



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

% **Judgment reserved on: 13th February, 2024**
Judgment pronounced on: 3rd April, 2024

+ **MAC.APP. 573/2014**

NEW INDIA ASSURANCE COMPANY LTD

..... Appellant

Through: **Mr. Abhishek Kumar Gola, Mr.
Anshul & Ms. Yashika Miglani,
Advocates.**

versus

VINITA GUPTA & ORS.

..... Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

**MAC.APP. 573/2014 & CM APPL. 8622/2024 (by R-1 & R-2 for
release of amount)**

1. CM. APPL. 8622/2024 has been filed on behalf of the applicants/respondents No.1 and 2, who are the parents of the deceased aged, who died at the age of 23 years, seeking direction against the appellant/insurance company for release of the amount awarded to the tune of Rs.8,47,002/- with interest @ 7% p.a.

FACTUAL BACKGROUND:

2. Shorn off unnecessary details, respondents No.1 and 2 (hereinafter referred to as the 'claimants') instituted a claim petition under Section 163-A of the Motor Vehicles Act, 1988¹ on 20.10.2012,

¹ M.V. Act



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bearing MACP No. 236/2012 before the learned Presiding Officer, Motor Accident Claims Tribunal-01, Dwarka Courts, Delhi² seeking compensation for the loss of their son in a motor accident on 12.11.2007 at 3:30 PM involving a vehicle bearing No.DEL-4S-BH-5889.

3. Suffice to state that the learned Tribunal allowed the claim petition, thereby awarding total compensation of Rs.4,57,839/- assessing the loss of financial dependency @ Rs.26,667/- per annum and applying multiplier of '17', besides adding compensation amount for funeral expenses and loss of estate to the tune of Rs.2,000/- and Rs.2,500/- respectively. Interest was also awarded @ 7.5% p.a. from the date of filing of petition i.e. 20.10.2012, till realization. Evidently, the vehicle was insured and the liability to pay the compensation was fastened upon the insurance company.

4. The impugned judgment-cum-award dated 19.05.2014 has been challenged by the appellant/Insurance Company in the present appeal primarily on the ground that the motorcycle which was being driven by the deceased Amit Kumar Gupta at the time of accident, belonged to his brother/owner of the vehicle namely, Mr. Rajesh Gupta.

5. Reliance has been placed on a decision in **Ningamma v. United India Insurance Co. Ltd.**³ to countenance that the brother of the owner of the vehicle cannot be said to be third-party. The operation of the impugned award has also been stayed by this Court in terms of the interim order dated 15.07.2014.

² Tribunal

³ AIR 2009 SC 3056



ANALYSIS AND DECISION:

6. Since the present appeal was filed on 08.07.2014 and has been listing in the category of regular matters since 21.12.2016, and the appellants being senior citizens, this Court heard the arguments advanced by the learned counsels for the parties on merits of the instant appeal. The relevant records as well as the written submissions have been perused.

7. First things first, it would be pertinent to reproduce the reasons which prevailed in the mind of the learned Tribunal culminating in the impugned judgment, which go as under :

“Issue 1 - negligence

11. Applying the above said tests in the present case the insurance company has not examined even a single witness to show if the accident had happened due to the negligence of the deceased. In the FIR and in the statement of PW-1 name of Sunila Bahuguna has come who was sitting as a pillion rider despite that she has not been examined by the insurance company to prove their case. In the absence of any witness having been examined it cannot be said that the insurance company has discharged the onus placed upon them. The insurance company cannot take shelter on the statement of PW-1 alone who had stated that the deceased lost his balance especially she was not present at the spot. The best evidence was the pillion rider who was travelling with the deceased at the time of accident. In such a situation it is not possible to conclude that the deceased was negligent. Coming on the second limb again the insurance company has not brought any evidence in order to show relationship between the victim and the owner of motorcycle. It is also not the case of insurance company that the motorcycle was owned by the deceased himself. Therefore, neither the relationship has been established nor the capacity in which the deceased was riding the vehicle has been brought out. Therefore, applying both the tests the insurance company has miserably failed to discharge the onus rests upon them.

Issue 2 - Quantum of compensation

13. This brings us to fixation of quantum of compensation which may be awarded in favour of the petitioners and against the



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respondents who are jointly or severely liable to make good the payment. Since the vehicle was insured with respondent no.3, therefore, it is primarily responsible to make the payment which may be awarded in the later part of the judgment.”

8. Suffice to say that the learned Tribunal took into view the evidence led by the parties and in view of the provisions of Section 163-A and the Second Schedule to the M.V. Act, reckoned income and earnings from the profession besides age, multiplier, number of dependants, loss of dependency and awarded the compensation, as aforesaid.

9. Aforesaid disposition is supported by decision in the case of **National Insurance Co. Ltd. v. Sinitha**⁴, wherein the context of a claim under Section 166 of the M.V. Act, it was held that it is for the insurance company to prove by leading cogent and reliable evidence that the deceased who was driving the motor vehicle was himself guilty of rash and negligent driving resulting in injuries or death. Learned Tribunal has rightly held that no such evidence has been led by the appellant/insurance company in the present matter.

10. Insofar as reliance by the learned counsel for the appellant/ insurance company on decision in *Ningamma (supra)* is concerned, it was a matter where the claimants were wife and minor son of the deceased, who were seeking compensation under Section 163A of the M.V. Act on account of death of the deceased, who was driving the insured motorcycle. It was a matter where the policy of the insurance was an “Act Only Policy” and it was under such circumstances that the matter was remanded back to the Tribunal to decide the issues





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afresh in the light of Section 147⁵ of the M.V. Act as to whether the owner/insured would be covered within the meaning of third-party insurance.

11. In the instant case, the plea of the appellant/insurance company is that since real brother of the deceased was the owner and the insured, and thus the insurance company is not liable to pay

⁴ (2012) 2 SCC 356

⁵ **1[Requirement 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 authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.

Explanation.--For the removal of doubts, it is hereby clarified that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place, notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and Development Authority.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected, a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Notwithstanding anything contained in this Act, a policy of Insurance issued before the commencement of the Motor Vehicles (Amendment) Act, 2019 shall be continued on the existing terms under the contract and the provisions of this Act shall apply as if this Act had not been amended by the said Act.

(5) Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made thereunder is not followed by a policy of insurance within the specified time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority or to such other authority as the State Government may prescribe.

(6) Notwithstanding anything contained in any other law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of





compensation, is clearly not sustainable because a bare perusal of the policy of the insurance in question would show that it was not an “Act Only Policy” and a sum of Rs.300/- was paid separately towards third-party premium. By all means, the deceased, although brother of the real owner and insured, would assume a character of being a “third-party”.

12. In view of the aforesaid discussion, I find that the present appeal is bereft of any merits. The impugned judgment-cum-award dated 19.05.2014 does not suffer from any illegality, perversity or incorrect approach in law. The same is dismissed accordingly.

13. The appellant/insurance company is directed to deposit the entire amount of compensation awarded by the learned Tribunal along with interest @ 7.5% p.a. from the date of filing of the petition i.e. 20.10.2012 till date, within four weeks from today failing which, the appellant/insurance company shall be liable to pay penal interest @ 12% p.a. from the date of decision of this judgment till realisation. On deposit of such amount, the same be released to the respondents/claimants forthwith.

14. The CM APPL. 8622/2024 also stands disposed of accordingly.

DHARMESH SHARMA, J.

APRIL 03, 2024

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persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.]

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