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

**CIVIL APPEAL NO. _____ OF 2025**
**[@ SPECIAL LEAVE PETITION (C) NO. 27621 OF 2019]**

**VALSAMMA CHACKO & ANR.** **Appellants(s)**

**VERSUS**

**M.A. TITTO & ORS.** **Respondent(s)**

**O R D E R**

Leave granted.

2. The appellants before this Court are the claimants in five motor accident claim cases arising out of one accident.

3. The brief facts of the case are that one Chacko George was travelling with his wife and two minor children in a car on 19.08.2000, which was driven by their driver, when they met with an accident, in which the father (Chacko George), one of the minor children and the driver were killed. The mother, her surviving child and her in-laws thereafter filed five claim petitions before the Motor Accident Claims

Tribunal (in short, "the Tribunal"). The finding of the Tribunal was that the accident occurred due to the negligent driving of the driver of the car in which they were travelling and consequently, their claim petitions were dismissed.

4. The matter was taken up in first appeal before the High Court, where the High Court opined that since the claim was made under Section 166 of The Motor Vehicles Act (in short, "the Act") and the accident occurred due to the negligence of the driver; the vehicle being covered by an 'Act only' policy the claim for gratuitous passengers against the insurer cannot be sustained. The owner of the car was the deceased husband and hence, the rejection of the claim petition was upheld. At that stage, a plea was made by the Counsel for the claimants that their claims may be treated under Section 163A of the Act; especially since the insurer and the owner of the other vehicle involved in the accident were parties in the claim petition. This plea was declined by the High Court, as it stands covered by the decision of a three-Judge Bench of this

Court in ***Deepal Girishbhai Soni and Ors. Vs. United India Insurance Co. Ltd., Baroda*** reported in ***(2004) 5 SCC 385,*** wherein it has been held that, where no case is made out for awarding compensation under Section 166 of the Act, the claimants cannot take the liberty of, then moving a claim under Section 163A of the Act.

5. The relevant portion of the Judgment in ***Deepal Girishbhai Soni*** *(Supra)* is reproduced as under:-

> *"59. The question may be considered from different angles. As for example, if in the proceedings under Section 166 of the Act, after obtaining compensation under Section 163-A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefor as a consequence whereto the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part of the amount of compensation already paid on the basis of structured formula? Furthermore, if in a case*

*the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, would it be at liberty to award compensation in terms of Section 163-A thereof?*

*60. The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under Section 163-A of the Act is interim in nature."*

6. Section 163A of the Act was inserted in the Act via an amendment in the year 1994. It is a beneficial legislation as it awards compensation to the claimants on a 'no-fault liability' basis. Section 163-A of the Act reads as under:-

*"163-A. Special provisions as to payment of compensation on structured formula basis.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised*

*insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*

*Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).*

*(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.*

*(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."*

7. By the 2019 amendment, which came into force on 01.04.2022, Section 163A of the Act has now been repealed for the reason that a similar

provision has been inserted in the Act, in fact, an entirely new Chapter, i.e. Chapter XI which bears the similar provision in Section 164 of the Act, is now incorporated. Be that as it may, for our purposes, what is relevant is that at the time when the accident occurred, it was Section 163A of the Act, which was applicable.

8. A bare perusal of Section 163A of the Act would show that it starts with a non-obstante clause and moreover, it is a beneficial piece of legislation and in a case like the one at hand where, in a motor accident case, half of the family; the father and one of the minor children, died and the claimants, amongst others, were the surviving wife and one minor child, we find it rather difficult to accept the position of law laid down in ***Deepal Girishbhai Soni*** *(supra)*. In fact, the said decision in paragraph 39 finds introduction of Section 163A of the Act to be a social security scheme, brought about on the recommendations of a Review Committee, appointed on various representations received from different stake holders. The need for a

more comprehensive scheme of 'no-fault liability' was felt, for reason of the ever-increasing instances of motor vehicle accidents and the difficulties in proving rash and negligent driving as a cause, leading to the accident. In fact, the report, a part of which was extracted, records as below:

> *"The 1988 Act provides for enhanced compensation for hit-and-run cases as well as for no-fault-liability cases. It also provides for payment of compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11,214 claims pending before the Motor Accidents Claims Tribunals, as on 31-3-1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle-owner as well as the insurance company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different classes of cases*

*depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels.*

*General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for settlement of claims on 'fault liability' in respect of third-party liability under Chapter XI of the MV Act, 1988. They have suggested that the claimants should first file their claims with Motor Accidents Claims Tribunals and then the insurers may be allowed six months' time to confirm their prima facie liability subject to the defences available under the Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time."*

9. The above extract clearly indicates that even when fault liability claims under Section 166 of

the MV Act are filed, it is incumbent on the insurer to confirm their prima facie liability and after such confirmation the claimants should be required to exercise their option for conciliation under structured compensation formula. According to us the fault liability if found to be non-existent in a particular claim petition under Section 166 of the Act, the Tribunal ought to provide an opportunity to the claimants to exercise an option to convert the claim to one under Section 163A of the Act; even if, voluntarily, it is not sought for. In the present case, we cannot but notice that the owner and insurer of the other vehicle involved in the accident were party-respondents in the claim petition and a 'no-fault liability' could be imposed on the insurer of the other vehicle as a third-party claim.

