

\$~32

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

Date of decision: 13th January, 2015

+ **MAC.APP. 101/2007**

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Adv.

versus

SUNITA & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The Appellant New India Assurance Company Limited impugns the judgment dated 23.11.2006 passed by the Motor Accident Claims Tribunal (the Claims Tribunal), whereby the Claims Tribunal awarded a compensation of Rs.4,06,948/- in favour of Respondents no.1 to 6, who are the legal representatives of deceased Babu Lal, who suffered fatal injuries in a motor vehicular accident which took place on the intervening night of 30-31.08.2003 while driving a TSR No.DL-1RF-7119.
2. As per the case set up by the Respondents, deceased Babu Lal used to take on rent TSR No.DL-1RF-7119 from its owners Respondents no.7 and 8 (Respondents no.2 and 3 before the Claims Tribunal) on daily

hire charges of Rs.100/-.

3. It is averred that on the night intervening of 30-31.08.2003, deceased Babu Lal was plying the earlier stated TSR on Bahadur Shah Zafar Marg, New Delhi. When he reached opposite petrol pump, Delhi Gate, the TSR driven by him met with an accident, as a result of which the TSR overturned and deceased Babu Lal suffered injuries which proved fatal. Ultimately on 03.09.2003, he succumbed to the injuries.
4. FIR No.316/2003 dated 31.08.2003 was registered in Police Station I.P. Estate. The other vehicle alleged to be involved in the accident could not be traced. The legal representatives therefore, preferred a petition under Section 163-A of the Motor Vehicles Act, 1988 (the M.V. Act) against the owner and Insurance Company of the vehicle driven by him.
5. The Claims Tribunal awarded a compensation of Rs.3,84,948/- on the assumption that under Section 163-A of the M.V. Act, the compensation can be claimed from vehicle's owner and insurer. Para 13 of the impugned judgment is extracted hereunder:-

“13. The petitioner has claimed compensation under Section 163-A of the Motor Vehicles Act. They have stated that the deceased earned about 100-150/- per day. In the absence of any documentary proof of income it would be equitable to award minimum wages applicable

to skilled workers which at the relevant time was Rs.3207.9 per month. The age of the deceased is stated to be around 41 years. The multiplier applicable is 15. Accordingly, the compensation for the death under the provision of Section 163-A M.V. Act is computed as under:

Annual Income: 3207.9X12 = Rs.38,495/-

2/3rd dependency of the petitioners: Rs.25,663/-

Compensation: 25663X15 = Rs.3,84,948/- ”

6. In the instant case, deceased Babu Lal was not the employee of the owner of the vehicle as he used to rent the vehicle to ply it for hire and reward on daily basis. There was no relationship of employer and employee between the two and, therefore, the legal representatives of deceased Babu Lal would not be entitled to any compensation under the Workman's Compensation Act, 1923.
7. Similarly, while plying the vehicle for hire and reward, deceased Babu Lal was not a third party and was, therefore, not covered by the terms and conditions of the insurance policy as well.
8. In *Ningamma & Anr. v. United India Insurance Company Limited*, (2009) 13 SCC 710, the Supreme Court relied upon the judgment in *Oriental Insurance Company Limited v. Rajni Devi*, (2008) 5 SCC 736 where it was held that Section 163-A of the M.V. Act cannot be said

to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. While referring to *Rajni Devi* in para 18 of the report, in *Ningamma & Anr.(supra)* the Supreme Court held as under:-

“18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Ors. (2008) 5 SCC736 , wherein one of us, namely, Hon'ble Justice S.B. Sinha is 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 M.V.A. 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 M.V.A. 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 M.V.A. 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 authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike”.

9. Since the vehicle in question had been rented out by the owner to deceased Babu Lal, he stepped into the shoes of the owner. He will

not be a third party as well and the Insurance Company therefore, will not be liable to indemnify the insured nor the owner will be treated as a tortfeasor.

10. The Claims Tribunal erred in not understanding the true purport of Section 163 of the M.V. Act. The impugned judgment cannot be sustained, the same is accordingly set aside.
11. The appeal is accordingly allowed.
12. The compensation deposited shall be refunded to the Appellant Insurance Company along with interest, if any earned thereon.
13. The statutory amount of Rs.25,000/- shall also be refunded to the Appellant Insurance Company.
14. Pending application also stands disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 13, 2015
vk