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

Date of Decision: 16th November, 2012

+ **MAC. APP. 691/2012**

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through Mr. Manish Maini, Advocate proxy
counsel for Ms. Manjusha Wadhwa,
Advocate

versus

RASHMI & 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 Oriental Insurance Company Ltd. takes exception to a judgment dated 18.05.2012 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby while holding that the Appellant Insurance Company was liable to cover the risk in respect of only a third party awarded a compensation of ₹1,00,000/- towards personal accident cover.
2. It is urged by the learned counsel for the Appellant Insurance Company that a sum of ₹ 50/- was charged towards the personal accident cover

which was meant only for the registered owner if he himself was driving the two-wheeler at the time of the accident. It is stated that the Claims Tribunal erred in awarding a compensation of ₹1,00,000/- which was meant for the driver-owner.

3. The facts of the case are not very much in dispute. As per the averments made in the Claim Petition, on 08.02.2009 deceased Ramesh Yadav had borrowed a two-wheeler No.DL-8S-AK-9733 from the First Respondent. While driving the said two-wheeler, at about 9.30 pm when the deceased reached near Government School, Sector 20 Rohini he lost control over the vehicle. It slipped resulting into multiple injuries on the deceased's person which proved fatal.
4. In the written statement filed by the Respondent No.2 (owner of the vehicle), it was admitted that the two-wheeler was being driven by the deceased with his permission. He took up the plea that the vehicle was duly insured and the liability would be that of the Appellant Insurance Company.
5. In the written statement filed by the Appellant, it was pleaded that since the deceased was negligent in driving the two-wheeler his legal representatives were not entitled to any compensation. It was also stated that the Appellant Insurance Company was liable to pay the compensation only in respect of risk of the third party unless any other risk was covered under the policy.

6. In *Ningamma & Anr. v. United India Insurance Company Limited*, (2009) 13 SCC 710, the Supreme Court relied on *Oriental Insurance Co. Ltd. v. Rajni Devi & Ors.*, (2008) 5 SCC 736 and *New India Assurance Co. Ltd. v. Sadanand Mukhi*, (2009) 2 SCC 417 and held that the liability of the Insurance Company would be unlimited where third party is involved in the accident. It was observed that where the compensation is claimed for the death of the owner or the representatives of the owner, the Insurance Company would not be liable. The relevant paras of *Ningamma & Anr.* are 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.(emphasis supplied)

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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.”*

7. In the instant case, the deceased was not a third party. He himself was driving the two-wheeler which he borrowed from the Second Respondent. A perusal of the Insurance Policy would show that a premium of ₹50/- was charged towards personal accident cover for the owner-driver. GR 36 under the Motor Policy(Tariff Advisory Committee Regulation for Transaction of Motor Insurance in India) deals with the coverage of owner driver, which is extracted hereunder:

“GR.36. Personal Accident (PA) Cover under Motor Policy

(not applicable to vehicles covered under Sections E, F and G of Tariff for Commercial Vehicles)

A. Compulsory Personal Accident Cover for Owner-Driver

Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner

of insured vehicle holding an effective driving licence is termed as Owner-Driver for the purposes of this section.

Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/ dismounting from or travelling in the insured vehicle as a co-driver.

NB.: This provision deals with Personal Accident cover and only the registered owner in person is entitled to the compulsory cover where he/ she holds an effective driving licence. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving licence. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory P.A. cover for the owner-driver should not be charged and the compulsory P.A. cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/ her.

The scope of the cover, Capital Sum Insured (CSI) and the annual premium payable under this section are as under: -

TYPE OF VEHICLES	CAPITAL SUM INSURED (₹)	PREMIUM (₹)	COVER
Motorised Two Wheelers	1 lakh	50/-	i) 100% of CSI for Death, Loss of Two Limbs or sight of both eyes or one limb and sight of one eye. ii) 100% from Permanent Total Disablement for injuries other than

			named above.
Private Cars	2 lakhs	100/-	i) 100% of CSI for Death, Loss of Two Limbs or sight of both eyes or one limb and sight of one eye. ii) 100% for Permanent Total Disablement from injuries other than named above.
Commercial Vehicles	2 lakhs	100/-	i) 100% of CSI for Death, Loss of Two Limbs or sight of both eyes or one limb and sight of one eye. ii) 50% of CSI for Loss of one Limb or sight of one eye. iii) 100% from Permanent Total Disablement from injuries other than named above.”

8. Thus, it would be seen that the owner-driver is the person who is the registered owner and who is driving the vehicle himself. Since the deceased was not the owner, his legal representatives were not entitled to the compensation of ₹1,00,000/- meant under Personal Accident cover for the owner driver. Anybody driving the vehicle with or without permission of the owner cannot be taken as owner driver. Thus, in this case, neither the compensation towards the third party risk was payable as the deceased was not a third party nor the compensation under personal accident coverage was payable as it was meant for owner-cum-driver.

