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

\+ MAC.APP. 488/2017, CM APPLs. 19974-75/2017

M/S NATIONL INS CO LTD

..... Appellant

Through: Mr. D.K. Sharma, Adv.

versus

MANOJ KUMAR & ANR

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 24.05.2017

The award of compensation has been impugned on the ground that since the vehicle was borrowed by the injured from its owner, therefore as per the insurance policy, the owner is not covered as a third party. The Tribunal considered this aspect as under:

> *"24. In the case of 'National Insurance Company Ltd. Vs. Sinitha and Ors.', the deceased Shijo was not the owner of the motorcycle. The contention advanced at the hands, of the counsel for the insurance company was, that Shijo being the rider of the motorcycle, cannot be treated as a 3rd party. The said contention was dealt with by the Hon'ble Supreme Court in following words :*
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> > *'According to the learned counsel for the petitioner, since the' rider of the vehicle Involved In the accident was Shijo himself,*

he would stand in the shoes of the owner, and as such, no claim for compensation can be raised in an accident caused by him, under Section 163A of the Act.

19. To substantiate-his second contention, it would be essential for the petitioner to establish, that Shijo having occupied the shoes of the owner, cannot be treated as the third party. Only 'factual details brought on record through reliable evidence, can discharge the aforesaid onus. During the course of hearing, despite our queries, learned counsel for the petitioner could not point out the relationship between Shijo and the owner of the motorcycle inovled in the accident. Shijo is not shown to be the employee of the owner. He was not even shown as the representative of the owner. In order to establish the relationship between the Ship and the owner, the petitioner insurance Company could have easily produced either the owner himself as a witness, or even the claimants themselves as witnesses. These, or other witnesses who could have brought out the relationship between the owner and Ship, were not produced by the petitioner herein, before the Tribunal. The petitioner has, therefore, not discharged the onus which rested on its shoulders. Since the relationship between the Shijo and the owner has not been established, nor the capacity: in which he was riding the vehicle has been brought out, it is not possible for us to concluded that Shijo while riding the motorcycle on the fateful day, was an agent employee or representative of the owner. It was open to the petitioner to defeat the claim for

> > *compensation raised by respondents by establishing, that the rider Shijo represented the owner, and as such, was not a third party, in terms of the judgment rendered by this court in Oriental Insurance Company Limited case (supra). The petitioner failed to discharge the said onus. In view of the above, it is not possible for us to accede to the second contention advanced at the hands of the learned counsel for the petitioner'.*
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> *25. In present claim petition also, nothing has come on record to point out the relationship between claimant and owner of the vehicle / respondent no. 1. It is nobody's case that the claimant was an employee of the owner / respondent no. 1. He was not representative (a person chosen or appointed to act or speak for another or others) of the owner / respondent no. 1. In order to establish relationship between the claimant and the owner, the insurance company could have easily produced the owner himself as a witness. What is more, when the claimant entered the witness box, no effort was made to elicit the relationship between owner and claimant. Therefore, it has not been brought out the capacity in which claimant was riding the vehicle, therefore, the claimant would be a third party and hence entitled to compensation*."

2. The learned counsel for the appellant relied upon the claim petition wherein it is stated that the vehicle was borrowed from the owner. However, the injured did not produce the owner in the witness box to establish his relationship of a representative of or to speak on behalf of the owner. The insurer did not produce the owner of the vehicle to establish a relationship which would facilitate it to avoid its liability. The claimant was not an employee or the owner of the vehicle. Hence, he would be treated as third party. The aforesaid reasoning and conclusion cannot be faulted.

3. The counsel further states that neither the FIR nor the claim petition had any mention about how the accident happened and the story that in order to save the child who suddenly came in front of the vehicle, the rider applied the brakes as a result of which the motorcycle collided with the footpath railing, causing multiple injuries to him as well as to the pillion rider, was an afterthought – a concocted story. The injured – claimant was treated at Pt. Madan Mohan Malaviya Hospital, which has certified his injuries to be a case of Traumatic Paraplegia with bladder bowel involvement and sensory loss having 90% permanent physical impairment in relation to the body. The counsel states that the nature of injury was not mentioned in the FIR or in the claim petition.

