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

% *Judgment Pronounced on: 26.05.2015*

\+ MAC.APP. 364/2010

NATIONAL INSURANCE COMPANY LTD ..... Appellant
Through Mr.Manoj R.Sinha, Advocate.

versus

SALIM & ORS ..... Respondents
Through Mr.Anshuman Bal, Advocate for LRs of R-1.
Mr.Nasimuddin, Advocate for R-3.

\+ MAC.APP. 369/2010

NATIONAL INSURANCE COMPANY LTD ..... Appellant
Through Mr.Manoj R. Sinha, Advocate.

versus

SAMA PARVEEN & ORS ..... Respondents
Through Mr. Anshuman Bal, Advocate for R-1 & 2.
Mr.Nasimuddin, Advocate for R-4.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. By the present two appeals the appellant impugns the common Award dated 22.02.2010.

2. The brief facts are that Mr.Ahsan and Mr.Zulfikar lost their lives on

13.01.2006 in an accident. Both were travelling on a motorcycle when the accident occurred on the main road Zafrabad, Delhi. The motorcycle is said to be owned by Mr.Pritpal Singh, respondent No.2. Claim petitions under Section 163A of the M.V.Act were filed against the owner and the appellant Insurance Company.

3. Based on the evidence on record, the Tribunal concluded that the factum of the death of the deceased persons in the motor accident involving the motorcycle stands established. In the case of Ahsan, the sole claimant, namely, the father was awarded a compensation of Rs.7,42,000/-. In the case of Zulfikar, the claimants namely, the parents were awarded a compensation of Rs.5,47,500/-.

4. On the issue of liability, the Tribunal noted that Pritpal Singh-the owner, respondent No. 2 and respondent No. 3-Mr.Parvez Khan were only shifting the blame against each other regarding the ownership of the motorcycle. It is averred that Pritpal Singh is the registered owner of the motorcycle. The said respondent No. 2-Pritpal Singh was said to be involved in the accident. Respondent No. 3 as per respondent No.2 was the driver of the motorcycle. Respondent No. 3 completely denied any connection with the motorcycle. From the evidence on record, the Tribunal could not come to a definite conclusion as to who was driving the motorcycle at the time of the accident. The Tribunal held that the burden was upon the appellant company to establish breach of the conditions of the insurance policy which they have failed to do from the kind of evidence on record. The Tribunal held that it cannot be inferred that respondent No. 3 was driving the motorcycle. Hence, the Tribunal directed the appellant Insurance Company to pay the compensation.

5. Learned counsel appearing for the appellant submits that as the Tribunal has concluded that respondent No. 3 was not driving the motorcycle, it is obvious that one of the two deceased either Ahsan or Zulfikar was driving the motorcycle. Hence, the motorcycle having been borrowed from the owner, it is averred that under Section 163A of the Motor Vehicles act the claim would not lie as the driver would step into the shoes of the owner. Reliance is placed on the judgment of this court dated 27.04.2012 in MAC 628/2009 titled as ***Bajaj Alliance General Insurance Co. Ltd. vs. Ritu Rawat & Anr***. where this court had reiterated the proposition of the law that while claiming the compensation under Section 163A of the M.V.Act, the claimant is not required to prove any negligence. Where the deceased himself was driving the two wheeler and had borrowed it from the owner. This court also held that as the deceased was admittedly not a third party and he stepped into the shoes of the owner and cannot file a claim under Section 163 A.

6. In my opinion, there is no reason to interfere with the findings recorded by the Tribunal. A perusal of the record shows that the appellant was highly negligent before the Tribunal. The appellant was initially proceeded ex parte. The same was subsequently set aside. Again on 15.12.2009, the appellant was proceeded ex parte. Further on 04.12.2009, the Tribunal in its order noted that from a perusal of the police file it cannot be made out as to which person was driving the motorcycle at the time of the accident. The Tribunal also noted that belatedly after three years, the appellant Insurance Company is raising the plea that Section 163A of M.V.Act will not apply. The Tribunal also noted that R1W1 was never cross-examined on this aspect by the appellant, namely, Sh.Pritpal Singh,

the registered owner of the motorcycle. The Tribunal also noted that there is no evidence on record to show who was driving.

7. In the light and the nature of the evidence on record, the plea that one of the two deceased was driving the motorcycle was a plea which the appellant had to establish. Having failed to do the needful, it cannot now seek to wriggle out its liability under the Insurance Policy.

8. The appeals are without any merit and are dismissed.

(JAYANT NATH)
JUDGE

MAY 26, 2015/rb