9. Now I turn to the question whether the owner was liable to pay any compensation. Admittedly, the Claimants have not filed any Appeal against the impugned judgment. Since the Insurance Company was made liable to pay the compensation of ₹1,00,000/- meant for the driver-cum-owner under the personal accident cover, I would now like to deal with the question whether the owner is liable to pay any compensation in the circumstances in which the accident has taken place. As stated hereinabove, it is the case of the Claimants themselves that the deceased lost control of the two-wheeler while he was driving the same. It is not the Claimants' case that any mechanical defect in the two-wheeler was the cause of the accident. Thus, it is evident that the accident took place because of the deceased's own wrongful act, neglect or default. The case is covered by report of the Supreme Court in *National Insurance Company Limited v. Sinitha & Ors., 2011 (13) SCALE 84* where the Supreme Court drew distinction between award of compensation on the basis of '*liability without fault*' under Section 140 of the Act and payment of compensation without proof of negligence under Section 163-A of the Act. The Supreme Court held that while awarding compensation under Section 140 of the Act, the fact whether the accident took place because of the wrongful act, neglect or default of the victim is not a defence, whereas this would be valid defence under Section 163-A of the Act although the victim need not prove that the accident was caused because of the wrongful act, neglect or default of the driver of the vehicle involved in the accident. In other words, the Supreme Court ruled that where the victim/deceased himself is responsible for the accident, then

he/his legal representatives cannot claim compensation under Section 163-A of the Act. Paras 13, 14, 15 and 16 of the report are extracted hereunder for reference:-

“13. In the second limb of the present consideration, it is necessary to carry out a comparison between Sections 140 and 163-A of the Act. For this, Section 163-A of the Act is being extracted hereunder:

Section 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 authorized 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.

A perusal of Section 163(A) reveals that Sub-section (2) thereof is in pari materia with Sub-section (3) of Section 140. In other words, just as in Section 140 of the Act, so also under Section 163-A of the Act, it is not essential for a claimant seeking compensation, to "plead or establish", that the accident out of which the claim arises suffers from "wrongful act" or "neglect" or "default" of the offending vehicle. But then, there is no equivalent of Sub-section (4) of Section 140 in Section 163-A of the Act. Whereas, under Sub-section (4) of Section 140, there is a specific bar, whereby the concerned party (owner or insurance company) is precluded from defeating a claim raised under Section 140 of the Act, by "pleading and establishing", "wrongful act", "neglect" or "default", there is no such or similar prohibiting clause in Section 163-A of the Act. The additional negative bar, precluding the defense from defeating a claim for reasons of a "fault" ("wrongful act", "neglect" or "default"), as has been expressly incorporated in Section 140 of the Act (through Sub-section (4) thereof), having not been embodied in Section 163-A of the Act, has to have a bearing on the interpretation of Section 163-A of the Act. In our considered view the legislature designedly included the negative clause through sub-section (4) in Section 140, yet consciously did not include the same in the scheme of Section 163-A of the Act. The legislature must have refrained from providing such a negative clause in Section 163-A intentionally and purposefully. In fact, the presence of Sub-section (4) in Section 140, and the absence of a similar provision in Section 163-A, in our view, leaves no room for any doubt, that the only object of the Legislature in doing so was, that the legislature desired to afford liberty to the defense to defeat a claim for

compensation raised under Section 163-A of the Act, by pleading and establishing "wrongful act", "neglect" or "default". Thus, in our view, it is open to a concerned party (owner or insurer) to defeat a claim raised under Section 163A of the Act, by pleading and establishing anyone of the three "faults", namely, "wrongful act", "neglect" or "default". But for the above reason, we find no plausible logic in the wisdom of the legislature, for providing an additional negative bar precluding the defense from defeating a claim for compensation in Section 140 of the Act, and in avoiding to include a similar negative bar in Section 163A of the Act. The object for incorporating Sub-section (2) in Section 163A of the Act is, that the burden of pleading and establishing proof of "wrongful act", "neglect" or "default" would not rest on the shoulders of the claimant. The absence of a provision similar to Sub-section (4) of Section 140 of the Act from Section 163A of the Act, is for shifting the onus of proof on the grounds of "wrongful act", "neglect" or "default" onto the shoulders of the defense (owner or the insurance company). A claim which can be defeated on the basis of any of the aforesaid considerations, regulated under the "fault" liability principle. We have no hesitation therefore to conclude, that Section 163A of the Act is founded on the "fault" liability principle.

14. There is also another reason, which supports the aforesaid conclusion. Section 140 of the Act falls in Chapter X of the Motor Vehicles Act, 1988. Chapter X of the Motor Vehicles Act, 1988 is titled as "Liability Without Fault in Certain Cases". The title of the chapter in which Section 140 falls, leaves no room for any doubt, that the provisions under the chapter have a reference to liability "... without fault ...", i.e., are founded under the "no-fault" liability principle. It would, however, be pertinent to mention, that Section 163A of the Act, does not find place in Chapter X of the Act. Section 163A falls in Chapter XI which has the title "Insurance of Motor Vehicles Against Third Party Risks".