4. The Court is unable to accept the aforesaid arguments for the reason that the petition was filed under Section 163A of the Motor Vehicles Act, 1988 which is based on 'no fault liability' and the Tribunal has considered this aspect as under:

> *"17. In the case of 'National Insurance Company Ltd. Vs. Sinitha and Ors.' Special Leave Petition (Civil) No. 6513 of 2007, the Hon'ble Supreme Court has dealt with scope of Section 163A of the Motor Vehicle's Act, 1988. The Hon'ble Supreme Court has held that it is open to the owner or insurance company, as the case may be, to defeat a claim under Section 163A of the-Act by pleading and establishing through cogent evidence a "fault" ("wrongful act" or "neglect" or "default").*
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> *18. The Hon'ble Supreme Court in the case of 'United India insurance Co. Vs. Sunil Kumar') 2013 SCR 223, it is held that liability to make compensation under Section 163A 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 163A. Section 163A 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 default or wrongful act on the part of the victim or claimant, naturally it would defeat the very object and purpose of Section 163A of the Act. 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 user of the vehicle and the vehicle is insured, the insurance company or the owner, as the case may be, shall be liable to pay the compensation, which is a statuary obligation.

20. Be that as it may, in this case the insurance company has not been successful in showing that the accident occurred due to negligence of claimant himself."

5. This Court does not find any flaw in the aforesaid reasoning and the conclusion arrived at.

6. Lastly, the learned counsel for the appellant submits that since the claim petition was filed under Section 163A of the Act, the multiplier adopted of 18 as per ***Sarla Verma Vs. DTC (2009)6 SCC 121*** should not have been applied and instead a multiplier of 17 is applicable as per second schedule of the MV Act, 1988. The Court finds no substance in the argument in light of the detailed analysis by the Supreme Court on this issue which reads as under:

"*18. The principles relating to determination of liability and quantum of compensation are different for claims made under Section 163A of MV Act and claims under Section 166 of MV Act. (See : Oriental Insurance Co. Ltd. v. Meena Variyal: AIR*

2007 SC 1609). Section 163A and Second Schedule in terms do not apply to determination of compensation in applications under Section 166. In Trilok Chandra, this Court, after reiterating the principles stated in Susamma Thomas, however, held that the operative (maximum) multiplier, should be increased as 18 (instead of 16 indicated in Susamma Thomas), even in cases under Section 166 of MV Act, by borrowing the principle underlying Section 163A and the Second Schedule. This Court observed:

> *Section 163A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in Susamma Thomas case..... Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier......What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16...*

19. In New India Assurance Co. Ltd. v. Charlie AIR 2005 SC 2157, this Court noticed that in respect of claims under Section 166 of the MV Act, the highest multiplier applicable was 18 and *that the said multiplier should be applied to the age group of 21 to 25 years (commencement of normal productive years) and the lowest multiplier would be in respect of persons in the age group of 60 to 70 years (normal retiring age). This was reiterated in TN State Road Transport Corporation Ltd. v. Rajapriya AIR 2005 SC 2985 and UP State Road Transport Corporation v. Krishna Bala AIR 2006 SC 2688. The multipliers indicated in Susamma Thomas, Trilok Chandra and Charlie (for claims under Section 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under Section 163A of MV Act (with appropriate deceleration after 50 years):*

20. *Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163A of MV Act. In cases falling under Section 166 of the MV Act, Davies method is applicable.*
21. *We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age*

> *groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.*

The injured was 23 years old, therefore the correct multiplier would be 18. It was so applied.

7. The appeal is without merit and is, along with all pending applications, dismissed.

NAJMI WAZIRI, J

MAY 24, 2017/acm