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

Date of decision: 29th August, 2012

+ **MAC. APP. No.932/2011**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Ms. Neerja Sachdeva, Advocate.

Versus

KIRAN DEVI & ORS. Respondents
Through: Mr. Peeush Sharma, Advocate.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant National Insurance Co. Ltd. impugns a judgment dated 25.08.2011 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby the Appellant Insurance Company was directed to pay a sum of ₹2,00,000/- towards personal accident coverage for owner-cum-driver of the insured vehicle No.DL-6-CD-6949.
2. It is admitted case of the parties that on 18.10.2009, deceased Sanjeev S/o Raju Rajak suffered fatal injuries in an accident while driving maruti car No. DL-6-CD-6949. An accident information report was filed by the SHO, P.S. Hauz Khas reporting the accident in respect of earlier said maruti car on 18.10.2009. Notice of the report was sent to the parties who appeared in pursuance of the notice. On 07.06.2011, a statement was made by the learned counsel for the legal representatives of deceased

Sanjeev that they(LRs) were claiming a sum of ₹2,00,000/- only from the Appellant Insurance Company towards personal accident coverage. The learned counsel for the Appellant Insurance Company informed the Claims Tribunal that the Insurance Company would not have any objection in paying the contractual liability of ₹2,00,000/- towards coverage of owner-driver. On the next date, an Application was moved on behalf of the Appellant Insurance Company stating that the deceased Sanjeev was not the owner-driver of maruti car No. DL-6-CD-6949 and that the personal accident cover was in the name of Sanjeev's father who had also expired at the time of obtaining the insurance cover. It was thus stated that the deceased did not have any coverage in the personal accident policy for owner-cum-driver. The Claims Tribunal relied on *New India Assurance Co. Ltd. v. Umesh Kumari & Ors.*, 2011 ACJ 890 and held that the deceased has to be termed as owner as he stepped into the shoes of the owner by borrowing the vehicle with the permission of the owner. Thus, the LRs were held entitled to compensation under the personal accident cover. In *Umesh Kumari*, the Punjab and Haryana High Court relied on *Ningamma & Anr. v. United India Insurance Company Limited*, (2009) 13 SCC 710. Paras 5 and 6 of the report in *Umesh Kumari* are extracted hereunder:

“5. In *Ningamma v. United India Insurance Co. Ltd.*, 2009 ACJ 2020 (SC), the Hon'ble Supreme Court of India held as under:-

“In the case of *Oriental Insurance Company Ltd. v. Rajni Devi and others*, 2008 ACJ 1441 (SC), wherein one of us, namely, Hon'ble Justice S.B. Sinha 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, It was held in the said decision 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. In our considered opinion, the ratio of the aforesaid decision 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 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.”

6. It is also useful to refer to para 21 of the judgment of Hon’ble Apex Court in Ningamma’s case, 2009 ACJ 2020 (SC), which reads as under:-

“(21). Section 147 of the MVA provides that the policy of insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorized representative carried in the vehicle or arising out of the use of vehicle in the public place.”

3. In *Ningamma & Anr and Oriental Insurance Company Limited v. Smt. Rajni Devi & Ors.*, (2008) 5 SCC 736, the Supreme Court negated the

contention that a borrower of the vehicle would be entitled to the compensation from the owner. In that context, it was laid down that a borrower of a vehicle steps into the shoes of the owner and is, therefore, not a third party to claim the compensation from the insurer. The judgments were rendered in the context that a borrower would not be entitled to the compensation payable to the owner-cum-driver under the personal accident cover.

4. In the instant case, the deceased was admittedly not a third party. He was driving the insured vehicle at the time of the accident. A perusal of the insurance policy would show that a premium of ₹100/- was charged under compulsory PA to the owner-cum-driver. The coverage under personal accident was ₹2,00,000/-.
5. 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.(emphasis supplied)*

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.

B. Optional Personal Accident Cover for persons other than Owner-Driver

The cover under this section is limited to maximum Capital Sum Insured (CSI) of ₹ 2 lacs per person.

Cover is available only in respect of the following persons:-

1. Private Cars including three wheelers rated as Private cars and motorized two wheelers with or without side car (not for hire or reward): For insured or any named person other than the paid driver and cleaner.

Endorsement IMT – 15 is to be used

2. *Private Cars, three wheelers rated as Private cars and Motorised Two Wheelers (not used for hire or reward) with or without side car: For unnamed passengers limited to the registered carrying capacity of the vehicle other than the insured, his paid driver and cleaner.*

Endorsement IMT – 16 is to be used.

3. *In respect of all classes of vehicles: For paid drivers, cleaners and conductors.*

Endorsement IMT – 17 is to be used

4. *Motorised Two Wheelers with or without side car (used for hire or reward): For unnamed hirer/ driver.*

Endorsement IMT – 18 is to be used”.

6. It is urged by the learned counsel for the Respondent that the Appellant Insurance Company could not have covered the risk of the owner as a driver of the vehicle towards personal accident as he was already dead at the time of obtaining the insurance policy. This insurance policy was issued on 11.06.2009 with its validity from 10.06.2009 to 10.09.2010. The registered owner of the vehicle had expired in the year 2008. Had the person who was in possession of the vehicle and who obtained the insurance coverage informed the Appellant Insurance Company that the registered owner is already dead, perhaps the Appellant would not have issued the insurance policy at all ? In any case, the coverage under GR 36 was only for the owner-driver, that is, registered owner of the vehicle who may be driving the insured vehicle at the time of the accident. The personal accident coverage is a contractual liability of the Insurance

Company and has to be strictly governed by the contract of insurance. Since risk of deceased Sanjeev, who could at best be taken as one of the legal heirs of Raju Rajak, was not covered for personal accident by the contract of insurance, the Appellant Insurance Company had no liability to pay the compensation.

7. The Appeal, therefore, has to be allowed. The impugned order is set aside. The award amount deposited with the Registrar General shall be refunded to the Appellant Insurance Company along with interest accrued, if any, during the pendency of the Appeal.
8. Statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.
9. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 29, 2012
pst