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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4342-2005 (O&M) with
XOBJ-9-CII-2006
Date of Decision : 28.10.2022

Bajaj Allianz General Insurance Co. Ltd. ....Appellant

VERSUS

Sudesh & Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Rishav Jain, Advocate for respondent Nos.1 to 4.

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ALKA SARIN, J. (Oral)

The present appeal has been preferred by the insurance company and cross-objections have been preferred by the claimants-respondent Nos.1 to 4 herein against the award dated 03.08.2005 passed by the Motor Accident Claims Tribunal, Jind.

The brief facts relevant to the present lis are that the claimants-respondent Nos.1 to 4 filed a claim petition under Section 163-A of the Motor Vehicle Act, 1988 seeking compensation on account of death of Suresh Kumar. It was averred in the claim petition that on 18.11.2002 Suresh Kumar was riding a motor cycle bearing registration No.DL-3-SV-2251 along with his friend Rajinder Parshad and was going from New Delhi to Faridabad. The rider of the motor-cycle was Suresh Kumar while Rajinder Parshad was the pillion rider. When they reached near Badkhal turn then from right hand side a cyclist came all of sudden and Suresh

Kumar tried to save him and in the process the motor-cycle struck against the front portion of the cycle and fell down. Suresh Kumar and Rajinder Parshad also fell down. Suresh Kumar received serious injuries and eventually succumbed to his injuries. FIR was lodged in this regard. It was averred that the death had arisen out the usage of motor-cycle bearing registration No. DL-3-SV-2251.

The claim petition was contested by the insurance company on the ground that Suresh Kumar was riding the motor-cycle in a rash and negligent manner and that he was not having a valid licence. It was further averred that the deceased was not a third party and hence respondent was not liable to pay compensation.

On the pleadings of the parties, the following issues were framed :

1. Whether the accident in question has taken place on account of use of motor cycle No.DL-35V-2251, if so to what effect ? OPP
2. Whether Suresh Kumar since deceased has died on account of the injuries suffered by him the said accident ? OPP
3. To what amount the petitioners are entitled as compensation and from whom ? OPP
4. Relief.

The Tribunal on the basis of the pleadings and the evidence on the record held the insurance company liable and awarded compensation to the tune of Rs.5,19,000/-. Aggrieved by the said award the insurance company has preferred the present appeal and cross-objections have been preferred by the claimants-respondent Nos.1 to 4.

Learned counsel for the appellant-insurance company has contended that the deceased had borrowed the motor-cycle from the owner and hence stepped in the shoes of the owner and could not be treated as third party and hence the appellant-insurance company was not liable to pay any amount. It is further the contention that under Section 163-A of the Act, claim petitions are maintainable only in case of third party and the deceased did not fall into that category. Reliance has been placed upon the judgment of the Supreme Court passed in **Ramkhiladi & Anr. Vs. United India Insurance Company & Anr. [2020 (2) SCC 550]**.

Learned counsel for the claimants-respondent Nos.1 to 4 is not in a position to deny the fact that the deceased had borrowed the motor-cycle.

Heard.

In the case of **Ramkhiladi** (*supra*) it has been held as under :

> *"5.4 An identical question came to be considered by this Court in the case of Ningamma (supra). In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163A of the Act by the legal representatives of*

the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation under Section 163A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing registration No.RJ 29 2M 9223, being a third party with respect to the offending vehicle. However, no claim under Section 163A was filed against the driver, owner and/or insurance company of the motorcycle bearing registration No.RJ 29 2M 9223. It is an admitted position that the claim under Section 163A of the Act was only against the owner and the insurance company of the motorcycle bearing registration No.RJ 02 SA 7811 which was borrowed by the deceased from the opponent owner Bhagwan Sahay. Therefore, applying the law laid down *by this Court in the case of Ningamma (supra), and as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No.RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 163A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable.*

5.5 It is true that, in a claim under Section 163A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163A of the Act is based on the principle of no fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163A of the Act against the owner and insurer of the vehicle bearing registration No.RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the *insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No.RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in the case of Dhanraj (supra), an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized 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 the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.*

5.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly

> *observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle."*

In view of the law laid down by the Supreme Court the claim petition itself was not maintainable under Section 163-A of the Act since the deceased who had borrowed the motor cycle did not fall into the category of third party.

In view of the above, the present appeal is allowed, the claim petition stands dismissed and the cross-objections also, accordingly, stand dismissed. Pending applications, if any, also stand disposed off.

October 28, 2022 **(ALKA SARIN)**
tripti **JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO