(102) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1441 of 2014 (O&M)
Date of decision: 27.11.2018

Oriental Insurance Company Ltd.

…. Appellant

Versus

Raj Bala and others

…. Respondents

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

Present: Mr. Harsh Aggarwal, Advocate for the appellant.

Mr. Parveen Mann, Advocate for Mr. R.S. Budhwar, Advocate for respondent Nos.1 to 4.

None for respondent No.5.

***

B.S. Walia, J. (Oral),

[1] Appeal has been filed against award dated 07.11.2013 passed by the learned Motor Accidents Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal') awarding compensation of ₹ 7,13,920/- to the respondents/claimants on account of death of Harvinder Singh in a motor vehicular accident on 21.12.2011.

[2] Brief facts of the case leading to the filing of the instant appeal are that Harvinder Singh had borrowed motorcycle No. HR49-A, 6034 from Kulwinder Singh (respondent No.5). While driving the aforementioned motorcycle, Harvinder Singh skidded (without involvement of any vehicle) and eventually on the basis of injuries sustained in the said accident, died at the spot.

[3] Before the Tribunal, the appellant amongst other objections took up the preliminary objection of non-maintainability of the claim petition on the ground that the deceased was himself driving the motorcycle and no other vehicle was involved, therefore, the deceased stepped into the shoes of the owner of the motorcycle, thus, the deceased could not be a claimant as also a recipient. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

[4] Plea with regard to aforementioned preliminary objection was taken in the written statement filed to the claim petition and was referred to during the course of hearing. The factual position as referred to above has not been disputed by the learned counsel for respondent Nos. 1 to 4.

[5] Learned counsel for the appellant contended that the Insurance Policy provided for indemnification qua personal accident of the registered owner-cum-driver limited to ₹1,00,000/-, therefore, the liability of the Insurance Company was only to the extent of ₹ 1,00,000/-. Learned counsel contends that in the circumstances, the appeal is liable to be allowed, award modified and compensation of ₹ 7,13,920/- awarded reduced to ₹ 1,00,000/- i.e. amount payable on account of personal accident cover qua registered owner-cum-driver.

[6] Learned counsel for respondent Nos.1 to 4 has not been able to dispute the aforementioned factual position.

[7] I have considered the submissions of learned counsel for the parties. Hon'ble the Supreme Court in **Ningamma and another v. United India Insurance Company Ltd., 2009 (13) SCC 710** held that Section 163-A of the Act was clear that if the borrower of a motor vehicle was involved

in an accident he stepped into the shoes of the owner of the vehicle and where the third party died or was permanently disabled due to an accident arising out of the aforesaid borrowed motor vehicle, in that eventuality the liability to make payment of the compensation was on the Insurance Company or the owner as the case may be as provided under Section 163-A but if it was proved that the victim driver was 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 was on the owner himself. On the basis of the same, Hon'ble the Supreme Court held that in the circumstances, the legal representatives of the deceased who had stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the Act. Relevant extract of the decision in Ningamma's case (Supra) is reproduced as under:-

> *18. In the case of* ***Oriental Insurance Company Ltd. v. Rajni Devi and Others*****, *2008 (4) RCR (Civil) 905 : 2008 (6) RAJ 396 : (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.

[8] The same was reiterated by Hon'ble the Supreme Court in **National Insurance Company Ltd. v. Ashalata Bhowmik and others, 2018 AIR (SC) 4133**. Relevant extract of the same is reproduced as under:-

> *"7. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record. It is an admitted position that the deceased was the owner-cum-driver of the vehicle in question. The accident had occurred due to the rash and negligent driving of the vehicle by the deceased. No other vehicle was involved in the accident. The deceased himself was responsible for the accident. The deceased being the owner of the offending vehicle was not a third party within the meaning of the Act. The deceased was the victim of his own action of rash and negligent driving. A Claimant, in our view, cannot maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make the insurance company to pay for the same. Therefore, the respondents being the LRs of the deceased could not have maintained the claim petition filed under Section 166 of the Motor Vehicles Act."*

[9] In the light of the position as noted above, it is crystal clear that the deceased having borrowed the motorcycle from respondent No.5 and no other vehicle being involved in the accident, the deceased stepped into the shoes of the owner and he himself being responsible for the accident was not a third party within the meaning of the Act. Accordingly, the legal heirs of the deceased are not entitled to maintain the claim on the basis of the fault or negligence of the deceased.

[10] Accordingly, the appeal is allowed. Award is modified. As against compensation of ₹ 7,13,920/- awarded by the learned Tribunal along with interest @ 7.5% per annum with effect from the date of claim petition till date of payment, the respondents/claimants are held entitled to compensation to the extent of personal accident cover as contained in the policy to the tune of ₹ 1,00,000/- along with interest @ 7.5% per annum with effect from the date of claim petition till date of payment less payment, if any, already made. A sum of ₹ 25,000/- deposited by the appellant with the Registry of this Court at the time of filing of the appeal is directed to be transmitted to the learned Tribunal for disbursal of the same to the respondents/claimants in accordance with law.

(B.S. Walia)
Judge

27.11.2018
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.