use of the terminology betrays a want of commitment. Paras 26 to 31 of the report are extracted hereunder:

26. Will not this lead to the innocent owners/insurers being compelled to pay compensation while the guilty/offending owners/insurers go scot free? Where is justice in such an event? Will not the law offend the primary constitutional mandate under Article 21 that any law has to be fair, just and reasonable? A flurry of questions are thrown at the Court. We are in the least impressed by these queries. In the scheme of S.163A there is no place for words like "innocent" and "offending". Even the use of the terminology betrays a want of commitment to the laudable goals of the statutory provisions under S.163A and its very scheme. The statutory concern is only that the victims must be compensated. To ensure that, the option must be and has been conceded to the claimant. He is the best judge to decide what would ensure payment to him. He can and has hence been conceded the option.

27. Going by the purpose that S.163A has to achieve, the argument that the singular expressions in a statute take in the plural also and hence all the owners/insurers are together covered by the expression "the owner of the vehicle or authorized insurer" in S.163A cannot be accepted. The further argument that the liability hence rests on all the owner/insurers equally cannot be accepted. The language of S.163A and the purpose that it has to serve does not persuade or permit us to accept such an interpretation.

28. If the primary accent under S.163A is to provide a social security scheme, we are satisfied that the option must be given to the target group of the beneficent provision to stake the claim against any of the owners/insurers who is made liable under S.163A. The liability under S.163A appears to be a joint and separable liability. Either or both (or any or all) who have been saddled with the liability under S.163A can be proceeded against by a claimant at his option under S.163A of the M.V. Act.

29. It is not as though the concept is alien to the law. In the case of joint and several liability in tort option is given to the claimant to proceed against either or both the tort feasons. Reference to page 171 in the Law of Tort by Ratanlal and Dhirjalal, 21st Edition may in this context be relevant. We extract the relevant portion below:

Joint tort feasons are jointly and severally, liable for the damages caused from the tort. They may be sued jointly or separately. If sued jointly damages may be levied from all or either. Each is responsible for the injury sustained by his common act.

It is a suit for composite negligence plaintiff is not entitled to a strict analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules of remoteness of damages, he is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover or the whole more than his whole damage. He has a right to recover full amount of damages from any of the defendants. (emphasis supplied)

30. If that can be the case of tortuous liability, we find it absolutely safe to come to the conclusion that the same principle must apply in a claim under S.163A of the M.V. Act. The legislature has advisedly and very cautiously not limited the option of the claimant when he stakes a claim under S.163A of the M.V. Act. He is not obliged to claim against both (or all) the insurers/owners. It is open to the claimant to choose the person from whom he should stake and recover the claim.

31. There can be many a reason which can prompt the claimant to choose to proceed against one of the many persons liable under S.163A of the M.V. Act. Where two vehicles are involved in the accident and one of them is not covered by a valid policy of insurance that is an eminently acceptable reason as to why the claimant should choose to stake the claim against the owner/insurer of one vehicle and not the other. There may also be instances like the one that presented itself in Ningamma and Another Vs. United India Insurance Co. Ltd., where the insurer of one of the vehicles may be entitled to claim absolution from liability under S.163A of the M.V. Act. If the purpose to be achieved by the statutory provision is a social security scheme, the accent must be to ensure that the claimant gets the amount under such social security scheme without dispute and at the earliest. If that be so, certainly our conclusion that the claim can be staked against either or both at the option of the claimant must be held to be sound.

9. Thus, there is no escape from the conclusion that a Claimant choosing the remedy u/s 163-A of the Act is entitled to sue and recover compensation as per the structured formula from the owner/Insurer of any or all the vehicles involved in the accident. Therefore, it was not necessary to implead the owner and Insurer of the truck.

10. In the result, the entire compensation of `4,48,000/- along with interest

awarded shall be payable by Respondent No.3 New India Assurance Company Limited.

11. I am conscious of the fact that in this case the compensation has not been awarded on the basis of the structured formula, although in a Petition u/s 163-A of the Act compensation is payable only on the basis of the structured formula. But, in the absence of any Appeal on this ground or on the quantum of compensation, I cannot interfere with the award of compensation of ` 4,48,000/-.

12. The Respondent No.3 Insurance Company is directed to deposit the balance amount of compensation in the name of the Appellants in the proportion as directed by the Claims Tribunal in the impugned order. The Appeal is allowed in above terms.