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

+ MAC.APP. 194/2010

Date of decision: 26.11.2014

SUSAN V. JOHAN & ORS.

..... Appellant

Through

Mr. O.P. Mannie, Advocate

versus

JOY MARKOSE AND ANR.

..... Respondent

Through

Mr. R.B. Shami, Advocate for
R-2

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present appeal is filed by the claimants seeking to impugn the Award dated 27.11.2009.
2. The brief facts which led to filing of the claim petition under section 163-A of the M.V. Act are that Shri. Verghese John while driving the car on 26.8.2007 received fatal injuries at Vikas Puri, New Delhi.
3. As per the claim petition itself the Joy Markose is the owner of the vehicle. It transpires that the deceased had borrowed the vehicle.
4. The Tribunal has concluded that the claimants/appellants are not entitled to any compensation under section 163-A of the M.V. Act and dismissed the claim petition.
5. Learned counsel appearing for the appellant has impugned the Award stating that the confusion regarding interpretation of section 163-A of the M.V. Act is misplaced.
6. Without prejudice to his first contention he submits that in any case ,

this was a comprehensive insurance policy and it covered compulsorily under Personal Accident for the owner and driver upto Rs.2 lacs. It is urged that the claimant would be entitled to the same.

7. As far as applicability of section 163-A of the M.V.Act is concerned this Court in MAC.APP.828/2006 titled as ***Royal Sunderam Alliance Insurance vs. Bhawna Aggarwal & Ors***, decided on 24.11.2014 relying upon ***Ningamma and Another vs. United India Insurance Company Ltd.,(2009) 13 SCC 710*** and ***Oriental Insurance Company Limited vs. Rajni Devi and Others, (2008) 5 SCC 736*** held that in facts similar to the present one that the deceased would step into the shoes of the owner and hence a compensation petition would not lie under section 163A of the M.V.Act by the claimants. The said judgment would be applicable to the facts of the present case. In those judgments also it was noted that the issue alongwith various other issues is pending adjudication before the Supreme Court in a Special Leave Petition titled as ***National Insurance Company vs. Jai Prakash***. However, liberty was granted to the claimants to approach the Tribunal again in case any different view is taken by the Supreme Court which is beneficial to the claimants on the interpretation of section 163-A of the M.V.Act.

8. Coming to the second submission of learned counsel for the appellant, he relies upon the judgments of the Punjab and Haryana High Court in the case of ***New India Insurance Company Ltd. vs. Karamjit & Ors., 2014 ACJ 604*** to submit that for purpose of section 163A of the M.V.Act it is the contention of the respondent that the said section is not applicable as the deceased stepped into the shoes of the owner. He submits that had the deceased being the owner, or deemed to be the owner, he would also be

entitled to the same compensation as provided by personal accident insurance.

9. He also relies upon *Oriental Insurance Company Limited vs. Rajni Devi and Others (supra)* and also *Bajaj Allianz General Ins. Co. Ltd. vs. Supriya Das and Anr.*, 2011 ACJ 348.

10. The Punjab and Haryana High Court in *New India Insurance Company Ltd. vs. Karamjit & Ors.*, held as follows:-

“21. The claim of the legal representatives of the deceased driver who borrowed the vehicle from the registered owner is negated only on the ground that the driver who borrowed the vehicle had stepped into the shoes of the owner. The insurance company cannot avoid its liability once for all on the plea that the owner of the vehicle had not sustained injury driving the vehicle for making a claim under the personal accident coverage. In other words, the insurance company cannot be permitted to play hot and cold. In my considered view, once the driver who borrowed the vehicle from the owner has become the owner of the vehicle for all practical purposes, then the insurance company is liable to pay compensation payable to the owner under the personal accident coverage. Therefore, I hold that in all cases where the premium for personal accident of the owner-cum-driver has been paid, the legal representatives of the driver or the injured driver who becomes the owner of the vehicle for all practical purposes under section 163-A of the Act is entitled to claim the compensation from the insurance company under the personal accident coverage....”

11. Similarly, a Division Bench of the Calcutta High Court in *Bajaj Allianz General Ins. Co. Ltd. vs Supriya Das and Anr.(supra)* held as follows:-

“22. Even in the case of *Oriental Insurance Co. Ltd. v. Rajni Devi* 2008 ACJ 1441 relied upon by Mr. Bose, the Apex Court after holding that the application under Section 163-A of the Act was not

maintainable in the absence of third party involvement, for the above reason, affirmed that the claimants were entitled to get the compensation to the extent provided in the policy and allowed the appeal only to that extent.

23...

24. We, therefore, find no substance in the contention of Mr. Bose that the claimants were required to move other forum for enforcement of the liability incurred by the insurer and accordingly, hold that in this case, the heirs and the legal representatives of the victim are entitled to get a sum of Rs. 1,00,000 in tune with the terms of the policy with interest at the rate of 8 per cent per annum from the date of filing of the claim application till the actual deposit of the amount before the Tribunal below.”

12. I may now refer to the judgment of the Supreme Court in ***Oriental Insurance Company Ltd.vs. Rajni Devi & Others (supra)*** where the Supreme Court held as follows:-

“7... The said provision cannot be said to have any application in regard to an accident wherein the owner of the motor vehicle himself is involved. The question is no longer *res integra*.

.....

9.

(22) Where the claim relates to own damage claims, it cannot be adjudicated by the insurance company (sic Tribunal). But it has to be decided by another forum, i.e. forum created under Consumer Protection Act, 1986 (in short ‘the C.P.Act’). Before the Tribunal, there were essentially three parties, i.e. the insurer, insured and the claimants. On the contrary, before the Consumer Forums there were two parties, i.e. the owner of the vehicle and the insurer. The claimant does not come into the picture. Therefore, these are cases where there is no third party involved.”

13. The Supreme Court further noted the judgment of the Supreme Court in the case of *National Insurance Company Ltd. vs. Laxmi Narain Dhut 2007 ACJ 721* where the Supreme Court held that dispute like the one now sought to be raised by learned counsel for the appellant, namely, that under the accident clause owner would be entitled to compensation of Rs.2 lacs.. which has to be adjudicated upon by a different forum other than the Motor Accident Claims Tribunal. However, the Supreme Court in exercise of powers under Article 142 of the Constitution directed as follows:-

“11. According to the terms of contract of insurance, the liability of the insurance company was confined to Rs. 1,00,000/- (Rupees one lac only). It was liable to the said extent and not any sum exceeding the said amount.”

14. I am persuaded to pass appropriate orders in the facts and circumstances of the present case relying upon the judgment of the Division Bench of the Calcutta High Court in the case of *Bajaj Allianz General Ins. Co. Ltd. (supra)*.

15. In the present the accident took place on 26.8.2007. Now, after eight years of the accident to ask the victims, namely, the widow, her two children and the grandmother staying with the widow on this date to approach another forum would be inappropriate. I am hence persuaded to pass orders in terms of the personal accident covered. Respondent No.2/Insurance Company shall pay a sum of Rs.2 lacs to appellants No.1 to 4. 40% be paid to the appellant No.1. Balance 60% be given to appellants No.2 to 4 in equal proportions.

16. On deposit of the amount of Rs.2 lacs by respondent No.2/Insurance Company alongwith interest @6% per annum from the date of filing of the

claim petition till deposit in court the Registrar General shall release the amount to the appellants as directed above.

17. Appeal stands disposed of.

JAYANT NATH, J

NOVEMBER 26, 2014

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