

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

**FAO No.792 of 2018 (O&M)
Date of Decision: August 06, 2018**

ICICI Lombard General Insurance Company Limited ...Appellant

Versus

Mehrana and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

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

Mr.Diwan S. Adlakha, Advocate
for respondents No.1 to 5.

HARINDER SINGH SIDHU, J.

The insurer has filed the present appeal impugning the award of the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri dated 7.12.2017, whereby, the claim petition under Section 163-A of the Motor Vehicles Act filed by the respondents – claimants, has been allowed and the appellant has been held jointly and severally liable along with respondent No.6 (the owner of the motorcycle) to pay the compensation.

Brief facts as disclosed in the claim petition are that on 5.3.2015 in the area of Village Pansara, a vehicular accident took place involving Motor Cycle No.HR02-AE-1005 (herein for short 'the offending vehicle'), wherein, Sajid Khan lost his life. It was pleaded that on 5.3.2015 Sajid Khan (deceased) was going to his house after finishing his work on the

motorcycle. Rashid Ali – respondent No.6 was following him on another motorcycle. When they reached near the railway crossing of village Pansara, then some unknown tractor-trolley hit against the motorcycle of Sajid Khan, who suffered multiple injuries and died due to the same. An FIR regarding the accident was also lodged. Asserting that the accident had taken place because of the use of the motorcycle which was owned by respondent No.6 and which was insured with the appellant the claim petition was filed.

The Ld. Tribunal concluded that the claimants had been able to establish that the accident had been caused because of the use of the motorcycle driven by the deceased Sajid Khan in which he suffered fatal injuries and died. Further as the claim was under Section 163-A of the Motor Vehicles Act, the claimants were only required to prove that the death had occurred because of the use of the motor vehicle and negligence was not required to be proved, the claim petition was allowed. The argument of the insurance company that the claimants were not entitled to any compensation under Section 163-A as the deceased was not a third party was rejected by holding that the insurance policy Ex.R2/ Ex.R/3 was a comprehensive insurance/ package policy, which was valid on the date of the accident. A decision of this Court in **Bajaj Allianz General Insurance Company Ltd. Vs. Jasmer Singh and another 2015(3) RCR (Civil) 325** was relied upon.

The Tribunal assessed the income of the deceased at Rs.3200/- per month, deducted 1/4th towards his personal expenses, applied the multiplier of 17 (deceased aged 26 years). The loss of dependency was assessed at Rs.4,89,600/-. Amount of Rs.5000/- towards 'loss of

consortium', Rs.2000/- as 'funeral expenses' and Rs.2500/- towards 'loss of estate' were also awarded. In all, compensation of Rs.4,99,100/- along with interest was awarded.

Challenging the Award, Ld. Counsel for the appellant – Insurer has primarily relied on a decision of Hon'ble Supreme Court in ***Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710*** and contended that under Section 163-A the liability is on the owner. A borrower of the vehicle steps into the shoes of the owner. And the owner cannot both be claimant as well as recipient. As the deceased was the brother of the owner of the motorcycle, he stepped into the shoes of the owner, hence no claim for compensation for his death was maintainable.

The Ld. Counsel for the claimants on the other hand argued that the ratio of ***Ningamma's*** case is not attracted in this case as in ***Ningamma's*** case the policy was an 'Act Only' policy whereas in the instant case there a comprehensive/ package policy. He also relied on various decisions of this Court in support of his contentions.

Having heard Ld. Counsel for the parties in my view there is no merit in the contention of the Ld. Counsel for the Insurance Company that the claimants are not entitled to any compensation as the deceased being the brother of the owner would step into the shoes of the owner and it would be a case of the same person being both the claimant and recipient.

Ld. Counsel for the respondent is right in his contention that ***Ningamma's*** case deals with an Act only policy and its ratio would not be applicable in the present case where there is comprehensive/package policy.

This is clear from a perusal of the judgment itself. The relevant

observations in the case relied on by the Ld. Counsel for the appellant are as under:

“17. The aforesaid decisions make it quite clear that Parliament by introducing Section 163-A in the MVA provided for payment of compensation on structured formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under sub-section (1) of Section 163-A of the MVA. In order to prove a claim of this nature the claimant would 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 concerned.