10. ***Deepal Girishbhai Soni*** *(supra)* was a case in which compensation was claimed for the death of both the parents by the four surviving children, of whom three were minors. Simultaneous applications were filed under Section 163A and Section 166 and compensation was awarded by the Tribunal, in the

claim under Section 163A of the Act, deeming it to be an interim compensation, pending finalization of the claim under Section 166 of the Act. The three-Judge Bench while declaring the proceeding under Section 163A of the Act to be not a provision for interim measure, all the same directed the compensation awarded to be refunded, except the amounts payable under Section 140 of the Act; which is an interim measure, also directing the claim filed under Section 166 of the Act to be proceeded with.

11. Indeed, the finding that if the accident occurred due to the fault of one's own driver, but even in such a case, the claimants would be prohibited from moving an application under Section 163A of the Act; if they had unsuccessfully moved an application under Section 166 of the Act, is a difficult proposition in law to be accepted; especially given the beneficial nature of the provision which is also one incorporated, notwithstanding the other provisions of the Act or any other law in force.

12. The position, all the same, is that we are presently bound to follow the three-Judge Bench decision in ***Deepal Girishbhai Soni*** *(supra)*. However, considering our difficulty, which we have expressed hereinabove, with all respect but purely in the interests of justice, we are of the opinion that this matter requires re-consideration by another three-judge Bench and therefore, we refer the matter to Hon'ble The Chief Justice of India for constituting a three-Judge Bench for re-consideration of the issue.

**.....J.**
**[ SUDHANSHU DHULIA ]**

**.....J.**
**[ K. VINOD CHANDRAN ]**

**New Delhi;**
**FEBRUARY 13, 2025.**

**ITEM NO.301 COURT NO.12 SECTION XI-A**

**S U P R E M E C O U R T O F I N D I A**
**RECORD OF PROCEEDINGS**

**Petition(s) for Special Leave to Appeal (C) No(s). 27621/2019**

**[Arising out of impugned final judgment and order dated 02-07-2019 in MACA No. 2591/2008 passed by the High Court of Kerala at Ernakulam]**

**VALSAMMA CHACKO & ANR. Petitioner(s)**

**VERSUS**

**M.A. TITTO & ORS. Respondent(s)**

**Date : 13-02-2025 This petition was called on for hearing today.**

**CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA**
**HON'BLE MR. JUSTICE K. VINOD CHANDRAN**

**For Petitioner(s) : Mr. S. P. Chaly, Sr. Adv.**
**Mr. Roy Abraham, Adv.**
**Ms. Reena Roy, Adv.**
**Mr. Adithya Koshy Roy, Adv.**
**Mr. Yaduinder Lal, Adv.**
**Ms. Rajni Ohri Lal, Adv.**
**Mr. Mehul Jain, Adv.**
**Mr. Himinder Lal, AOR**

**For Respondent(s) : Dr. Anand Vardhan Sharma, Adv.**
**Mr. Vinod K. Vashudev, Adv.**
**Mr. Kailash Prashad Pandey, AOR**
**Mr. Anurag Tyagi, Adv.**
**Mr. Hemant Singh, Adv.**

**Mr. Parmanand Gaur, AOR**
**Ms. Megha Gaur, Adv.**
**Mr. Vibhav Mishra, Adv.**

**UPON hearing the counsel the Court made the following**
**O R D E R**

**In terms of the signed order, the matter is referred to Hon’ble The Chief Justice of India for constituting a three-Judge Bench for re-consideration of the issue. The operative portion of the order is reproduced as under :-**

***"11. Indeed, the finding that if the accident occurred due to the fault of one's own driver, but even in such a case, the claimants would be prohibited from moving an application under Section 163A of the Act; if they had unsuccessfully moved an application under Section 166 of the Act, is a difficult proposition in law to be accepted; especially given the beneficial nature of the provision which is also one incorporated, notwithstanding the other provisions of the Act or any other law in force.***

***12. The position, all the same, is that we are presently bound to follow the three-Judge Bench decision in Deepal Girishbhai Soni (supra). However, considering our difficulty, which we have expressed hereinabove, with all respect but purely in the interests of justice, we are of the opinion that this matter requires re-consideration by another three-judge Bench and therefore, we refer the matter to Hon'ble The Chief Justice of India for constituting a three-Judge Bench for re-consideration of the issue."***

**(JAYANT KUMAR ARORA)**
**ASST. REGISTRAR-CUM-PS**

**(RENU BALA GAMBHIR)**
**ASSISTANT REGISTRAR**

**(Signed order is placed on the file)**