The Motor Vehicles Act, 1988 came into force with effect from 1.7.1989 (i.e., the date on which it was published in the Gazette of India Extraordinary Part II). Section 140 of the Act was included in the original enactment under chapter X. As against the aforesaid, Section 163A of the Act was inserted therein with effect from 14.11.1994 by way of an amendment. Had it been the intention of the legislature to provide for another provision (besides Section 140 of the Act), under the "no-fault" liability principle, it would have rationally added the same under Chapter X of the Act. Only because it was not meant to fall within the ambit of the title of Chapter X of the Act "Liability Without Fault in Certain Cases", it was purposefully and designedly not included thereunder.

15. The heading of Section 163A also needs a special mention. It reads, "Special Provisions as to Payment of Compensation on Structured Formula Basis". It is abundantly clear that Section 163A, introduced a different scheme for expeditious determination of accident claims. Expeditious determination would have reference to a provision wherein litigation was hitherto before (before the insertion of Section 163A of the Act) being long drawn. The only such situation (before the insertion of Section 163A of the Act) wherein the litigation was long drawn was under Chapter XII of the Act. Since the provisions under Chapter XII are structured under the "fault" liability principle, its alternative would also inferentially be founded under the same principle. Section 163A of the Act, catered to shortening the length of litigation, by introducing a scheme regulated by a pre-structured formula to evaluate compensation. It provided for some short-cuts, as for instance, only proof of age and income, need to be established by the claimant to determine the compensation in case of death. There is also not much discretion in the determination of other damages, the limits whereof are also provided for. All in all, one cannot lose sight of the fact that

claims made under Section 163A can result in substantial compensation. When taken together the liability may be huge. It is difficult to accept, that the legislature would fasten such a prodigious liability under the "no-fault" liability principle, without reference to the "fault" grounds. When compensation is high, it is legitimate that the insurance company is not fastened with liability when the offending vehicle suffered a "fault" ("wrongful act", "neglect", or "defect") under a valid Act only policy. Even the instant process of reasoning, leads to the inference, that Section 163A of the Act is founded under the "fault" liability principle.

*16. At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that Section 163A of the Act has an overriding effect on all other provisions of the Motor Vehicles Act, 1988. Stated in other words, none of the provisions of the Motor Vehicles Act which is in conflict with Section 163A of the Act will negate the mandate contained therein (in Section 163A of the Act). Therefore, no matter what, Section 163A of the Act shall stand on its own, without being diluted by any provision. Furthermore, in the course of our determination including the inferences and conclusions drawn by us from the judgment of this Court in *Oriental Insurance Company Limited v. Hansrajibhai v. Kodala*, (2001) 5 SCC 175, as also, the statutory provisions dealt with by this Court in its aforesaid determination, we are of the view, that there is no basis for inferring that Section 163A of the Act is founded under the "no-fault" liability principle. Additionally, we have concluded herein above, that on the conjoint reading of Sections 140 and 163A, the legislative intent is clear, namely, that a claim for compensation raised under Section 163A of the Act, need not be based on pleadings or proof at the hands of the claimants showing absence of "wrongful act", being "neglect" or "default". But that, is not sufficient to determine that the provision falls under the "fault" liability principle.*

To decide whether a provision is governed by the "fault" liability principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or insurance company) by pleading and proving "wrongful act", "neglect" or "default". From the preceding paragraphs (commencing from paragraph 12), we have no hesitation in concluding, that it is open to the owner or insurance company, as the case may be, to defeat a claim under Section 163A of the Act by pleading and establishing through cogent evidence a "fault" ground ("wrongful act" or "neglect" or "default"). It is, therefore, doubtless, that Section 163A of the Act is founded under the "fault" liability principle. To this effect, we accept the contention advanced at the hands of the Learned Counsel for the Petitioner."

10. In this case, the accident took place on account of the neglect of deceased Ramesh Yadav himself. His legal representatives (Respondents No.1 and 2 herein) would not be entitled to compensation from the owner under Section 163-A of the Act also. Similar view was taken by the Punjab and Haryana High Court in FAO No.1413/2000 titled *General Manager, Chandigarh Transport Undertaking-I, Chandigarh & Anr v. Kanwaljit Kaur & Ors.*, decided on 09.05.2011.
11. Since the coverage towards personal accident was meant only for the owner-driver, the Claims Tribunal erred in awarding the compensation of ₹1,00,000/- to the legal representatives of the borrower of the vehicle. The impugned order cannot be sustained. The Appeal, therefore, must succeed.
12. The Appeal is allowed in above terms.

13. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.
14. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 16, 2012
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