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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.1302 of 2016 (O&M)
Date of Decision : 30.04.2019

Rajwanti and another

Appellants

Versus

Satish Kumar and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. M.S. Rana, Advocate for the appellants.

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AVNEESH JHINGAN, J (Oral)

The award dated 24.08.2015 passed by the Motor Accident Claims Tribunal, Rohtak [for brevity 'the Tribunal'] has been assailed by the claimants. The grievance is that the Tribunal erred in holding that the legal heirs of borrower of vehicle are not entitled to compensation under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act']. The only issue raised by learned counsel for the appellants is that no compensation was given under Section 163-A of the Act.

The brief facts of the case are that on 29.04.2014, Anil Kumar was driving Car bearing registration No. HR-70C-0588 owned by Satish Kumar (respondent No.1). When he reached near G.B. Rice Mills, Padhana, suddenly a stray animal came in front of the Car, as a result, he lost the control and Car turned turtle. Anil Kumar, who was driving the Car, sustained grievous injuries and succumbed to the injuries on 30.04.2014. FIR was registered.

A claim petition was filed under Section 163-A of the Act and the same was dismissed by the Tribunal stating that the legal heirs of the borrower of the offending vehicle are not entitled to compensation under Section 163-A of the Act as there was no Package Policy.

There is no challenge to the fact that deceased was borrower of the offending vehicle. The issue that legal representatives of borrower of vehicle cannot claim compensation under Section 163-A of the Act is no longer *res integra*. The Supreme Court in ***Ningamma and another Vs. United India Insurance Co. Ltd., 2009 (13) SCC 710*** dealt with the following issue:-

> *"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."

In view of decision of the Supreme Court, the contention raised by learned counsel for appellant deserves rejection.

The appeal is dismissed *in limine.*

Since the appeal is being decided on merits, the question of limitation is being left open.

[AVNEESH JHINGAN]
JUDGE

April 30, 2019
pankaj baweja

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1. Whether speaking/ reasoned      :     Yes
2. Whether reportable              :     No
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