

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

Date of decision: 17th April, 2012

+ **MAC. APP. No.348/2010**

ORIENTAL INSURANCE CO LTD Appellant
Through Mr. L.K. Tyagi, Advocate

versus

RENU SINGH & ORS Respondent
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 Oriental Insurance Company Limited impugns a judgment dated 03.04.2010 whereby in a petition filed by Respondent Nos.1 to 3 under Section 163-A of the Motor Vehicles Act (the Act), a compensation of ₹4,35,000/- was awarded.
2. The manner of the accident can be extracted from Para 1 of the impugned judgment hereunder:-

“1. By this award, I shall dispose the petition of the Petitioners u/s. 163A of the M.V.Act, 1988. The brief facts of the petition as stated by the Petitioner are that on 25.2.07 at about 3 a.m. deceased Lt. Sh. Dinesh Kumar

Singh was travelling/driving in Maruti Van bearing no.DL 6CC 8132 alongwith his friends Sunil Kumar and Anil Kumar was going towards Rishikesh and when they reached near Zuibaida Cold Store, Kharkhoda, District Meerut, Uttar Pradesh, an unknown truck came from opposite side & hit the Maruti Van, as a result of which, deceased received fatal injuries and died on the spot. He was taken to Meerut Medical Hospital where he was declared 'Brought dead' and an FIR no.27/07 u/s. 279/338/304 A IPC dated 25.2.07 was registered at the P.S. Kharkhoda, District Meerut, U.P. It is further submitted that age of the deceased at the time of accident was 35 years and he was earning ₹ 3300/- p.m. from running a grossary shop at A 329, Saraswati Gali, Budha Marg, Mandawali, Fazalpur, Delhi and used to spend entire earnings/income on the petitioners. It is further deposed that deceased left the wife and two minor children at the time of his death."

3. It is urged by the counsel for the Appellant that the vehicle bearing registration No.DL-6CC-8132 which was owned and was insured in the name of Late Sabha Jeet Singh was being driven by Dinesh Singh at the time of accident. It is urged that said Dinesh Singh being himself the driver was not entitled to any compensation from his insurer unless there was a specific contract to cover the risk.
4. The Claims Tribunal while holding the Appellant Insurance Company liable to pay a compensation relied upon the report of this Court in *Yashpal Luthra v. United India Insurance Co. Ltd.* MAC. APPL. 176/2009. Reliance on *Yashpal Luthra* (supra) is misplaced, in view of the fact that *Yashpal Luthra* (supra) dealt with liability of the Insurance Company in respect of the

occupants of a motor car or a pillion rider and not a driver thereof.

5. The deceased Dinesh Singh was not a paid driver. In fact, he himself was one of the owners of the vehicle as his father Late Sabha Jeet Singh had died about five years prior to the accident, although the Insurance policy was still obtained in the name of Sabha Jeet Singh. The legal representatives of deceased Dinesh Singh were not entitled to the compensation from their own Insurer.
6. The manner of the accident has not been established. If the Respondents (the Claimants') version is to be accepted, the accident took place on account of the negligence of an unknown truck. The Claimants, of course were not required to prove the negligence on the part of the vehicle involved in the accident as they can claim compensation on the basis of the structured formula given in the second Schedule under Section 163-A of the Act without proving any negligence on the part of the truck driver, yet, they were not entitled to any compensation from their own Insurer.
7. In *Ningamma & Anr. v. United India Insurance Company Limited*, (2009) 13 SCC 710, the Supreme Court relied on *Oriental Insurance Company Limited v. Rajni Devi*, (2008) 5 SCC 736 and held that where the compensation is claimed for the death or injury to a third party, the liability of the Insurance

Company would be unlimited but the grant of compensation for the death or injury to the owner would be governed by the contract of Insurance and the victim would be entitled to any compensation from his own Insurer only in terms of the contract. Relevant portion of the report in *Ningamma & Anr (supra)* is extracted hereunder:-

“18. However, in the facts of the present case, it was forcefully argued by the counsel appearing for the respondent that the claimants are not the “third party”, and therefore, they are not entitled to claim any benefit under Section 163-A of the MVA. In support of the said contention, the counsel relied on the decision of this Court in Oriental Insurance Co. Ltd. v. Rajni Devi (2008) 5 SCC 736 and New India Assurance Co. Ltd. v. Sadanand Mukhi, (2009) 2 SCC 417.

19. In Oriental Insurance Co. Ltd. v. Rajni Devi (supra) 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.

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21. In our considered opinion, the ratio of the decision in Oriental Insurance Co. Ltd. v. 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 authorized 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 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.

23. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case.”

8. The Claims Tribunal dealt with the premium paid by the insured in para 7 of the impugned judgment. A premium of ₹100/- was paid for personal accident (PA) of the owner if he himself was the driver and a sum of ₹25/- was paid as premium for covering the risk of the paid driver. In this case, the insured, as stated

above, was Sabha Jeet Singh. He was already dead when the insurance policy was obtained and the contract of insurance came into existence. The personal accident coverage would be for the insured only in terms of the contract of insurance. The deceased who was one of the rightful owners being one of the legal heirs would not be entitled to the benefit of that coverage. The Claims Tribunal relied on a judgment of this Court in *Yashpal Luthra & Anr v. United India Insurance Co. Ltd., 2011 ACJ 1415* to hold that the driver/insured would be covered in every policy of insurance. Reliance on *Yashpal Luthra(supra)* was misplaced. The Delhi High Court in the above stated judgment simply held that in comprehensive package policies, the insurance for the pillion rider (in case of two-wheeler) and the occupant of a motor car (not the driver) was covered. In this case, firstly there was no comprehensive package policy. Secondly, the risk was covered only for the insured who was already dead and for the paid driver. The deceased Dinesh was neither the registered owner nor the paid driver. He was, therefore, not covered under the contract of insurance and his legal representatives were not entitled to be compensated for his death. In this view of the matter, the Appeal is bound to succeed.

9. By an order dated 31.05.2010 passed by this Court, 75% of the award amount by the Claims Tribunal was permitted to be disbursed in favour of the Claimants. If the amount is lying in a

fixed deposit, the amount shall not be disbursed and shall be refunded to the Appellant Insurance Company.

10. The Appellant Insurance Company shall be entitled to restitution if any amount has been disbursed in favour of the Respondents (the Claimants).
11. The Appeal is allowed in above terms.
12. The statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

APRIL 17, 2012
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