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

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Judgment delivered on: 31.05.2017

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MAC.APP. 118/2017 & CM APPL. 4506/2017

NATIONAL INSURANCE CO LTD.

..... Appellant

Through: Mr. Manu Shahalia, Advocate.

Versus

MISHRI LAL & ORS.

..... Respondents

Through: Mr. Triloki Nath, Advocate for
Respondents No. 1 and 2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. On 22nd April 2003, Deepak the 24 year old son of Mr. Mishri Lal, (respondent No.1), was on his way to work on a motorcycle when he was hit by an unknown vehicle and he succumbed to the fatal injuries caused to him. The motorcycle was insured with the appellant. Mr. Mishri Lal filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter to be referred as 'the Act') seeking compensation on "no fault" liability. Deepak was claimed to be earning Rs.3,300/- per month. After looking into the facts of the case, the Tribunal awarded compensation of Rs.4,46,500/- alongwith interest at the rate of 9% per annum from the date of filing of the petition till payment of the same.

2. The appellant-insurance company has impugned the Award on the ground that no liability can be apportioned on it because the vehicle was

insured only for third party liability and not for the rider. It contends that the owner had an insurance cover only to the extent of Rs.1,00,000/- for his personal injury, although the third party liability was unlimited.

3. The learned counsel for the appellant refers to the terms of the insurance policy under Sections 147, 149(2) and 170 of the Act. He states that receipt of premium calculated for the policy clearly shows that it was charged only for third party basic policy and since the owner's claim is about his personal liability, it cannot exceed Rs.1,00,000/-. The insurer terms the claim as a 'personal accident', because the rider of the two-wheeler was proven to be an employee of respondent No.3, the owner of the vehicle. Hence, under Section 147(1)(b) of the Act, the employee would not be covered under the policy. He contends that the appellant was insured only to meet the mandatory requirements of the aforesaid section and it was an "Act" only policy. He refers to the judgment of the Supreme Court in the case of ***New India Assurance Company Limited vs. Sadanand Mukhi & Ors. (2009) 2 SCC 417***, wherein it has been observed that:

"11. Provisions relating to grant of compensation occurring in Chapter XI and XII of the Act have been enacted by the Parliament in order to achieve the purpose and object stated therein. Section 146 of the Act lays down the requirements for insurance against third party risk. Where a third party risk is involved, an insurance policy is required to be mandatorily taken out. The requirements of policies and the limits of liability, however, have been stated in Section 147 of the Act. Section 147(1)(b) of the Act, reads as under:

*"147. Requirements of policies and limits of liability.--
(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--*

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(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.--For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall

be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

The provisions of the Act, therefore, provide for two types of insurance - one statutory in nature and the other contractual in nature. Whereas the insurance company is bound to compensate the owner or the driver of the motor vehicle in case any person dies or suffers injury as a result of an accident; in case involving owner of the vehicle or others are proposed to be covered, an additional premium is required to be paid for covering their life and property.

12. It is not a case where even Section 163-A of the Act was resorted to. Respondents filed an application under Section 166 of the Act. Only an act policy was taken in respect of the motor vehicle. Submission of the learned counsel that being a two wheelers, the vehicle was more prone to accident and, therefore, whosoever becomes victim of an accident arising out of the use thereof would come within the purview of the term "a person" as provided for in Section 147 of the Act, in our opinion, is not correct.

13. Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium payable for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an 'act policy', the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk

covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is to be accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.

14. Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms and the guidelines.”

4. The learned counsel for the appellant contends that the “Act” only policy means the statutory cover is apropos the third party and not for any rider of the two-wheeler other than the owner. In other words, the third party, under the policy, would cover only an unrelated party i.e. a victim of an accident, who is not the owner or somebody who comes under the definition of ‘owner’. He further relies upon the dicta of the Supreme Court in ***National Insurance Company Limited vs. Sinitha and Others (2012) 2 SCC 356*** to emphasize this point.

