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

Decided on: 13th February, 2015

\+ **MAC.APP. 152/2015**

POORAN LAL SHARMA ..... Appellant

Through: Mr.J.S. Kanwar, Advocate

versus

SH. KARAN KUMAR & ORS ..... Respondents

Through: Mr. Manish Kaushik, Advocate for Mr. K.L. Nandwani, Advocate for Respondent no.2.

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

JUDGMENT

G. P. MITTAL, J. (ORAL)

1. The instant appeal is directed against the judgment dated 27.09.2014 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby the petition under Section 163A of the Motor Vehicles Act, 1988(the Act) preferred by the legal representatives of deceased Abhishek Sharma was dismissed.

2. As per the averments made in the claim petition, on 14.04.2008 at about 7:55 a.m., the deceased was driving motor cycle

no.DL-13-SA-5501 which he borrowed from Karan Kumar, Respondent no.1 herein. When deceased reached Khajuri Khas Chowk Red Light, an accident occurred and the deceased suffered fatal injuries. The Appellant sued the owner of the motorcycle *i.e.*, Respondent no.1 and its insurer Respondent no.2, claiming compensation from them for the death of the deceased.

3. The Claims Tribunal relied upon the judgments in *Ningamma & Anr. v. United India Insurance Co. Ltd.*, *(2009) 13 SCC 710*, *Oriental Insurance Co. Ltd. v. Rajni Devi & Ors.*, *(2008) 5 SCC 736* and the judgment of the Karnataka High Court in *Oriental Insurance Co. Ltd. v. Sharda G. & Ors., 2010 ACJ 977* and dismissed the claim petition holding that in a petition under Section 163A of the Act, only a third party can claim compensation.

4. This Court in *Oriental Insurance Co. Ltd. v. Kavita Singal & Ors*, MAC.APP.533/2009 decided on 13.01.2012 has discussed this aspect in great detail. Para 2 of the report is extracted hereunder:

> *"2. In my view the Tribunal misinterpreted the judgment in Ningamma (supra), it was nowhere laid down in Ningamma that a personal accident cover made in respect of the owner – driver would extend to anybody driving the two wheeler covered by the policy of insurance. Ningamma and Rajni Devi (supra) were in the context that compensation under Section 163 (A) cannot be claimed by an owner or*

anybody driving the vehicle with the permission of the owner (not being his employee) against his own insurer as in respect of 3rd party risk, the liability of insurance company is to indemnify the owner. The relevant portion of the report in Nigamma (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.""

5. Thus, it is evident that the Appellant cannot claim any compensation from the insurer if the accident occurs on account

of deceased’s own negligence. Even if the accident was caused because of any mechanical defect in the vehicle, the said risk was not covered under the policy of insurance. In that event, the legal representatives would be entitled to compensation only from the owner of the vehicle which is not even the case set up by the Appellant herein.

6. It is urged by the learned counsel for the Appellant that a premium of Rs.50/- was paid towards personal accident of owner driver by Respondent no.1 and as per the driver’s clause, any person including the insured could drive the vehicle. It is therefore, argued by the learned counsel for the Appellant that the Appellant would at least be entitled to the compensation of Rs.1,00,000/- as covered by the policy of insurance. This question was also answered in *Kavita Singal & Ors (supra)* wherein it was also held that additional premium of Rs.50/- paid for owner driver under GR 36A covers risk only of the owner-cum-driver of the insured vehicle. Para 3 of the report in *Kavita Singal & Ors(supra)* is extracted hereunder:

> *“3. A perusal of the insurance policy placed on record shows that an additional premium of ₹ 50/- was paid for owner-driver under GR-36A. An order dated 11.12.2009 was passed by this Court (in this case); relevant portion of the order 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.

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

Endorsement IMT – 1 is to be used.

The scope of the cover, Capital Sum Insured and the annual premium payable under this section would be as under: -

DESCRIPTION OF BENEFITS	**% OF CAPITAL SUM INSURED**	**PREMIUM FOR EVERY UNIT OF CSI OF ₹ 10,000/- OR PART THEREOF (IN ₹)**		
		Pvt. Car	Mot. Two Wheeler	Com. Veh.
i) Death only	100%	5	7	6

ii) Loss of Two Limbs or sight of two eyes or one limb and sight of one eye.	100%	5	7	6
ii) Loss of one Limb or Sight of one eye.	50%	5	7	6
iii) Permanent Total Disablement from injuries other than named above.	100%	5	7	6

7. The Abhishek Sharma was not the owner- driver of the vehicle. His risk was not covered. The Claims Tribunal hence, rightly dismissed the claim petition.

8. The impugned order does not call for any interference. The appeal is therefore, dismissed *in limine*.

9. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 13, 2015
pst