

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

**FAO-192-2014 (O&M)
Date of decision: 23.03.2018**

New India Assurance Company Ltd.

...Appellant(s)

V/s.

Renu Devi and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Vandana Malhotra, Advocate for the appellant.

Mr. Sandeep Kotla, Advocate for the respondents.

AVNEESH JHINGAN, J. (Oral)

The present appeal arises from award dated 06.11.2013 passed by Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal').

On 21.01.2013, Jai Gopal was going on his motorcycle bearing registration no. HR06L-9463. Near Gohana turn, one canter driven in a rash and negligent manner, came at a very high speed and hit the motorcycle and ran away. The accident was witnessed by Krishan Kumar who brought Jai Gopal to Hyderabad Hospital, Panipat. He died during the treatment. FIR No. 59 dated 21.01.2013 was registered at Police Station Chandni Bagh, Panipat.

The claim petition was filed under Section 163-A of Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal awarded a sum of Rs.6,42,300/- along with interest @ 7.5% per annum.

The respondent was the only insurer of the motorcycle owned by the deceased.

The insurance company has filed the present appeal raising the issue that in case of death of the registered owner himself, no claim can be sought under Section 163-A.

The learned counsel for the claimants was not in a position to dispute the fact that the claim petition was moved against the insurer of the vehicle owned by the deceased.

Supreme Court in case of Ningamma and another V/s. United India Insurance Co. Ltd. 2009 (13) SCC 710 held as under:-

“13. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representatives?”

The issue was decided and it was held as under :-

“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.”

It would be appropriate at this stage to quote Section 163-A of the Act:-

“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 subsection, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923.

(2) In any claim for compensation under subsection (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.”

The provision provides for an alternative mechanism for claiming compensation in case of motor accident. The compensation is awarded as per structured formula. Under Section 163-A, the claimants

are not required to prove rash and negligent driving of the offending vehicle. The condition is that the deceased should be having an income of Rs.40,000/- or less per annum.

The case in hand will not fall under Section 163-A because the owner himself cannot be the recipient of the compensation. As per the language of Section 163-A, the owner of the motor vehicle or the authorised insurer is liable to pay to the legal heirs of the deceased due to accident arising out of the use of the motor vehicle. The section casts a duty upon the owner or the insurer to compensate the legal heirs of the deceased. It cannot be read to mean that owner himself can claim compensation.

For the reasons mentioned above and giving due regard to the decision of the Supreme Court in Ningamma's case (supra), it is held that claimants would not be entitled to compensation under Section 163-A.

However, it is made clear that the claimants can claim for compensation under personal accident cover if the additional premium for the same was paid. The claimants would also be entitled to make their claim under Section 161 of the Act.

The appeal is disposed of in the above terms.

23rd March, 2018

Divyanshi

**(AVNEESH JHINGAN)
JUDGE**

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**