

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

% *Judgment reserved on : 28.7.2011*
Judgment delivered on : 03.8.2011

+ **MAC APPEAL No.17/2009**

NATIONAL INSURANCE CO.LTD. Appellant
Through: Mr.Pradeep Gaur, Advocate.

Versus

SMT.SHEELA & ORS. Respondents
Through: Mr.Navneet Goyal, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. The Award impugned is the Award dated 26.8.2008 whereby the legal heirs of deceased Davinder had been awarded compensation in the sum of Rs.2.90,400/- along with interest @ 7.5 % per annum. This claim petition had been filed under Section 163A of the M.V.Act .

2. Facts were that on the intervening night of 17/18.4.2005 Davinder @ Babloo and Lakshman along with their friend were

going on their motorcycle; the motorcycle suffered an accident an unknown vehicle hit the motorcycle from behind as a result of which the motorbike and the riders were thrown of balance. Davinder and Lakshman fell down; they were crushed by some unknown vehicle; they both died. The vehicle was being driven by Lakshman; Davinder was the pillion rider. Sheela is the claimant of deceased Davinder.

3. The appellant has filed the appeal assailing the award on three grounds; first contention is that the deceased Lakshman has no valid driving licence; secondly there was a breach of condition of the policy; three persons were sitting on the motorcycle at the time when the accident occurred; and lastly that it was hit and ran case as such the claim cannot be entertained under Section 163A of the M.V.Act; claim could only have entertained under Section 163 of the M.V.Act for which there is a fixed compensation of ₹50,000/-.

4. Arguments have been rebutted. It is pointed out that since the deceased had died in a road accident; even if the offending vehicle has not been caught, Section 163A being a case of no fault liability, it is only the involvement of the vehicle which has to be established; which in this case has been fully established.

Evidence shows that the deceased had a valid driving licence; there has also been no breach of conditions of the policy. The Award calls for no interference.

5. Record shows that in this case the victim Davinder was the pillion rider of the driver Lakshman; there is no dispute to the fact that a pillion rider is covered as a "third party risk" and if the claim is otherwise found to be in order the appellant/Insurance Company is liable to pay compensation to the legal heirs of the deceased pillion rider. Further in terms of the notification. 25.3.1977 issued by the Tariff Advisory Committee, Insurance Companies have been made liable even in the case of pillion rider.

6. The submission of the learned counsel for the appellant that the deceased Lakshman did not hold a valid driving licence is without any merit. The respondent has produced two witnesses in defence but none as deposed anything about the alleged factum that the deceased did not have a valid driving licence.

7. The scheme of the Act by the promulgation of Section 163 of the M.V.Act was intended to be incorporated as a special concern for the safety and social security of such a person who had either met with an accident himself resulting in injuries or the concern for his legal representatives where the victim had died. The non-

obstante clause in this section dispenses with proof of fault; it is

based on a no fault liability; whole purpose being that the claimants should as early as possible be granted the beneficial provision of the Act and compensation be awarded to them in terms of the structured formula prescribed in the second schedule of the Act.

8. The Apex Court in National Insurance Company Vs. Swarn Singh & Ors. reported in 2004(1) TAC 321 (Supreme Court) had in this context interalia held noted as under:

(iii) The breach of policy condition e.g. disqualification of driver of invalid driving licence of the driver as contained in sub-section (2) (a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding a liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.”

9. In a judgment of Gujrat High Court in India Insurance Company Ltd. Vs. Muna Maya Basant Vs. reported 2001 ACJ 940, a Bench of the Gujrat High Court has noted that in a claim petition under Section 163 A of the M.V.Act the scope of raising a plea in defence about the challenge to the driving

licence is not permissible.

10. Thus a mere plea that there was absence of a valid driving licence of the driver would not by itself entitle the Insurance Company to avoid its liability. This argument is accordingly rejected.

11. The appellant has also failed to show that there has been breach of any of the terms of the policy; the policy in fact negatives his submission. The conditions of the policy noted herein below state:

Limitation as to use:

The policy covers use of the Vehicle for any purpose other than

- a) Hire or Reward
- b) Carriage of Goods (other than samples or personal Luggage)
- c) Organized racing
- d) Pace making
- e) Speed Testing and Reliability Trials
- f) Use in connection with Motor Trade"

12. Even as per the case of the appellant Lakshman the deceased was driving the motor cycle; his contention is that three persons were riding on the motor cycle when the fateful accident occurred; this in no manner amounts to a breach of any of the terms of the policy conditions. Learned counsel for the appellant has also failed to draw attention of this Court to any such condition in the policy. This argument is also without any merit.

13. Section 163A introduced by the amendment of 1994 has introduced the principle of 'no fault liability'; being a social security provision, this provision is applicable only where the annual income of the deceased/victim does not exceed ₹40,000/- per annum and the compensation under Section 163 A has to be awarded strictly in accordance with the structured formula as contained in the second schedule. Section 163 has laid down the scheme for payment of compensation in 'hit and run' motor accident claim cases. Section 163 A does not become inapplicable even if it is a 'hit and run' case; condition to be fulfilled for the applicability of Section 163A is that the annual income of the victim must not be more than ₹40,000/- per annum; further the compensation has to be awarded as per the structured formula contained in the Second Schedule of the Act. This argument of the learned counsel for the appellant is also without any merit.

14. Appeal dismissed.

INDERMEET KAUR, J.

AUGUST 03, 2011
nandan