18. However, in the facts of the present case, it was forcefully argued by the counsel appearing for the respondent that the claimants 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 Oriental Insurance Co. Ltd. v. Rajni Devi and New India Assurance Co. Ltd. v. Sadanand Mukhi.

19. In Oriental Insurance Co. Ltd. v. Rajni Devi wherein one of us, namely, Hon’ble S.B. Sinha, J. was 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 Oriental Insurance Co. Ltd. case 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 decision in Oriental Insurance Co. Ltd. case 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 an 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 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.

23. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case.”

But these observations have to be read in the context of the subsequent paragraphs of the judgment.

In paragraph 28 it was explained that the policy in question before the Supreme Court in that case was an Act only policy which covered risk only as contemplated in Section 147 of the Motor Vehicles Act.

“28. When we analyse the impugned judgment of the High Court in terms of aforesaid discussion, we find that the counsel for the Insurance Company himself contended before the High Court that the policy of insurance was an Act policy and the risk that is covered is only in respect of persons contemplated under Section 147 of the MVA. It is the finding of fact which we have also upheld in this judgment that the deceased was authorised by the owner of the vehicle to drive the vehicle.”

“26. In this context, reference could be made to relevant paras of Section 147 of the MVA which read as follows:

“147. Requirements of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen’s Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

** * **

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

** * **

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under

this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”

In paragraph 27 the Court, obviously with reference to the provisions of Section 147(5) of the Motor Vehicles Act, observed that the policy of insurance could also cover any other liability, in which event, the insurance would be liable to indemnify as per the terms of the policy. This was amplified by observing that where compensation is claimed for the death of the owner or another passenger of the vehicle, the claim of the insurance company would depend upon the terms of the contract. The relevant observations are as under:

“27. Section 147 of the MVA provides that the policy of insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorised representative carried in the vehicle or arising out of the use of vehicle in the public place.

xxx xxx xxx

30. In this connection, reference can be made to the judgment of this Court in Oriental Insurance Co. Ltd. v. Rajni Devi wherein it was held that where 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 insurance company would depend upon the terms thereof.”

Thus, clearly in **Ningamma's** case the Supreme Court has held that where there was an Act only policy the owner or a person authorised by the owner, who would step into his shoes was not entitled to compensation as it would be a case of the same person being the claimant and recipient. But there was no bar to the insurance company choosing to cover the owner

depend on the terms of the contract.

The question of the liability of the insurance company in a case where the policy is a package/comprehensive policy which covers the driver of the vehicle has been considered by this Court in various cases and it has been held that the insurance company will be liable.

In **Oriental Insurance Company Limited vs. Silky and another**, 2011(6) R.C.R.(Civil) 5 this Court was considering an appeal of the Insurance Company challenging the liability for a claim for compensation for injuries suffered in an accident by the owner's wife, who was driving the vehicle herself with her husband sitting by her. The accident took place while she attempted to prevent a collision with an on coming vehicle that was coming fast and she dashed against a tree and suffered injuries. The claim had been made under Section 163-A. The insurer relied on the decision of the Supreme Court in **Ningamma's case**. The claimants contended that if it was merely an Act policy, the insurer may not be liable but as in that case, there had been a comprehensive cover for risk to driver and owner the Insurance Company was liable. The Court held as under:

*“2. Whether a cause of action would survive for a driver, who by her own negligent driving causes an accident and makes a claim under Section 163-A must be considered in the context of certain situations of how the liability could be seen to exist even apart from the normal tort law principle. If the driver had been a workman, liability will be on the basis that an employer shall become liable for the injuries sustained by the workman in the course of employment. A person, who is not a workman and who would make a claim under the MV Act shall not normally be entitled to a claim for compensation under Section 163-A. This aspect came about in a case before the Hon'ble Supreme Court in **New India Assurance Company Limited v. Sadanand Mukhi and others**, (2009) 2 SCC 417 : 2009 (1) TAC 425. In that case, the claim arose out of death of an owner who while driving a motorcycle dashed against a tree and died. While rejecting the contention that a person, who was*

