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

103 **FAO No.3744 of 2015 (O&M)**
Date of Decision : 26.03.2019

RELIANCE GENERAL INSURANCE COMPANY LIMITED

....APPELLANT

V/S

DALBIR SINGH

....RESPONDENT

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

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

Ms. Bhupinder Kaur, Advocate for
Mr. Vikrant Hooda, Advocate
for the respondent.

B.S. WALIA, J. (ORAL)

[1] Appeal has been filed by the appellant/*Insurance Company* against award dated 02.01.2015, passed by the learned Motor Accidents Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal'), awarding compensation of ₹5,00,000/- along with interest @ 8% per annum to the respondent-claimant on the ground that the respondent-claimant was himself the owner of the insured vehicle and was driving the insured vehicle at the time when the same met with an accident and claimant sustained injuries. Learned Counsel contends that in view of the law laid down by Hon'ble the Supreme Court in '***Ningamma and another*** *versus* ***United India Insurance Company Limited***', *2009(13) SCC 710*, the award is legally unsustainable and at best the respondent-claimant was entitled to maintain a claim in terms of personal

accident cover clause and that too up to a sum of ₹2,00,000/-, subject to fulfillment of the conditions stipulated in said clause.

[2] Learned counsel contended that it was crystal clear from a reading of the award that the respondent-claimant was driving his own truck bearing registration No.HR-63B-4974 at the time when he lost control over the same and fell down on the road and hit a electricity pole and thereby sustained injuries.

[3] Learned counsel contended that qua issue No.2 i.e. "whether petitioner is entitled to compensation, if yes, to what extent? OPP" the Insurance Company had taken preliminary objection No. 8 in its written statement. The same reads as under :-

> *"that the present petition under Section 163(A) of the Motor Vehicle Act is not maintainable and hence the same is liable to be dismissed."*

[4] Learned counsel contended that in the circumstances, the award of compensation by the tribunal was legally unsustainable, as the compensation awarded was not under the personal accident cover clause but was on account of medical expenses, treatment, loss of income, mental pain & agony etc.

[5] Hon'ble the Supreme Court in ***Ningamma's*** *case (supra)*, was pleased to hold that the provisions of Section 163(A) of the Motor Vehicle Act could not be said to have any application in respect of an accident wherein the owner of the motor vehicle was himself involved as the liability under Section 163(A) of the Motor Vehicle Act is on the owner of the vehicle. Thus, a person cannot be both, owner/person liable to pay as also a recipient/claimant, with respect to claim. Relevant extract of the decision of Hon'ble the Supreme Court in ***Ningamma's*** *case (supra)* is reproduced as under:-

"18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (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."*

[6] Faced with the aforementioned position, learned counsel for the respondent-claimant contended that in view of the stand of the appellant in the grounds of appeal that the claim could be considered only under the personal accident cover clause up to maximum of ₹2,00,000/- and the appellant having undertaken to deposit compensation amount to the tune of ₹2,00,000/- at the time of motion hearing, the respondent-claimant would file a claim under the personal accident cover clause before the appellant and the appellant be directed to decide the claim of the respondent-claimant under the personal accident cover clause within a stipulated period of time and the payment of ₹2,00,000/- made by the appellant to the respondent/claimant be made subject to the outcome of the decision to be taken by the appellant-Company.

[7] Learned counsel for the appellant states that he has no objection to the aforementioned course of action. In the circumstances, the impugned award passed by the learned Tribunal, Jhajjar, awarding compensation of ₹5,00,000/- to the respondent-claimant under Section 163(A) despite the respondent-claimant himself being the owner of the insured vehicle is set aside

in view of the decision in ***Ningamma's*** *case (supra)*. However, liberty is granted to the respondent-claimant to approach the appellant by way of a claim under the personal accident cover clause for award of compensation as may be permissible there under, subject to fulfillment of the conditions stipulated therein. On the respondent-claimant submitting a claim to the appellant within a reasonable period of time, the appellant shall consider and decide the same in accordance with law, within a period of three months thereafter. In the eventuality of the claim under personal accident cover clause being allowed by the appellant in favour of the respondent-claimant, the amount of ₹2,00,000/- paid by the appellant to the respondent-claimant would be adjusted thereof. The appeal is **allowed** in the aforementioned terms.

(B.S. WALIA)
JUDGE

March 26, 2019
'Rajneesh'

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