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

Decided on: 24th August, 2017

+ **MAC APPEAL NO.603/2009 & CM Nos.17861/2009 and
17862/2009**

RADHEY SHYAM

..... Appellant

Through: Mr. Pravin Sharma, Advocate

versus

SONI & ANR.

..... Respondents

Through: Mr. Jatinder Kamra, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. It is the admitted case of both sides that the appellant is the registered owner of the motor cycle bearing registration no.DL-4S-AY-5372 (motor cycle). On 23.03.2007, Raghuvir @ Raghuvir Singh was driving the said motor cycle on Rohtak Road near bus stand Mundka proceeding in the direction of Nangloi, Delhi. It has been the case of the claimants (respondents) in appeal that he had borrowed the said motor cycle from its registered owner i.e. the appellant. Though, in his contest to the claim petition, the appellant had taken the position that the deceased had taken the motor cycle from a co-worker at the workshop for a ride without his knowledge, consent or permission, the facts may be assumed to the contrary accepting the averments of the claimant to above effect.

2. Be that as it may, Raghuvir Singh was found dead, with motor cycle lying nearby, at about 7.42 p.m on 23.03.2007, this having been reported to police station Nangloi which initially logged DD no.81B and later converted into FIR no.261/2007. The post mortem examination of the dead body confirmed that he had died on account of ante mortem injuries which were likely to have been caused in a roadside accident. The investigation unfortunately could not bring out with any clarity the sequence of events leading to the death. The involvement of another motor vehicle could not be established as no eye witness could be found, the police eventually treating it as a case of “hit and run”.

3. The respondents instituted accident claim case (petition no.34/09, original no.227/07) seeking compensation invoking the principle of no fault liability under the structured formula in terms of Section 163A of the Motor Vehicles Act, 1988 impleading the appellant as the sole respondent, the motor cycle not being insured against third party risk for the period in question. The claim case was contested by the appellant through written statement denying any liability raising the defence mentioned above. The matter was put to inquiry by issues framed on 04.07.2008. Mid-way the inquiry, the appellant was set *ex parte*. On the conclusion, the tribunal upheld the claim for compensation under Section 163A of the Motor Vehicles Act 1988 and, by judgment dated 03.07.2009, awarded compensation calculated in the sum of Rs.5,24,600/- fastening the liability on the appellant. It may be added that the claim was accepted as maintainable under Section 163A of the Motor Vehicles Act by the

tribunal on the basis of the facts that the evidence had proved that the death had occurred in an accident involving use of the motor cycle the appellant being the owner of the said vehicle.

4. By the appeal at hand, the appellant questions the above mentioned judgment of the tribunal stating that the deceased, having borrowed the vehicle from him, had stepped into the shoes of the owner and therefore, the claim could not have been maintained.

5. Section 163A of the Motor Vehicles Act is a special provision for compensation on structured formula basis wherein the issues of wrongful act or neglect or default are irrelevant. The provision reads as under :-

“163A. Special provisions as to payment of compensation on structured formula basis-

(1) Notwithstanding anything contained in this Act or in any other law for time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation-For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or

neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

6. The judgment of the Supreme Court in *Ningamma and Anr. Vs. United India Insurance Co.*, 2009 (13) SCC 710, following the previous ruling in *Oriental Insurance Co Ltd. Vs. Rajni Devi*, 2008 (5) SCC 736 which had similar fact situation is a complete answer to the issue that is brought before this court. The observations of the Supreme Court (in paras 18 and 19 of) *Ningamma* (supra) need to be extracted as under :-

“18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon'ble Justice S.B. Sinha is 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. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA.

In our considered opinion, the ratio of the aforesaid decision 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 employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.

19. 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. 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 case the owner could not himself be a recipient of compensation as the 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.”

(emphasis supplied)

7. The deceased having stepped into the shoes of the registered owner, his legal heirs cannot maintain such a claim under Section 163A of the Motor Vehicles Act.
8. The impugned judgment is set aside. The petition in so far as it claimed compensation against the appellant stands dismissed.

9. The statutory amount shall be refunded.
10. The appeal and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 24, 2017

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