not an insurer but the son of the insurer must be taken as a third party, the Court said whosoever becomes a victim in an accident arising out of the use of the vehicle would not come within the purview of the terms referred under Section 147. The judgment dealt with a compulsory insurance that was required to be taken under Section 147 and further observed that an Act policy does not cover a risk to such a person in a passenger car or his representative. Neither Ningamma nor Sadanand Mukhi therefore addresses specifically situation where the claim arose within the terms of the policy where the claimant pleads for enforcement of the policy that is extended to cover the risk to an owner driver as well as third party. The driver need not be a paid driver or an employee for the definition under Section 2(9) of the MV Act, reads as under :-

“driver' includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;”

The liability of the Insurance Company under the terms of the policy for which additional premium had been paid is for private use of the vehicle and the person who is entitled to drive under the terms of the policy shall be fully covered. All that is necessary, who would qualify for the definition of the driver is a person who is not disqualified from holding or obtaining a licence and holds an effective driving licence. The situation that allows for a claim against the Insurance Company is that the policy covers the use of the vehicle for any purpose other than carriage of goods (other than samples or personal luggage), organised racing, pace making, speed testing, reliability trials, and for any purpose in connection with motor trade or for hire or reward other than the purpose of driving tuition. The limits of liability as prescribed are as per Section-II-1(1) of the policy are for death or bodily injury. A bodily injury to a driver who sustained injury in the use of the vehicle and the fact that there has been payment of premium for such a person shall render liable the Insurance Company. I have not been shown any particular provision of the terms of the policy that excludes the liability of the insurer for a claim arising out of an injury sustained by the driver to whom a special cover was provided.

3. In this case, I am anchoring the liability of the insurer strictly by the terms namely of the bodily injury arising by the use of a motor vehicle in an accident by a driver who is duly licensed to drive the vehicle. The maintainability of the petition for injuries sustained cannot be doubted.”

The appeal of the insurance Company was dismissed.

The issue was again elaborately considered in **Bajaj Allianz General Insurance Company Limited vs. Jasmer Singh and another**, 2015 (3) R.C.R.(Civil) 325.

*“11. The policy of insurance Ex. R-1 in the instant case is two wheeler package policy and premium of L 50/- was paid by the insured to cover Personal Accident (PA) claim for owner-driver. The bone of contention of learned counsel for the appellant was that the claim-petition was not maintainable under Section 163-A of the Act. The learned counsel referred to the judgment of a co-ordinate Bench of this Court in **FAO No.4689 of 2007 (Bajaj Allianz General Insurance Company Ltd. v. Baljinder Singh)**, decided on 13.9.2010 in which there were similar terms and conditions in the policy of Insurance. It was held that if the policy merely provided for a personal accident cover for owner/driver, a person who borrows such a vehicle cannot obtain any right of action against the insurer. The indemnity to a driver, which the terms of the policy contemplates is to provide a cover for his act that results in death or injury to any third party. A driver of a vehicle, who is involved in the accident is not to be treated as third party and, therefore, it was held that the claimant is not entitled to make such a successful claim against the insurer of the vehicle, which he was driving.*

*12. This was again the view of the same Bench in **FAO No.3596 of 2011, (Bajaj Allianz General Insurance Company Limited v. Vikrant son of Jasbir Singh and another)** decided on 9.1.2014 that the term of the policy is, "the owner-driver is the insured named in the policy." The liability cannot be fastened on the insurance company for a claim at the instance of a borrower of a vehicle and personal accident cannot be understood as extending the liability for a person who was the insured. This Court, however, allowed the compensation to the tune of L 25,000/- for permanent disability in terms of Section 140 of the Act.*

*13. Same Bench of this Court in **FAO No. 2979 of 2010, Bajaj Allianz General Insurance Company Ltd. v. Pardeep Kumar** decided on 14.2.2011 taking a similar view, awarded the compensation to the tune of L 25,000/- in terms of Section 140 of the Act. Even in **Sushila and others v. Pankaj Mahajan and another**, 2014 ACJ 935, decided by this Court on 10.12.2012, the deceased had borrowed a motorcycle from the owner. Adopting the same view, this Court held that reference to the term owner-driver must be understood as the owner, who is capable of driving and who is driving the vehicle at the*

relevant time. It cannot be understood as the owner/driver (owner or driver). It was further observed that it is evident from regulations that require owner-driver to be duly licensed to drive the vehicle. The optional cover could include unnamed passenger in a private vehicle also. This Court, however, awarded an amount of L 50,000/- to the claimants under 'no fault liability'.

