

[104] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5248 of 2016(O&M)

Date of Decision :22.02.2023

Bharti AXA General Insurance Company Limited,
Chandigarh through its authorized signatory ...Appellant

versus

Sudesh and othersRespondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for the appellant.

Mr. Munish Kumar Garg, Advocate with
Ms. Bhawna Mehra& Mr. Pankaj Goyal, Advocates
for respondent Nos.1 & 2.

B.S. Walia, J. (Oral)

[1] Learned counsel for respondent Nos.1 & 2 cites paragraph Nos.5.6 to 5.9 of the decision of Hon'ble the Supreme Court in 'Ramkhiladi and anotherversusUnited India Insurance Company and another', 2020 AIR (SC) 527 and contends that in the instant case, as per the terms of the contract of Insurance, the owner of the vehicle was having personal accident insurance for a sum of Rs.1,00,000/-, therefore, since the deceased borrower stepped into the shoes of the owner, he would be entitled to the aforementioned amount on account of personal accident cover as available to the owner. Relevant extract of the same is reproduced as under:-

"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.

5.7 Now, so far as the reliance placed upon by the learned Advocate for the claimants on the decision of this Court in the case of Naveen Kumar (supra), on considering the issue involved in that decision, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the claimants. In that case, the issue was as to who could be said to be the registered owner of the vehicle and the liability of the owner who sold the vehicle, but his name continued to be as the owner with the registering authority. To that, it was held that the person in whose name the motor vehicle stands registered is the owner of the vehicle for the purpose of the Act.

5.8 However, at the same time, even as per the contract of insurance, in case of personal accident the ownerdriver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2 nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case,

the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.

5.9 Now, so far as the submission made on behalf of the claimants that in a claim under Section 163A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163A of the Act would be maintainable is concerned, in view of the decision of this Court in *Rajni Devi (supra)*, the aforesaid cannot be accepted. In *Rajni Devi (supra)*, it has been specifically observed and held that the provisions of Section 163A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in the cases of *Oriental Insurance Co. Ltd. V. JhumaSaha* (2007) 9 SCC 263; *Dhanraj (supra)*; *National Insurance Co. Ltd. V. Laxmi NarainDhut* (2007) 3 SCC 700 and *Premkumari v. Prahlad Dev* (2008) 3 SCC 193, it is ultimately concluded by this Court that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of *Ashalata Bhowmik (supra)*, it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed hereinabove.”

[2] Learned counsel for the appellant does not controvert the
aforementioned factual or legal position of law or of the position in the
instant case being paramateria with the position in '**Ramkhiladi and
another***versus***United India Insurance Company and another,**' 2020 AIR
(SC) 527. He further contends that a sum of Rs.1,00,000/- has already
been awarded by the learned Tribunal along with interest @ 7.5%.

[3] Accordingly, in the light of the position noted above, as well
as statement of learned counsel for the parties, the instant appeal is
disposed of as not calling for any orders in view of the decision in
'**Ramkhiladi and another's**' case (supra) of the LRs of the deceased
borrower of the vehicle being entitled to claim compensation on account
of personal accident cover as taken out by the owner of the vehicle from
the Insurance Company, which had insured the vehicle of the owner,
which was borrowed by the deceased. Resultantly, the appeal is disposed
of as such.Payment of Rs.1,00,000/- along with interest @ 7.5% as
ordered by the learned Motor Accident Claims Tribunal, Sonapat, be
remitted to the respondents-claimants in the proportion as ordered by the
learned Tribunal by way of demand draft within 04 weeks from today by
registered post.

[4] Statutory amount deposited by the appellant is ordered to be
refunded as per Rules.

(B.S. Walia)
Judge

22.02.2023
'Rajneesh'

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