

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

Reserved on: 4th July, 2012

Pronounced on: 16th July, 2012

+ **MAC.APP. 4/2012**

UNITED INDIA INSURANCE CO LTD Appellant
Through: Ms. Suman Bagga, Advocate

versus

MEENA & ORS Respondent
Through: Mr. Anshuman Bal, Advocate
for the Respondents No.1 to 3.
Mr. Ashutosh Lohia with
Ms. Aabha Verma, Advocate
for the Respondent No.4.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant United India Insurance Company Limited takes exception to a judgment dated 24.08.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby in a Petition under Section 163-A of the Motor Vehicles Act, 1988 (the Act) a compensation of ₹4,15,000/- was awarded for the death of one Hari Kumar, who is alleged to have suffered fatal injuries while driving a two wheeler No.DL-7S-AB-7723.

2. It is admitted case of the parties that the deceased Hari Kumar was in employment of M/s. Bhagwati Fabrics. The two wheeler No. DL-7S-AB-7723 was owned by the earlier said employer. As per the averments made in the Claim Petition, on 25.11.2007 at mid night while the deceased was driving the two wheeler in front of Bhopura, Check Post, it met with an accident resulting in his death.
3. The Claims Tribunal held that the vehicle No.DL-7S-AB-7723 was involved in the accident. In the FIR No.1065/2007, dated 25.11.2007 registered at Police Station Sahibabad, Ghaziabad, U.P. in respect of this accident it was recorded that the two wheeler was hit by some unknown vehicle.
4. On appreciation of evidence, and relying on a judgment of this Court in *New India Assurance Company Limited v. Smt. Raniya @ Rami Devi & Ors., MAC APP.501/2009* decided on 13.07.2011 the Claims Tribunal held that since the deceased Hari Kumar was an employee of M/s. Bhagwati Fabrics, the owner of the two wheeler, the Respondents No.1 to 3 (the Claimants) were entitled to compensation without proving any negligence in a Petition under Section 163-A of the Act. The Claims Tribunal further held that since the vehicle was insured, the Appellant Insurance Company would indemnify the insured and pay the compensation to Respondents No.1 to 3.
5. It is urged on behalf of the Appellant Insurance Company that as per Section 147 of the Act, the Appellant was liable to cover

the risk towards the liability of the insured incurred by him in respect of death or bodily injury or damage to any property to third party. The deceased himself being the driver of the two wheeler, was not a third party. No special contract was entered into between the Appellant and Respondent No.4 to cover extra risk as per the policy Ex.R2W-1/A and thus the Appellant had no liability to pay the compensation.

6. On the other hand, learned counsel for Respondents No.1 to 3 supports the impugned judgment on the ground that since the deceased was an employee of Respondent No.4 (M/s. Bhagwati Fabrics), Respondent No.4 was liable to pay the compensation and the Appellant was under obligation to indemnify the insured.
7. The Respondent No.4 has not come forward to contest this Appeal and was proceeded ex-parte.
8. Before adverting to the case law on the subject, I would like to refer to the circumstances under which the accident took place. PW-1 Smt. Meena filed her Affidavit Ex.PW-1/A stating that her husband met with an accident while driving a two wheeler No.DL-7S-AB-7723. She testified that her husband was in private service and was earning ₹39,000/- per month. In cross-examination, she deposed that he had no personal knowledge as to how the accident took place. She deposed that her husband

was working with M/s. Bhagwati Fabrics and used to go to the office on a motorcycle.

