

\$-3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th January, 2015

+

MAC.APP. 540/2012

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr.Pankaj Seth, Advocate

versus

PREM & ORS.

..... Respondents

Through: Mr. Anshuman Bal, Advocate
for Respondents no.1 & 2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant National Insurance Co. Ltd. impugns the judgment dated 15.03.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby in a claim petition under Section 163-A of the Motor Vehicles Act, 1988(the Act), a compensation of Rs.6,84,500/- was awarded in favour of Respondents no.1 and 2 for the death of Sunil who died in a motor vehicular accident which occurred on 21.08.2007.
2. It is urged by the learned counsel for the Appellant that deceased Sunil had hired the motorcycle from Respondent no.3, owner of the motorcycle and thus, he stepped into the shoes of

the owner. He being neither a third party nor an employee, no compensation was admissible to Respondents no.1 and 2 from the owner or the insurer of the motorcycle bearing no.DL-4SAK-3346. It is urged that since the deceased himself was to be blamed for the accident, he cannot claim compensation from the owner of the motorcycle which he himself was driving even under Section 163-A of the Act. Thus, there was no liability of the Insurance Company to indemnify the insured.

3. On the other hand, learned counsel for the Respondents supporting the judgment passed by the Claims Tribunal urges that the manner of accident is not known. The learned counsel for the Respondents urges that no evidence was led by the Appellant Insurance Company or the owner of the motorcycle that the accident took place because of the negligence of deceased Sunil. No evidence was required as the averments made in the written statement by the owner and the Insurance Company were not refuted. Relying on *National Insurance Company Limited v. Sinitha & Ors., 2011 (13) SCALE 84.*, the learned counsel for the Respondents submits that under Section 163-A of the Act, the legal representatives of a deceased who dies in a motor vehicular accident were not expected to prove the negligence and the legal representatives were entitled to compensation from the owner of the vehicle.
4. It is not in dispute that the manner of accident has not been stated in the claim petition by Respondents no.1 and 2. Para

23(I) of the claim petition which elaborates as to how the deceased Sunil suffered fatal injuries is extracted hereunder:

“23(I).That on 21.8.2007 at about 2.05 A.M. the accident took place at Ghevra Kanjhawla Road, Near D.K. Farm, Village Ghevra, with motorcycle bearing no.DL-4SAK-3346 owned by respondent no.1 resulting into death of the deceased due to injuries received in the accident.”

5. In the written statement filed by Respondent no.3 herein (Respondent no.1 before the Claims Tribunal), Respondent no.3 took up the plea that the deceased had taken the vehicle from Respondent no.3 for some time for riding. The deceased drove the vehicle rashly and negligently without observing the traffic rules and dashed against a tree. Para 23(1) of the written statement filed by Respondent no.3 is extracted hereunder:

“23(1) That para No.23(I) of the petition is wrong and denied. It is submitted that the petitioners intentionally avoiding to give the truth before this Hon’ble Court because the deceased took the motor cycle for some time from the respondent No.1 and being known to the deceased, respondent No.1 allowed him to take the vehicle but they misused the same by plying in a very high speed, rashly, negligently and without observing traffic rules and dashed against the tree resulting death of the deceased.”

6. The Appellant who was Respondent no.2 before the Claims Tribunal filed written statement stating that the deceased

himself was rash and negligent in driving the vehicle and there was no cause of action for filing the petition against the Appellant Insurance Company.

7. 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. It is not the case of Respondents no.1 and 2 that the deceased Sunil was an employee of the insured Respondent no.3. 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.

XXXXX

XXXXX

XXXXX

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.”

8. *Sinitha & Ors. (supra)* relied upon by the learned counsel for Respondents no.1 and 2 does not apply to the instant case. Since it is established that deceased Sunil who was a borrower of the vehicle from Respondent no.3 was himself to be blamed for the accident, he could not claim compensation either from the owner of the vehicle or from the Insurance Company.
9. The appeal therefore, has to succeed; the same is accordingly allowed. The impugned judgment is consequently set aside.
10. Pending applications also stand disposed of.
11. Statutory amount of Rs.25,000/-, if any, shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 16, 2015

pst