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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of decision: 05.10.2023*

+ **MAC.APP. 749/2018 & CM APPL. 34117/2018**

**BAJAJ ALLIANZ GENERAL  
INSURANCE CO LTD**

..... Appellant

Through: Mr. A.K. Soni, Advocate.

versus

**ANJU DEVI & ORS**

..... Respondents

Through: Ms. Ekta Kumari and Ms. Mehak  
Dhiman, Advocates for respondent  
Nos. 1 to 4.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed by the appellant challenging the Award dated 21.05.2018 passed by the learned Motor Accident Claims Tribunal South-East District, Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in Suit No. 2992/2016 titled as *Smt.Anju Devi & Ors .v. Sh.Sudhir Power Project Ltd.& Anr.*

2. It was the case of the claimant before the learned Tribunal that on 25.08.2013 at about 9 PM, the deceased - Sh.Ranjay Kumar Singh was going on Yamuna Bridge towards Akshardham to Sarai Kale Khan, when he met with an accident. The Claim Petition was filed under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act').

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3. The learned Tribunal held that as the claim petition has been filed under Section 163A of the Act, the claimants were not required to prove that the accident had taken place due to the negligence of another person. The learned Tribunal, therefore, awarded compensation in favour of the claimants based on the II<sup>nd</sup> Schedule of the Act.

4. The learned counsel for the appellant submits that the deceased was employed as a Supervisor with the owner of the motorcycle, which he was driving. He submits that therefore, the deceased cannot be considered as a third party, as he stepped into the shoes of the owner of the motorcycle, and the claimants were not entitled to receive any compensation under the insurance policy. He submits that in terms of Proviso (i)(a) to Section 147(1) of the Act, as was then applicable, it is only when the deceased is employed as a driver that the insurance company is liable to pay compensation for the death or the bodily injury suffered by such an employee. He submits that the insurance company is under no statutory obligation to cover all kinds of employees of the insured. In support, he placed reliance on the judgment of this Court in *Oriental Insurance Co. Ltd. v. Shakuntala & Anr.* 2016:DHC:1829.

5. On the other hand, the learned counsel for the respondent nos. 1 to 4, placing reliance on the judgments of the High Court of Kerala in *New India Assurance Company Limited v. Smt.Shyla & Ors.*, 2017 SCC OnLine Ker 38527; and in *National Insurance Company Ltd. v. P. Ramachandran & Ors.*, (2018) SCC OnLine Ker 102, submits that the Proviso (i) (a) to Section 147(1) of the Act makes the Insurance Company liable in respect of the death of an employee engaged in the driving of the vehicle which is



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involved in a motor accident, irrespective of whether such an employee was employed as a driver or not.

6. I have considered the submissions made by learned counsels for the parties.

7. Section 147(1) of the Act, so far as it is relevant to the present case and as was then applicable, is reproduced hereinunder:-

***“147. Requirements of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—***

*(a) is issued by a person who is an authorised insurer; and*

*(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—*

*(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicular damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;*

*(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:*

*Provided that a policy shall not be required—*

*(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the*

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*Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—*

- (a) engaged in driving the vehicle, or*
  - (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or*
  - (c) if it is a goods carriage, being carried in the vehicle, or*
- (ii) to cover any contractual liability.*

xxxxx”

(Emphasis supplied)

8. The words used in Proviso (i) (a) to Section 147(1) of the Act are ‘engaged in driving the vehicle’ without specifying either the class of the vehicle which is covered by this provision or the nature of the employment of the person engaged in driving the vehicle, as juxtaposed to Proviso (i)(b) which uses the words ‘if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle’. The above difference in the language to the two provisions shows that the liability of the Insurance Company arises when the employee, at the time of the accident, is driving the vehicle involved in the accident. Such an employee need not necessarily be employed by the employer as the driver of the vehicle, but should be the one who is, at the time of the accident, driving the vehicle.

9. The Full Bench of the High Court of Kerala in *United India Insurance Co. Ltd. v. P.R. Surendran & Ors.*, 2014 SCC OnLine Ker 22865 has highlighted the distinction in the above provisions, and held as under:-

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*“9. The learned counsel for the Insurance Companies reiterated their contention that in order to get the coverage of Clause (a) to the proviso to Section 147, an employee should be employed as a driver and should be engaged in driving. It is the settled position of law that when the language of a statute is unambiguous, the Courts are bound to literally interpret the statute and give full effect to the provisions. In so far as Clause (a) to the proviso to Section 147 is concerned, Section only uses the expression ‘engaged in driving the vehicle’ without specifying either the class of the vehicle which is covered by this provision or the nature of the employment of the person engaged in driving the vehicle, unlike clauses (b) and (c) to the proviso, which specifies the nature of the employment to claim coverage of the said provision. This, therefore, means that to claim coverage of Clause (a) to the proviso to Section 147 of the Act, the employee need only be engaged in driving the vehicle, irrespective of whether he was employed as driver or not. Needless to say that such coverage would be available only if the accident arose out of and in the course of his employment and only if the other requirements of the Workmen's Compensation Act are also satisfied.*

*10. On the other hand, if we are to accept the contention canvassed on behalf of the Insurance Companies that the claimant should be employed as driver and that he should be engaged in driving, that would mean that this Court would be adding words to the statute, which is impermissible for a Court interpreting statutory provisions. Therefore, we do not see any justification to adopt the interpretation canvassed by the counsel for the Insurance Companies.*

xxxx

*16. Thus, the above judgments rendered by this Court show that, consistently it was being held that, if an employee, in discharge of his duties, is engaged in driving a vehicle as permitted by his employer, irrespective of whether he is employed as driver or not, the employee would be entitled to the coverage of the proviso to Section 147, provided the accident has occurred out of and in the course of his employment.”*

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10. The view in *P.R. Surendran*(Supra)was followed by the High Court of Kerala in its subsequent judgments in *Shyla* (Supra) and *P. Ramachandran* (Supra).

11. The judgment of this Court in *Shakuntala* (supra) is not applicable to the facts of the present case. In the said case, the deceased was riding the scooter owned by his father. Placing reliance on the judgments of the Supreme Court in *New India Assurance Company Ltd. v. Sadanand Mukhi & Ors.* (2009) 2 SCC 417, and in *Ningamma & Anr. v. United India Insurance Company Ltd.* (2009) 13 SCC 710, this Court held that the deceased cannot be treated as a ‘third party’ covered by the ‘act policy’. The question of the deceased being covered by Proviso (i)(a) of Section 147 of the Act did not arise before this Court and was, hence, not considered.

12. In view of the above, as the deceased was employed by the owner of the vehicle involved in the accident, and was driving the said vehicle in the course of his employment, the appellant is liable to pay the compensation to the claimants.

13. I, therefore, find no merit in the present appeal. The same is, dismissed. The pending application also stands dismissed. There shall be no order as to costs.

14. The statutory amount deposited by the appellant be released in favour of the appellant alongwith interest accrued thereon.

NAVIN CHAWLA, J

OCTOBER 05, 2023  
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