14. This Court, however, had the occasion to deal with exactly a similar question in **New India Assurance Company Ltd. v. Umesh Kumari and others, 2010 (1) RCR (Civil) 669**. The deceased in that case was the son of the owner-insured and claim petition was preferred under Section 163-A of the Act. The Insurance Company contended that it had no liability as the deceased was not a third party. In support of the contention reliance was placed by the Insurance company to various judgment i.e. (i) **Dhanraj v. New India Assurance Co. Ltd., 2004 (4) RCR (Civil) 786**, (ii) **Ningamma and another v. United India Insurance Co. Ltd., 2009(3) R.C.R.(Civil) 435 : 2009 (13) SCC 410**, and (iii) **New India Assurance Co. Ltd. v. Sadanand Mukhi and others, 2009(1) R.C.R.(Civil) 817 : 2009 ACJ 998 (SC)**. It was, however, found as a matter of fact that the insurance policy was a comprehensive policy and the insured had paid premium for personal accident (PA) for own-cum-driver.

15. In Umesh Kumari's case (supra) this Court referred to para 21 of the judgment of the Apex Court in Ningamma's case (supra) in which it was observed that Section 147 of the Act provides that the policy of insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorised representative carried in the vehicle or arising out of the use of vehicle in public place. It was held by this Court in Umesh Kumari's case (supra) as under:-

"7. In the present case, admittedly, the premium towards compulsory PA to owner cum driver was paid and therefore, in view of the aforesaid observations of the Honble Supreme Court of India as referred to above, the insurance company was liable to make the payment of compensation.

8. Faced with this situation, learned counsel for the appellant has argued that the terms and conditions of the policy makes it clear that if owner is driving the vehicle, in that case only, the aforesaid clause will come into play and the insurance company would be liable to pay. Since in the present case, the owner himself was not driving the

vehicle, even if the premium has been paid covering the risk of owner- cum-driver, the same would not be applicable.

9. The argument of the learned counsel for the appellant is without any merit.

10. In this regard, the aforesaid phrase would obviously mean to cover owner or driver of the vehicle. Moreover, it is the case of the appellant itself that Pawan Kumar deceased cannot be treated as a third party being son of the owner and he has to be termed as owner itself as he has stepped into the shoes of the owner by borrowing the vehicle with permission of the owner. If that is so, Pawan Kumar deceased has to be treated as owner of the vehicle and in that eventuality, the aforesaid clause of comprehensive policy would cover the claim of the claimant and on the basis of the aforesaid clause of the policy, the appellant is liable to pay compensation."

17. Learned counsel for the appellant-Insurance Company has tried to substantiate his contention on the basis of terms contained in Section III of the Policy of Insurance Ex. R-1 dealing with personal accident cover. It says that this cover is subject to (a) the owner-driver is the registered owner of the vehicle insured herein; (b) The owner driver is the insured named in this policy; and (c) the owner-driver holds and effective driving licence, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of accident.

18. The above clause in the policy of insurance is to be interpreted liberally and more particularly keeping in view the main terms of the policy, to cover personal accident. The first page of the policy of insurance Ex. R-1 contains the amount of premiums for the liability. An amount of L 135/- is the premium for the basic third party liability and L 50/- was towards personal accident cover for owner-driver limited to the extent of L 1 lac. The term driver has been explained on the first page of this policy, as meaning any person including the insured : Provided that a person driving holds an effective driving licence at the time of accident and is not disqualified from holding or obtaining such a licence. Provided also that a person holding an effective Learner's licence may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

19. It cannot be gainsaid that terms of the policy of Insurance are stipulated on the instructions/guidance of the Tariff Advisory Committee which is a Statutory Authority under the

