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

Date of Decision: 22nd March, 2016

\+ **MAC.APP. 1042/2011 & CM Nos. 21254-55/2011**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD ..... Appellant
Through: Ms. Suman Bagga & Mr. Pankaj Gupta, Advs.

versus

SMT KAVITA & ORS ..... Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 06.02.2010, Raj Kumar was riding motorcycle bearing No.DL 3S BS 0114 (motorcycle), on way back to his home in Mandoli, Delhi-93 in the area of Kabir Nagar Bus stand when he met with an accident, dying in the result. The police registered a first information report (FIR) and took up the matter for investigation. The cause for the accident could not be ascertained. His widow and other dependent family members brought an accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (tribunal) which registered it as MACT suit No.171/2010 seeking compensation from the registered owner of the motorcycle (impleaded as the first respondent before the tribunal) and the appellant insurance company (insurer), it having

admittedly issued a third party insurance policy in its respect for the period in question. It appears that the deceased had borrowed the motorcycle from the registered owner/insurer. The claim petition was resisted by the insurer before the tribunal.

2. By judgment dated 02.08.2011, the tribunal held that the claimants could not have maintained the claim petition under Section 163A of MV Act. It is not clear from the impugned judgment as to how the claim petition was treated by the tribunal to be one under Section 163A of MV Act even while, as noted in the opening para of the impugned judgment, it have been presented under Sections 166 and 140 of MV Act. Be that as it may, since no evidence appears to have been led to make out a case on the principle of fault liability under Section 166 of MV Act, it may be assumed that the petition was pressed instead under Section 163A of MV Act.

3. The tribunal granted compensation in the sum of ₹1 lakh to the claimants on the reasoning that the insurance policy having taken out by the registered owner of the motorcycle covering the period in question, it having been insured for personal accident in relation to the owner/driver, such amount was payable.

4. It is the above mentioned award which is challenged by the insurance company through the appeal at hand pointing out that the personal accident risk cover was subject to the conditions, *inter alia*, to the effect that it should relate to the owner/driver.

5. The learned counsel for the appellant relies upon the following view taken by a learned single judge of this Court in MAC.APP.No.691/2012 *Oriental Insurance Co. Ltd. v. Rashmi* dated 16.11.2012 in identical fact-situation :

> *"Thus, it would be seen that the owner-driver is the person who is the registered owner and who is driving the vehicle himself. Since the deceased was not the owner, his legal representatives were not entitled to the compensation of ₹1,00,000/- meant under Personal Accident cover for the owner driver. Anybody driving the vehicle with or without permission of the owner cannot be taken as owner driver. Thus, in this case, neither the compensation towards the third party risk was payable as the deceased was not a third party nor the compensation under personal accident coverage was payable as it was meant for owner-cum-driver."*

6. It may be added that the said view was reiterated in judgments in *ICICI Lombard General Insurance Co. Ltd. v. Jai Veer Singh* (MAC.APP.No.164/2012) dated 16.11.2012 and *Pooran Lal Sharma v. Karan Kumar* (MAC.APP.No.152/2015) dated 13.02.2015. This Court finds the case at hand squarely covered by the view taken in *Rashmi* (supra) and consequently holds that the tribunal could not have awarded any compensation under the personal accident clause of the insurance policy to the claimants in this case.

7. Thus, the appeal is allowed. The impugned judgment is set aside.

8. The amount deposited by the insurance company in terms of order dated 24.11.2011 which has been held in fixed deposit receipt shall be refunded along with statutory deposit, if made.

9. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 22, 2016
VLD