9. Respondents No.1 to 3 (the Claimants) examined Rahul Chauhan, an Accountant from M/s. Bhagwati fabrics. He deposed about the deceased's employment with M/s. Bhagwati Fabrics and proved the attendance sheet as Ex.PW-2/2. In cross-examination, the witness admitted that the deceased was not appointed for driving any vehicle. He took the two wheeler for his personal use. This part of PW-2's testimony is not challenged by the Respondents No.1 to 3. Thus, it is established on record that at the time of the accident the two wheeler No. DL-7S-AB-7723 was being used by the deceased Hari Kumar for his personal use. In other words, the accident did not occur while the vehicle was being used in the course of employment of Respondent No.4.
10. In *Ningamma & Anr. v. United India Insurance Company Limited*, (2009) 13 SCC 710, the question of grant of compensation in a Petition under Section 163-A of the Act for a person who died while driving a two wheeler borrowed from the owner, came for consideration. The Hon'ble Supreme Court held that in a Claim Petition under Section 163-A of the Act, the Claimants are not 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, neglect or default of the owner of the vehicle concerned. Further, it was observed that

where a person borrows a vehicle from the owner he steps into the shoes of the owner. The insured or the legal representatives of the victim in such circumstances cannot claim any compensation from the owner of that very vehicle. The Supreme Court referred to its report in *Oriental Insurance Company Limited v. Smt. Rajni Devi & Ors.* (2008) 5 SCC 736 and *New India Assurance Company Limited v. Sadanand Mukhi*, (2009 2 SCC 417, and observed as under:-

“19. In Oriental Insurance Co. Ltd. v. Rajni Devi (2008) 5 SCC 736 : wherein one of us, namely, Hon'ble S.B. Sinha, J. was a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof.

20. It was held in Rajni Devi (supra) that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under Section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA.

21. In our considered opinion, the ratio of the decision in Rajni Devi (supra) is clearly applicable to the facts of the present case. In the present case, the deceased was not

*the owner of the motorbike in question. He borrowed the said motorbike from its real owner. **The deceased cannot be held to be an employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner and, therefore, he would step into the shoes of the owner of the motorbike.** We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle.*

22. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.”(emphasis supplied).

11. Thus, it may be noticed that although the deceased was an employee of M/s. Bhagwati Fabrics, he was not driving the two wheeler in his capacity as an employee or during the course of his employment. He was using the two wheeler for his personal use. In the circumstances, the Respondent No.4 (M/s. Bhagwati Fabrics) was not liable to pay any compensation unless it was proved that the accident was caused because of the wrongful act, neglect or default in the maintenance of the two wheeler by

Respondent No.4. If the borrower of a vehicle is permitted to claim compensation while he himself (the borrower) is driving the same, it would result into a very dangerous situation because such borrower may meet with an accident either because of his own neglect or because of the negligence of some other vehicle and he may make the lender of the vehicle liable to pay the compensation, although such risk is not statutorily covered by an authorized insurer under Section 147 of the Act.

12. *Smt. Raniya @ Rami Devi (supra)* relied upon by the Claims Tribunal is not attracted to the facts of the present case as the vehicle was not being driven in this case as an employee in the course of the employment.
13. In the circumstances, I am of the view that Respondent No.4 was not liable to pay any compensation to Respondents No.1 to 3.
14. Since the owner was not liable to pay the compensation, there was no question of indemnifying the Insured by the Appellant Insurance Company. Otherwise also, R2W1 Vikram Singh, Administrative Officer of the Appellant Insurance Company proved a notice under Order XII Rule 8 CPC (Ex.R2W1/B) requiring Respondent No.4 to produce the original insurance policy in respect of vehicle No. DL-7S-AB-7723. Respondent No.4 failed to produce the policy and office copy of the policy Ex.R2W1/A was duly proved which shows that no extra

premium was paid to cover the risk of the driver of a two wheeler.

15. In view of the report of the Supreme Court in *Rajni Devi (supra)* which is extracted above, in the absence of any contract of insurance, the Insurance Company was not liable to pay any compensation except for an injury to the third party. Thus, even if, Respondent No.4 would have been liable, there would be no liability of the Appellant Insurance Company.
16. In view of the above discussion, the Appeal is liable to be allowed.
17. The impugned judgment is set aside and it is held that neither Respondent No.4 nor the Appellant Insurance Company had any liability to pay the compensation to Respondents No.1 to 3.
18. The compensation amount deposited shall be refunded to the Appellant Insurance Company.
19. The statutory deposit of ₹ 25,000/- shall also be refunded to the Appellant Insurance Company.
20. All pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 16, 2012

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