

Before Avneesh Jhingan, J.

SUMAN AND OTHERS—Appellants

versus

NARENDER AND ANOTHER—Respondents

FAO No.6000 of 2018

March 28, 2019

Motor Vehicles Act, 1988—S.140 and 163-A—Compensation—Question for consideration is once it is held that borrower steps into shoes of owner— Can a contrary stand be taken that borrower will not be covered under Personal Accident Cover?— Held, No—Note in GR-36, only registered owner is person entitled for PAC if he holds effective driving licence—Personal Accident Cover not to be granted where vehicle is owned by a company, a partnership firm or a similar body corporate—Representative of owner will not fall within ambit of Personal Accident Cover—Thus, case of PAC cannot be intended for borrower of vehicle—Appropriate to invoke Section 140 of Act—Claimants are entitled to Rs.50,000/- for 'no fault liability' as provided which is to be paid by insurer of vehicle involved in accident.

Held that, note in GR-36 states that only the registered owner in person is entitled for Personal Accident Cover if he holds an effective driving licence. The said Cover is not to be granted where the vehicle is owned by a company, a partnership firm or a similar body corporate. This further clarifies that representative of the owner will not fall within the ambit of PAC.

(Para 12)

Further held that, from perusal of Section 163-A of the Act and the decision of the Supreme Court in Ningamma's case no shadow can be cast upon the findings recorded by the

Tribunal. Further the case of PAC cannot be intended to borrower of vehicle.

(Para 14)

Further held that, it would be appropriate to invoke Section 140 of the Act. Under the said provision, the claimants are entitled to Rs.50,000/- for 'no fault liability' as provided which is to be paid by the insurer of the offending vehicle.

(Para 15)

Chanderhas Yadav, Advocate for the *appellants*.

AVNEESH JHINGAN, J. oral

(1) The present appeal has been filed being aggrieved of the award dated 7.3.2018 passed by the Motor Accident Claims Tribunal, Jhajjar (for short, 'the Tribunal'), whereby the claim petition filed by the appellants under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') on account of the death of Sandeep was dismissed.

(2) The respondents in the appeal are the owner of motorcycle bearing registration No. HR-13-J-1668 (hereinafter referred to as 'the offending vehicle') and the insurer (i.e. Oriental Insurance Co. Ltd.) of the offending vehicle.

(3) The facts in brief are that on 24.9.2012, Sandeep was driving the offending vehicle. On his way, a dog barked at him and started chasing him. While Sandeep was crossing the speed-breaker, due to fear he lost control and the bike slipped, as a result, he sustained injuries. He was shifted to General Hospital, Jhajjar from where he was referred to PGIMS, Rohtak and then shifted to Aggarsain Hospital, Delhi. Ultimately he succumbed to injuries on 26.9.2012. DDR No. 67 dated 27.9.2012 was lodged at Police Station, Jhajjar.

(4) A claim petition under Section 163-A of the Act was filed. The Tribunal dismissed the claim petition relying upon the

decision of the Supreme Court in *Ningamma and another* versus *United India Insurance Co. Ltd.*,¹ holding that the deceased was the borrower of the offending vehicle and the claim petition under Section 163-A of the Act is not maintainable.

(5) Heard learned counsel for the appellants and perused the paper book.

(6) Learned counsel for the appellants contends that the deceased was borrower of the offending vehicle, thus, stepped into the shoes of the owner, hence the claimants were entitled to amount to be given under Personal Accident Cover (for short, 'PAC').

(7) In *Ningamma's* case (*supra*), the Supreme Court held that a borrower steps into the shoes of owner of the vehicle. The issue which arose before the Apex Court was:-

“13. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representatives?”

The issue was decided and it was held as under :-

“19. 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. In a

¹ (2009) 13 SCC 710

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.”

It was held that the representatives of the deceased step into the shoes of the owner of the motor vehicle, hence, could not claim compensation under Section 163-A of the Act.

(8) The issue now arise is that once it is held that borrower steps into the shoes of owner can a contrary stand be taken that borrower will not be covered under PAC.

(9) The answer is yes, he will not be covered under PAC.

(10) It would be appropriate at this stage to quote Sections 140 and 163-A of the Act and GR-36. The same are reproduced below:

“140. Liability to pay compensation in certain cases on the principle of no fault –

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and

severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty – five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under subsection (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163 –A.

163 – A. Special provisions as to payment of compensation on structured formula basis

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. – For the purposes of this subsection, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923.

(2) In any claim for compensation under subsection (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

GR 36 : Personal Accident (PA) Cover under Motor Policy (not applicable to vehicles covered under

Section E, F and G of Tariff for Commercial Vehicles)

A. Compulsory Personal Accident Cover for Owner-

Driver Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an 'effective' driving license is termed as Owner Driver for the purposes of this section.

Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/dismounting from or traveling in the insured vehicle as a co-driver.

NB: This provision deals with Personal Accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective driving license. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the ownerdriver does not hold an effective driving license. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory P.A. cover for the owner - driver should not be charged and the compulsory P. A. cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her.

(11) The contention raised by learned counsel for appellants has a fallacy. The term 'owner-driver' has been defined under GR-36. It states "Compulsory Personal Accident Cover shall be applicable under both cases i.e. Liability Only and

Package Policies. The owner of insured vehicle holding an 'effective' driving licence is termed as Owner-Driver for the purposes of this section. The definition clearly restricts the meaning of 'owner-driver', it only includes owner of the insured vehicle. There is a further rider that for claiming compensation for PAC, owner should be holding an 'effective' driving licence.

(12) Note in GR-36 states that only the registered owner in person is entitled for Personal Accident Cover if he holds an effective driving licence. The said Cover is not to be granted where the vehicle is owned by a company, a partnership firm or a similar body corporate. This further clarifies that representative of the owner will not fall within the ambit of PAC.

(13) The term 'owner-driver' has been defined, hence, no word can be added or deleted from the definition to extend the benefit to claimant so that the term 'owner-driver' can be stretched to mean owner or driver.

(14) From perusal of Section 163-A of the Act and the decision of the Supreme Court in *Ningamma's* case (supra), no shadow can be cast upon the findings recorded by the Tribunal. Further the case of PAC cannot be intended to borrower of vehicle.

(15) However, it would be appropriate to invoke Section 140 of the Act. Under the said provision, the claimants are entitled to Rs.50,000/- for 'no fault liability' as provided which is to be paid by the insurer of the offending vehicle.

(16) The appeal is disposed of in the aforementioned terms.

Ritambhra Rishi