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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 22nd January, 2015

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MAC.APP. 274/2007

NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through: Mr. D.K. Sharma, Advocate

versus

NUTAN DEVI & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against judgment dated 07.02.2007 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby in a petition under Section 163-A of the Motor Vehicles Act, 1988(the Act), compensation of Rs.4,65,000/- was awarded to Respondents no.1 to 4 for the death of Shiv Kumar, who died in a motor vehicular accident which occurred on 23.02.2005 at about 11:00 p.m.

2. Relying on *National Insurance Company Limited v. Sinitha & Ors.*, (2012) (2) SCC 356 and *Ningamma & Anr. v. United India Insurance Co. Ltd.*, (2009) 13 SCC 710, the learned counsel for the Appellant Insurance Company contends that deceased Shiv Kumar had borrowed the two-wheeler (motorcycle) bearing no.UP-14-N-4279 which met with an accident with an unknown vehicle. It is urged by the learned counsel that the borrower of the vehicle stepped into the shoes of the owner and this risk was not covered under the policy of insurance as only third party risk is liable to be covered. It is urged that if there was any mechanical defect in the vehicle bearing no.UP-14-N-4279 and the accident was caused because of the same, the same ought to have been started by Respondents no.1 to 4 and even in that case, only the owner of the vehicle was liable to pay compensation under tort and this risk was not covered by the policy of insurance.
3. As per the averments made in the claim petition, on 23.02.2005 at about 11:00 p.m., deceased Shiv Kumar while driving Bajaj motorcycle bearing no.UP-14-N-4279 which was owned by Ramgopal, Respondent no.6(Respondent no.2 before the Claims Tribunal) who was the brother of deceased Shiv Kumar reached near Gopal Pur, outer Ring Road, near CNG pump, Timarpur, Delhi, when an unknown vehicle being driven in a rash and negligent manner dashed against the motorcycle resulting into injuries on the person of Shiv Kumar which proved fatal.

4. It is true that in a petition under Section 163-A of the Act, the claimant is not required to prove negligence on the part of the driver/owner of an offending vehicle, but the said Section does not entitle the claimant to claim compensation from his own insurer.
5. The case is squarely covered by the judgments of the Supreme Court in *Oriental Insurance Co. Ltd. v. Rajni Devi & Ors.*, (2008) 5 SCC 736 and *Ningamma & Anr. v. United India Insurance Co. Ltd.*, (2009) 13 SCC 710. In *Ningamma* and *Rajni Devi (supra)*, it was laid down that compensation under Section 163-A of the Act cannot be claimed by an owner or anybody driving the vehicle with the permission of the owner (not being his employee) against his (owner's) insurer in respect of third party risk liability. 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.”

6. The appeal therefore, has to be allowed. I order accordingly.
7. Initially, the operation of the impugned judgment was stayed by an order dated 19.07.2007. However, subsequently by an order dated 13.05.2009, the Appellant was directed to deposit the awarded amount which was ordered to be released to the claimants. Consequently, since the Appellant Insurance Company had no liability, it is entitled to restitution.
8. The compensation amount paid including the interest shall be refunded to the Appellant New India Assurance Co. Ltd. within three months from today, failing which the Appellant shall be entitled to claim interest @ 7.5% per annum from the date of this order.
9. The appeal is allowed in above terms.
10. Pending applications also stand disposed of.

11. Statutory amount of Rs.25,000/-, if any, shall also be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 22, 2015
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