IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1819 of 2018
Date of decision: 6.3.2019

Gurmeet Kaur and others
.. Appellants

v.

Sultan Singh and another
.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Deepak Sharma, Advocate for the appellants.

...

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed being aggrieved of the award dated 24.10.2017 passed by the Motor Accident Claims Tribunal, Ambala (for short, 'the Tribunal'), whereby the claim petition filed by the appellants under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') on account of the death of Baljeet Singh was dismissed.

The facts as emanating from the record are that on 19.6.2016, Baljeet Singh had gone to village Brahman Majra and was levelling the land of Anil Kumar with a tractor bearing registration No. HR-01-AK-2470 (hereinafter referred to as 'the offending vehicle'). While working, some mechanical defect developed in the tractor. When Baljeet Singh was checking the same, the tractor started moving and the rear wheel of the tractor passed over the abdomen of Baljeet Singh. He died at the spot. DDR No. 17 dated 20.6.2016 was recorded at Police Station Mahesh Nagar, Ambala Cantt. The tractor was owned by Sultan Singh, who was arrayed as respondent No. 1 before the Tribunal.

A claim petition filed by the legal heirs of Baljeet Singh under Section 163-A of the Act which was dismissed by the Tribunal relying upon the decision of the Supreme Court in **Ningamma and another Vs. United India Insurance Co. Ltd., (2009) 13 SCC 710** holding that the deceased was the borrower of the offending vehicle and the claim petition under Section 163-A of the Act is not maintainable.

Heard learned counsel for the appellants and perused the paper book.

In **Ningamma's case (supra)**, the Supreme Court held that a borrower steps into the shoes of owner of the vehicle. The issue arose before the Apex Court was:-

> *"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 Sections 140 and 163-A of the Act. The same are reproduced below:

"140. Liability to pay compensation in certain cases on the principle of no fault –

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty – five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead

and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under subsection (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163 – A.

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 sub-section (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."*

From perusal of Section 163-A of the Act and the decision of the Supreme Court in **Ningamma's case (supra),** no shadow can be cast upon the findings recorded by the Tribunal.

However, it would be appropriate to invoke Section 140 of the Act. Under the said provision, the claimants are entitled to ₹50,000/- for 'no fault liability' as provided which is to be paid by the insurer of the offending vehicle.

The appeal is disposed of in the aforementioned terms.

(AVNEESH JHINGAN)
JUDGE

6.3.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No