

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

Decided on: 12th October, 2012

+ **MAC.APP. 171/2005**

NEW INDIA INSURANCE CO.TD. Appellant

Through: Mr. S.L.Gupta & Mr.Ram Ashray,
Advocates.

versus

ANURAG & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Insurance Company takes exception to a judgment dated 11th January, 2005 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.4,20,000/- was awarded in favour of Respondents No.2 to 5 for the death of Deepak Jain, who died in a motor vehicle accident, which occurred on 05.02.2002.
2. In the Claim Petition filed before the Tribunal, it was claimed that on 05.02.2002 the deceased Deepak Jain was proceeding on a two wheeler No.DL-8SK-9651 to Azadpur Mandi. Due to sudden failure of the brakes, he could not control the two wheeler, as a result of which, he dashed the two wheeler against a woman resulting in causing injuries to her. Deepak Jain who was driving the two wheeler also suffered injuries which proved

fatal. An FIR was No.71/2002 was also registered on the basis of the statement of Smt. Kanti who was the victim of this accident and had suffered injuries due to the same.

3. Since the Claim Petition was under Section 163-A of the Motor Vehicles Act, 1988(the Act), the Claims Tribunal without going into the question as to how the accident occurred, granted the compensation on the ground that negligence was not required to be proved.
4. It is urged by the learned counsel for the Appellant Insurance Company that in this case no evidence was produced that the accident was caused on account of the failure of the brakes as claimed in the Claim Petition. Moreover, the Insurance Company did not cover the risk of the driver of the two wheeler and he being not a third party, the Insurance Company was not liable to pay any compensation.
5. In *Ningamma & Anr. v. United India Insurance Company Limited*, (2009) 13 SCC 710 the Supreme Court relied on its earlier decision in the case of *Oriental Insurance Company Limited v. Rajni Devi*, (2008) 5 SCC 736 wherein it was held that Section 163-A of the Act cannot be said to have any application in respect of the accident wherein the owner of the motor vehicle himself is involved.
6. Obviously, the Insurance Company indemnifies the owner on the basis of the contract of insurance where a third party is involved. Where an insurance contract provides for own damages or personal accident, the owner would be entitled to

compensation in respect of the damage to the vehicle or to the personal injuries sustained by him as per the contract of the insurance. Where the owner himself is a tortfeasor, he cannot claim compensation from his own insurer for a third party policy. It is thus, obvious that in the absence of any contract for insurance, the Appellant Insurance Company was not liable to pay any compensation to the legal heirs of the deceased Deepak Jain(Respondents No.2 to 5 herein).

7. The other question that falls for consideration is whether the Claimants in the facts of the case were entitled to any compensation from the owner of the vehicle. Obviously, if the accident takes place because of the fault, neglect or inaction of the owner of a vehicle, the owner may become the tortfeasor and may be liable to be indemnified by the owner of a vehicle.
8. In the instant case, it was alleged that the accident took place on account of the mechanical fault as the brakes did not work when the deceased tried to stop the two wheeler. In this regard, there are testimonies of PW1 Babu Ram Jain and PW 2 Smt.Omwati. PW1 testified as under:-

“I came to know that due to the failure of brakes of the scooter my son Deepak Jain met an accident and the result of this who sustained head injuries and who was treated for many days in the hospitals, but my son not survive and did in the Jai Parkash Narayan Hospital, Delhi.”

9. To the same effect is the testimony of PW2 Smt. Omwati.

10. As against this, a perusal of the FIR registered on the basis of the statement of Smt. Kanti, the injured in the accident, discloses that the two wheeler was being driven by the deceased in a rash and negligent manner and while the two wheeler was going down on the flyover it dashed against Smt.Kanti. The Claimants did not prefer any other evidence including the mechanical instruction report of the two wheeler to show that there was failure of the brakes. In this view of the matter, Respondents No.2 to 5 clearly failed to prove that the accident was caused on account of any “wrongful act”, “neglect” or “default” of the owner of the two wheeler that is Respondent No.1 herein.
11. In *National Insurance Company Limited v. Sinitha & Ors., 2011 (13) SCALE 84*, the Supreme Court laid down that where the accident takes place because of the “wrongful act”, “neglect” or “default” of the victim himself, he is not entitled to any compensation from the owner or Insurer of the vehicle involved in the accident.
12. The Appeal, therefore, has to succeed; the same is accordingly allowed. The impugned judgment is set aside. Consequently, the Claim Petition stands dismissed.
13. The compensation amount deposited by the Appellant Insurance Company with the Claims Tribunal shall be refunded along with interest accrued, if any, during the pendency of the Appeal.

14. The statutory amount of Rs.25,000/- shall also be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

OCTOBER 12, 2012

v