

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 668 of 2011 (O&M)

Date of Decision: 02.04.2019

Kalawati and others

.....Appellants

Versus

United India Insurance Company Limited

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Raman Chawla, Advocate
for the appellants.

Mr. Rajesh K. Sharma, Advocate
for respondent.

AVNEESH JHINGAN, J.(oral)

The award dated 10.6.2010 passed by the Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') has been assailed by the legal heirs of Ajay, being aggrieved of award under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act').

The facts emanating from record are that on 19.6.2009 Ajay along with his uncle Subhash were riding a motor cycle owned by Ajay. The Motor cycle was being driven by Ajay. On their way suddenly a 'neel gai' appeared from the side and came in front of motor cycle, as a result Ajay lost control and struck against a kikar tree (Acacia Karoo). He sustained injuries and was taken to hospital at Hisar, where he was declared dead.

A claim petition under Section 163-A of the Act was filed. The Tribunal partly allowed the same. It was held that the deceased was owner of the vehicle involved in the accident and his legal heirs cannot claim compensation under Section 163-A of the Act. However, ₹ 1,00,000/- under personal accident cover along with interest at the rate of 7.5% per annum was

Aggrieved of the award, the present appeal has been filed.

Learned counsel for the appellants contends that the Tribunal erred in not awarding compensation under Section 163-A of the Act.

Learned counsel for the insurer defends the award and relies upon decision of the Supreme Court in *Ningamma and another Vs. United India Insurance Co. Ltd.*, 2009 (13) SCC 710.

The issue that the legal heirs of owner cannot claim compensation under Section 163-A of the Act, is no longer res-integra.

The Supreme Court in *Ningamma's case (supra)*, 2009 (13) SCC 710, has held as under:

"17. 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 the case of *Oriental Insurance Co. Ltd. v. Rajni Devi*, 2008(4) RCR(Civil) 905 : 2008(6) RAJ 396 : (2008)5 SCC 736 and *New India Assurance Co. Ltd. v. SadanandMukhi and Ors.*, 2009(1) RCR(Civil) 817 : 2009(1) RAJ 472 : (2009)2 SCC 417.

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."

Thus, the owner or his legal heirs cannot claim compensation under Section 163-A of the Act.

No error is found in the award of the Tribunal.

Dismissed.

(AVNEESH JHINGAN)
JUDGE

02.04.2019
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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No