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

FAO No.2387 of 2015(O&M)
Date of Decision: 30.05.2018

ICICI Lombard General Insurance Company Limited
......Appellant
Vs
Sunita and others .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Sanjeev Goyal, Advocate
for the appellant.

Mr. Ravinder Malik, Advocate
for respondents No.1 to 6.

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RAJ MOHAN SINGH, J.

[1]. Insurance Company has come forward to challenge the award dated 07.02.2015 passed by the Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal') in favour of the claimants on account of death of Rishi Pal @ Nanu.

[2]. The accident took place on 27.12.2011 when deceased Rishi Pal @ Nanu along with Subhash son of Pirthi was travelling on a motorcycle. The motorcycle was being driven by the deceased himself and they were coming back to their village Peer Badoli at a moderate speed. At about 6:00 PM, when they reached near village Chundipur, on the road leading from Dabarki Kalan to Rasulpur, then Rishi Pal lost control over his

vehicle and struck against the tree, due to which, motorcycle fell down on the road and the occupants received multiple injuries on their person. Rishi Pal @ Nanu succumbed to the injuries later on. After the occurrence, the deceased was referred to Government Hospital, Karnal where postmortem was conducted. The accident took place due to use of motorcycle, which was being driven by the deceased himself and was owned by respondent No.1/Sunita. The vehicle was duly insured with the appellant/Insurance Company.

[3]. The claimants asserted that deceased was 30 years of age and was working as electrician. The annual income of the deceased was Rs.40,000/-. The claim petition was brought under Section 163-A of the Motor Vehicles Act. Prior to the accident, deceased was hale and hearty. An amount of Rs.50,000/- was spent on transportation and last rites of the deceased. The claimants/appellants claimed compensation to the tune of Rs.20,00,000/- along with interest.

[4]. The claim petition was contested by the appellant/Insurance Company.

[5]. The Tribunal has decided the claim petition in favour of the claimants by awarding an amount of Rs.5,84,600/- along with interest @ 12 % per annum from the date of filing of the claim petition till final realization of the amount.

[6]. Respondents No.1 to 6 have been represented by the counsel whereas respondent No.7 was proceeded against *ex parte* vide order dated 15.02.2016.

[7]. The question arises for consideration is whether the claimants who are legal representatives of deceased driver who had borrowed the motorcycle from the owner, thereof can claim compensation from Insurance Company under Section 163-A of the Motor Vehicles Act, 1988 ?

[8]. The legal position as emerged under issues No.2 to 4 can be appreciated in the light of legal position arising from ***Ningamma and another Vs. United India Insurance Co. Ltd., 2009(3) RCR (Civil) 435,*** wherein following proposition was held in para No.19:-

> *"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."*

[9]. As per General Regulation No.36, personal accident cover is available only to the registered owner in person where he or she holds the effective driving licence. Reference to owner-driver mentioned in General Regulation No.36 must be understood as owner who is capable of driving and was in fact driving the vehicle at the time of accident. It cannot be understood as owner or driver. The aforesaid regulation would show that owner-driver should be duly licensed to drive the vehicle. Consequently, a person who is not a registered owner of the vehicle is not covered for personal accident cover. Reference can be made to ***Sushila w/o late Sh. Muna Lal Ji and others Vs. Sh. Pankaj Mahajan and another, 2012 (57) RCR (Civil) 252, FAO No.3764 of 2010*** titled ***Cholamandlam MS General Insurance Company Limited Vs. Rajesh and others*** decided on 14.05.2014, ***M/s Reliance General Insurance Company Vs. Ranjit, 2016 ACJ 1050, The Oriental Insurance Co. Ltd. Vs. Darshani Devi @ Pinki, 2014(3) PLR 226*** and ***United India Insurance Co. Ltd. Vs. Vijayrajan, 2010***

ACJ 280 (DB (Kerala).

[10]. The deceased cannot be considered as third party in view of ratio laid down in ***Ningamma and another's case (supra),*** therefore, claimants are not entitled to compensation under Section 163-A of the Motor Vehicles Act. The claimants are only entitled to compensation for no fault liability under Section 140 of the Motor Vehicles Act. In this way, an amount of Rs.50,000/- can be awarded to the claimants under no fault liability. The decision rendered in ***ICICI Lombard General Insurance Co. Ltd. Vs. Puri @ Puri Devi and others, 2015(17) RCR (Civil) 292*** can be relied in the aforesaid context.

[11]. For the reasons recorded hereinabove, the appellants are held entitled only for a sum of Rs.50,000/- under no fault liability.

[12]. With the aforesaid modification, the present appeal stands disposed of.

May 30, 2018 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

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