

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.2252 of 2006 (O&M)

Date of Decision : 18.04.2018

United India Insurance Company Limited

... Petitioner

versus

Sanjeev Kumar and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. V. Ramswaroop, Advocate for the appellant.

None for the respondents.

B.S.WALIA, J.

None has appeared on behalf of the respondents despite the case having been called out twice. Accordingly, the respondents are proceeded ex-parte.

2. Learned counsel for the appellant contends that the only point involved is that the claim petition filed by the owner-cum-driver of the vehicle under Section 163-A of the Motor Vehicles Act, 1988, for having sustained injuries by him while driving the insured vehicle is not maintainable in view of the clear provisions of Section 163-A of the Motor Vehicles Act, 1988 as well as the decision of Hon'ble the Supreme Court in Ningamma and another versus United India Insurance Company Ltd. 2009(13) Supreme Court Cases 710, wherein it has been categorically held that the owner is not a third party and Section 163-A of Motor Vehicles Act, 1988 provides for compensation to a third party but has no application where owner of the motor vehicle is himself injured. Accordingly, award of

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learned the Motor Accident Claims Tribunal, Ropar, awarding compensation of ₹70,000/- on account of injury is legally unsustainable and is liable to be set aside under Section 163-A of the Motor Vehicles Act, 1988. Relevant extract of the Section 163-A of the Motor Vehicles Act, 1988 as well as of the decision in Ningamma's case (supra), is reproduced as under:-

Relevant Extract of Section 163-A of the Motor Vehicles Act, 1988.

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

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of 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.

(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.

Relevant extract of the decision in Ningamma's case (supra), is reproduced as under:-

18. However, in the facts of the present case, it was forcefully argued by the counsel appearing for the respondent that the claimants

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are not the 'third party', and therefore, they are not entitled to claim any benefit under Section 163-A of the MVA. In support of the said contention, the counsel relied on the decision of this Court in the case of Oriental Insurance Co. Ltd. v. Rajni Devi, (2008) 5 SCC 736; and New India Assurance Co. Ltd. v. Sadanand Mukhi and Ors., (2009) 2 SCC 417.

19. 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.

20. 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.

21. 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. We have already extracted Section 163-A of the MVA

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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.

22. 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.

3. I have considered the submissions of learned counsel for the appellant. In view of the clear provisions of Section 163-A of the Motor Vehicles Act, 1988 and categorical pronouncement of Hon'ble the Supreme Court in Ningamma's case (supra), no compensation is payable to the owner of the vehicle in terms of Section 163-A of the Motor Vehicles Act.

4. In view of position as noted above, the appeal is allowed and the award passed by the Motor Accident Claims Tribunal, Ropar, dated 20.02.2006, is set aside.

(B.S.WALIA)
JUDGE

18.04.2018
rajesh.k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No