5. Refuting the aforesaid arguments, the learned counsel for the respondents submits that the judgment in *Sinitha (supra)* has been differed by another Bench of the Supreme Court in *United India Insurance Company Ltd. vs. Sunil Kumar & Anr.* 2013 XII AD (SC) 295 which held that principle laid down in *Sinitha (supra)* is not based on “no fault” liability; “the liability to make compensation under Section 163-A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry under Section 163-A. Section 163-A does not make any provision for apportionment of the liability. If the owner of the vehicle or the insurance company is permitted to prove contributory negligence or fault or wrongful act on the part of the victim or claimant, naturally it would defeat the very object and purpose of Section 163-A of the Act. The legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or permanent disablement occurred during the course of the use of the insured vehicle, the insurance company or the owner, as the case may be, shall be liable to pay the compensation, which is a statutory obligation”. Thereafter, the case has been referred to a larger Bench for the correct interpretation of the scope of Section 163-A of the Motor Vehicles Act, 1988.

6. The learned counsel for the respondents submits that even though the insurance company has taken recourse to limited liability in terms of the insurance policy, they have not proven any negligence on the part of the deceased rider which is the only aspect which was available to them under *Sinitha (supra)* He submits that having accepted their remedy under *Sinitha (supra)*, they would not be governed by the judgment of *Sunil*

Kumar (*supra*). Counsel for the respondent also relies upon a decision by three judges Bench of the Supreme Court in **Deepal Girishbhai Soni & Ors. vs. United India Insurance Co. Ltd., Baroda [(2004) 5 SCC 385]** to hold that M.V. Act is a socially beneficial legislation and must be given widest interpretation and liberal construction. He submits that the claim was under Section 163-A of the Act for the purpose of compensation on a fixed schedule and the claimant had chosen not to pursue the case under Section 166 of the Act. Therefore, there is no error in the impugned order and the appeal should be dismissed.

7. The Court would note that on the issue of the liability apropos injury to the owner of the vehicle being limited to Rs.1,00,000/-, the Tribunal reasoned that the policy covers the use of the vehicle for any purpose other than:- (a) *Hire or reward*, (b) *Carriage of goods (other than samples or personal luggage)*, (c) *Organized racing* (d) *Pace Making* (e) *Speed testing and reliability trials* (f) *Use in connection with motor trade*. Quite clearly, the insured two-wheeler was not being used for any of the aforesaid purposes.

8. The policy further provided for persons or class of persons entitled to drive:- “*Any person including insured provided that a personal driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.....*”.

9. Apropos, whether Deepak was holding a valid driving licence, Mr. Mishri Lal, his father, proved that Deepak was issued a valid driving licence bearing No.P-94070873 on 07.07.1994 and it was valid till 06.07.2003. Accordingly, the Tribunal observed that Deepak held a valid

driving licence and died in a motor accident. Hence the claim petition under Section 163-A of the Act seeking compensation of “no fault” liability could not be rejected.

10. The insurer has primarily argued that it was not liable for paying any compensation because:-

- (i) The deceased being an employee of the owner was not covered under the policy and in any case the extent of such cover would not exceed Rs.1,00,000/-;
- (ii) The deceased rider did not possess a valid driving licence; and
- (iii) The deceased himself was negligent while riding the motorcycle, which led to his fatal accident.

11. However, as discussed above, apropos the latter two points, the validity of the driving licence has been proved and nothing has been brought on record to show that deceased Deepak was negligent while riding the motorcycle. The appellant’s reliance on *Sinitha (supra)*, which covered only the issue of negligence or contributory negligence of the insured vehicle, would, therefore, not be available to the insurer. Even if one were to, for the sake of argument, consider the decision of *Sunil Kumar (supra)*, which differed with the decision of *Sinitha (supra)*, still the insurer cannot be benefited from the ratio of *Sinitha (supra)*, which held that the principle of fault would first have to be established for any compensation under Section 163-A of the Act.

12. As discussed hereinabove, the insurer has not been able to prove on record any evidence as to how the deceased Deepak was at fault while

riding the insured two-wheeler. In the circumstances, the Court is unable to accept the contentions of the appellant. The appeal is without merit and is, accordingly, dismissed.

NAJMI WAZIRI, J.

MAY 31, 2017

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