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

Judgment Pronounced on: 22.05. 2015

+ MAC.APP. 1126/2012

RAJBIR SINGH & ANR

Through

..... Appellants

Mr.Peeush Sharma, Advocate.

versus

HEMANT KUAMR & ORS

Through

..... Respondents

Ms.Shantha Devi Raman and

Mr.Mukul Thakur, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed seeking to impugn the Award dated 19.07.2012.
2. The brief facts which led to filing of the claim petition are that on 24.09.2009 one Sh.Ravi Kumar, the deceased along with respondent No.1 was going on a motorcycle through village Palli, PS Baghpat, U.P. Suddenly a cow came in front of the vehicle. The motorcycle struck the cow and the occupants of the motorcycle fell down. Sh.Ravi Kumar received injuries on his head and subsequently succumbed to his injuries. Respondent No.1 was driving the motorcycle. The vehicle was owned by respondent no.2.
3. The Tribunal noted the testimony of PW-1 who had deposed that he is the father of the respondent No.2 and at her marriage he had given the motorcycle to his daughter. The motorcycle was borrowed by the deceased

on the date of the accident though it was being driven by respondent No.1 who was a neighbour and a friend of the deceased. In this background, respondent No.3 Insurance Company has pointed out that the present claim petition having been filed under Section 163A of the M.V.Act, the deceased who had borrowed the motorcycle from the owner i.e. respondent No.2 stepped into the shoes of the owner. Hence, a petition under Section 163 A would not lie as an owner cannot file a petition against himself. The petition was dismissed.

4. Learned counsel appearing for the appellants has relied upon the judgment of the Supreme Court in the case of *National Insurance Co. Ltd. vs. Sinitha & Ors.*, (2012) 2 SCC 356 and *Ningamma & Anr. vs. United India Insurance Co.Ltd.*, (2009) 13 SCC 710. He contends that the deceased was a third party and not driving the motorcycle.

5. In MAC Appl. 828/2006 titled as *Royal Sunderam Alliance Insurance vs. Bhawna Aggarwal & Ors.* dated 24.11.2014 which judgment has been followed in several other judgments this court has relying upon the judgments of the Supreme Court in the case *Ningamma & Anr. vs. United India Insurance Co.Ltd.(supra)* and *Oriental Insurance Company vs. Rajni Devi & Ors.*, (2008) 5 SCC 736 held that Section 163A of the M.V.Act has no application to an accident where the owner of the vehicle himself is involved. The case of *Ningamma & Anr. vs. United India Insurance Co.Ltd.(supra)* was also a case of a deceased who was travelling on a motorcycle which he had borrowed from the real owner. The Supreme Court held that the deceased was not the owner of the motorbike, he had borrowed the motorbike from its real owner and hence, he would step into the shoes of the owner of the motorbike. Hence, it was held that the petition

would not lie.

6. The judgment of the Supreme Court in the case of *National Insurance Co. Ltd. vs. Sinitha & Ors.*(*supra*) relied upon by the learned counsel for the appellant does not help the appellants. That was a case on which facts the Supreme Court held that it was for the Insurance Company to establish that the deceased occupied the shoes of the owner and cannot be treated as a third party and also held that only the factual details brought on record through reliable evidence can discharge the aforesaid onus. The said judgment does not help the case of the appellants. There is no merit in the present appeal.

7. However, this court in the case of *Royal Sunderam Alliance Insurance vs. Bhawna Aggarwal & Ors.* (*supra*) granted the following liberty to the claimants. The said para reads as follows:-

“11. At this stage, learned counsel appearing for the insurance company/appellant submits that some similar issues are pending before the Supreme Court in a Special Leave Petition titled as *National Insurance Company vs. Jai Prakash*. I, hence, grant liberty to the claimants to approach the Tribunal again in case the judgment in the said case before the Hon’ble Supreme Court in the pending SLP accepts their stand. With this liberty the appeal stands disposed of.”

8. Accordingly, I also grant the same liberty to the appellants.

9. The appeal stands disposed of.

(JAYANT NATH)
JUDGE

May 22, 2015
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