Act. Learned counsel for the appellant-Insurance Company was unable to show that the Tariff Advisory Committee laid down any condition to limit the liability only for the owner himself, to be covered under the personal accident cover. When main object of the policy is to cover for the owner-driver, and the meaning of expression driver in the policy has been explained, limiting the liability to the registered owner in personal accident claim in rest of the term of policy cannot be given any legal sanctity. The interpretation of the aforesaid term to cover the personal accident claims cannot be made on the basis of each and every term because the basic intent is to cover not only the third party liability under the Act but also personal accident and even the own damage claim for which premium paid is L 302.52P.

21. It needs to be emphasised that learned counsel for the appellant-Insurance Company could not dispute liability of the Insurance Company in case the vehicle was being driven by the owner himself as premium of L 50/- for the personal accident claim was paid. If that be so, why not the same principle should apply in case the victim is driving the vehicle under the authority of the owner. The deposit of premium for personal accident claim in the package/comprehensive policy in my view cannot be limited only to the owner as the words used in the policy to cover personal accident is described as 'owner driver'. Any other interpretation to these plain words would be restricting the authorised driving to the owner himself and such a consequence is manifestly illegal. Such an interpretation would in fact amount to a contract to pay premium for the life insurance which cannot be so as the premium has been paid for the policy issued under the Act.

22. In Ningamma and another's case (supra) the claim was made under Section 163-A of the Act. The policy of insurance was "Act only Policy" and not a comprehensive/package policy. The victim was travelling on Hero Honda motorcycle which he had borrowed from the real owner. Hon'ble Supreme Court held that the deceased cannot be held to be employee of the owner of the motorcycle 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. I am of the view that if the borrower of the vehicle steps into the shoes of owner, the terms of the policy which is comprehensive/package policy would include the personal accident claim of the person driving the vehicle provided he holds a valid licence.

23. From the above discussion, I find that the view expressed by this Court in Umesh Kumari's case (supra) and Monika's case (supra) is more in consonance with the principle held by Hon'ble Supreme Court in Ningamma's and Sinitha's cases

(supra) and also the purpose and object of the policy of insurance towards personal accidents. The contention, therefore, raised by the learned appellant's counsel to challenge the Award on this ground cannot be sustained."

The appeal of the insurance company was dismissed.

It may also be apposite to refer to two decisions of Hon'ble Supreme Court where the scope of liability under comprehensive/package policy has been spelt out:

In ***Bhagyalakshmi v. United Insurance Co. Ltd., (2009) 7 SCC***

148 it was observed:

"13. The policy in question is a package policy. The contract of insurance if given its face value covers the risk not only of a third party but also of persons travelling in the car including the owner thereof. The question is as to whether the policy in question is a comprehensive policy or only an Act policy."

In ***National Insurance Co. Ltd. v. Balakrishnan, (2013) 1 SCC***

731, the Supreme Court explained the scope of a comprehensive/ package policy as under:

"26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in Bhagyalakshmi and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing

circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.”

In the present case also the policy is a comprehensive/package policy. It has not been pointed out by the Ld. Counsel for the Insurance Company that the owner/ driver was not covered therein. Hence, the claim was clearly maintainable. The appeal of the insurance company on this aspect is dismissed.

However, there is merit in the other contention of the Ld. Counsel for the Insurance Company that as the claim petition had been filed under Section 163-A, as per the Second Schedule the deduction ought to have been 1/3rd instead of 1/4th as made by the Tribunal. Further as the deceased was 26 years of age the multiplier ought to have been 18 instead of 17. The compensation awarded needs to be modified accordingly.

On deducting 1/3rd, the monthly surviving dependency comes to Rs.2133.33 paise (3200x2/3). After applying the multiplier of 18, the total amount of dependency comes to Rs.4,60,799/- (2133.33x12x18) i.e. Rs.38,301/- (499100-460799) less than the amount awarded by the Tribunal. In other words, the claimants are entitled to compensation of Rs.4,70,299/- (460799+2500+5000+2000). The impugned award is modified that extent.

Appeal stands disposed of accordingly.

August 06 , 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No