

\$~46

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 27th April, 2012

+

MAC APP. No.628/2009

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. Atul Nanda, Sr. Advocate with
Ms. Rameeza Hakeem & Mr.
Rajat Brar, Advocates

Versus

RITU RAWAT & ANR.

..... Respondents

Through: Ms. Pinki Talukdar, Advocate for
the Respondents.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Bajaj Allianz Insurance Co. Ltd. impugns a judgment dated 05.10.2009 passed in a Claim Petition under Section 163-A of the Motor Vehicles Act whereby a compensation of ₹6,00,000/- was awarded to the parents of the deceased Manish Rawat who died while driving the two-wheeler bearing Registration No. DL-5S-W-1373 owned by his father the Respondent No.2 herein.

2. The manner of the accident as stated by the First Respondents (the Claimants) is extracted from para 2 of the impugned judgment hereunder:

“2. The detailed circumstances of the accident as stated by the petitioners are that on 01.03.08, deceased at about 7.20 AM was going on Motorcycle above stated at a moderate speed along the right side of the road and when he reached the GT Road Flyover, Shahdara, suddenly an unknown/untraced truck came being driven in a very rash and negligent manner and hit the motorcycle of the deceased from behind. As a result, the deceased fell down and was removed to GTP Hospital, but the doctors declared him to have been “brought dead”. The truck driver fled from the spot alongwith the truck. Case was registered at PS M.S. Park, Delhi U/s 279/304-A of IPC vide FIR No.60/08.”

3. It is urged by the learned counsel for the Appellant that the Claims Tribunal fell into error while interpreting Section II of the Contract of Insurance which referred to the liability of the third parties, as the deceased being himself driver of the two-wheeler was not a third party vis-à-vis the owner of the vehicle. Para 21 of the impugned order is extracted hereunder:

“21. Upon perusal of the entire case law cited by Id. counsel for the insurance company, the same would still not help the case of the insurance company keeping in view the factual position of the case, as the contract of policy in question, copy of which is Ex.R1W1/4, and the terms and conditions filed by the insurance company itself and relied upon by them, clearly show that the policy in question was a package policy. Section II deals with the aspect of

‘liability to third parties’(emphasis supplied) and states as under:

“Subject to the limits of liability as laid down in the Schedule hereto, the company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of :-

- (i) Death of or bodily injury to any person including occupants carried in the insured vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.....”

- 4. It is admitted case of the First Respondent that Vijay Rawat, the deceased’s father was the owner of the two-wheeler and the deceased himself was driving the same at the time of the accident. Thus, the deceased was not a third party vis-à-vis the insured.
- 5. There is no dispute about the proposition of law that while claiming compensation under Section 163-A of the Motor Vehicles Act from the owner or the insurer of any vehicle involved in the accident, the Claimant is not required to prove any negligence on the part of the driver from whose vehicle the compensation is claimed. In this case, the deceased himself was driving the two-wheeler which was borrowed by him from his father (Respondent No.2 herein). This case is squarely

covered by the reports of the Supreme Court in *Oriental Insurance Co. Ltd. v. Rajni Devi & Ors.*, (2008) 5 SCC 736, *New India Assurance Co. Ltd. v. Sadanand Mukhi*, (2009) 2 SCC 417 and *Ningamma & Anr. Vs. United India Insurance Co. Ltd.*, (2009) 13 SCC 710. In *Rajni Devi (supra)* and *Ningamma(supra)*, the Supreme Court brought out the difference between the third party liability and contractual liability. It was held that where the victim is not a third party, the claim for compensation shall be governed by the terms of the Contract of Insurance. The relevant para of *Ningamma(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.(emphasis supplied)

XXXXX

XXXXX

XXXXX

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.”

6. In the instant case, the deceased was admittedly not a third party. He himself was driving the two-wheeler which he borrowed from his father. 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.

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 Motorsied 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.”

7. The owner driver is the person who is the registered owner and who is driving the two-wheeler 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 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 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-driver.
8. The impugned order cannot be sustained and the Insurance Company cannot be made liable to pay the compensation.
9. The Appeal is, therefore, allowed and the impugned order is set aside.

10. The amount of compensation of ₹5,00,000/- lying deposited in this Court vide order dated 21.12.2009 shall be refunded to the Appellant Insurance Company along with the interest, if any, accrued during the pendency of the Appeal.
11. The statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.
12. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

APRIL 27, 2012

pst