Vijay Kumar and ors. Vs. Manoj Kumar and ors.

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Court : Delhi

Decided On : Nov-05-2012

Judge : G.P. Mittal

Appellant : Vijay Kumar and ors.

Respondent : Manoj Kumar and ors.

Advocate for Def. : Mr. Sumit Rana

Advocate for Pet/Ap. : Mr. Navneet Goyal, Ms. Suman N. Rawat

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

5. h November, 2012 + MAC. APP. 1056/2011 VIJAY KUMAR & ORS. Through: ... Appellants Mr. Navneet Goyal, Adv. with Ms. Suman N. Rawat, Adv. versus MANOJ KUMAR & ORS. Through: ..... Respondents Mr. Sumit Rana, Adv. for R-1. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

(ORAL) 1. The Appeal is directed against a judgment dated 11.07.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a Claim Petition filed under Section 163-A of the Motor Vehicles Act, 1988 (the Act) was dismissed on the ground that the deceased Harish Chand being borrower of the motorcycle not DL-4SC-AL-1329 was not entitled to claim compensation from the owner or the Insurance Company. The Claims Tribunal while reaching on this conclusion placed reliance on the Supreme Court report in Oriental Insurance Company Limited v.

Smt. Rajni Devi & Ors. (2008) 5 SCC 736.Ningamma & Anr. v. United India Insurance Company Limited, (2009) 13 SCC 71.and a judgment of this Court in United India Insurance Company Limited v. Angrej Singh FAO No.1200/2008 decided on 20.05.2010.

2. It is urged by the learned counsel for the Appellants that under Section 163-A of the Act, the Appellants are entitled to compensation without proving negligence of any person. Thus, it is argued that the Appellants were entitled to compensation under Section 163-A of the Act.

3. As per the case set up by the Appellants on 13.03.2006 at about 9:50 A.M. the deceased was proceeding to Gokulpuri from his house while driving motorcycle No. DL-4S-AL-1329. When he reached near main Wazirabad road, on account of portholes on the road and some sand lying near the place of accident, the motorcycle slipped and struck against the patri. The deceased Harish Chand suffered injuries which proved fatal.

4. It is not in dispute that deceased Harish Chand was borrower of the vehicle. The question whether the borrower of a vehicle can claim compensation from the owner/insurer of the vehicle was considered by the Supreme Court in New India Assurance Company Limited v. Sadanand Mukhi & Ors. (2009) 2 SCC 417.Oriental Insurance Company Limited v. Smt. Rajni Devi & Ors. (2008) 5 SCC 736.and Ningamma & Anr. v. United India Insurance Company Limited, (2009) 13 SCC 710.The Supreme Court held that borrower of a vehicle steps into the shoes of the owner and, therefore, he/his legal heirs are not entitled to claim compensation from the owner/insurer of the vehicle under Section 163-A of the Act. In Ningamma, the Supreme Court held as follows:19. In Oriental Insurance Co. Ltd. v. Rajni Devi [(2008) 5 SCC 73.wherein one of us, namely, Hon'ble S.B. Sinha, J.

was a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof.

20. It was held in Oriental Insurance Co. Ltd. case [(2008) 5 SCC 73.: (2008) 3 SCC (Cri) 67] that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under Section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA.

21. In our considered opinion, the ratio of the decision in Oriental Insurance Co. Ltd. case [(2008) 5 SCC 73.: (2008) 3 SCC (Cri) 67] is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be an employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner and, therefore, he would step into the shoes of the owner of the motorbike. 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.

22. 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.

23. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section

163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case.

5. It would be a different matter whether accident took place because of lack of maintenance or due to mechanical defect in the vehicle involved in the accident, which is not the case here.

6. Further, in the instant case, the accident took place as the motorcycle driven by the deceased Harish Chand slipped on account of portholes on the road and some sand lying near the place of accident. This shows that the deceased himself was careless and not in control of the two wheeler driven by him. In such circumstances, where an accident takes place because of the wrongful act, neglect or default of the victim himself then he/his legal representatives are not entitled to claim compensation from the owner of the vehicle under Section 163-A of the Act.

7. This principle emanates from the fact that no person can take advantage of his own wrong. This view was taken by the Supreme Court in National Insurance Company Limited v. Sinitha & Ors., 2011 (13) SCALE 84

8. The Claims Tribunal rightly dismissed the Claim Petition preferred by the Appellants under Section 163-A of the Act.

9. The Appeal is devoid of any merit; the same is accordingly dismissed.

10. Pending Applications also stand disposed of. (G.P. MITTAL) JUDGE NOVEMBER 05 2012 vk