
(2019) 05 P&H CK 0125

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 5726 Of 2010 (O&M)

Bajaj Allianz General Insurance Company Limited

APPELLANT

Vs

Surjit Kaur And Others

RESPONDENT

Date of Decision : 15-05-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2019) 05 P&H CK 0125

Hon'ble Judges : Surinder Gupta, J

Bench : Single Bench

Advocate : Subhash Goyal

Final Decision : Allowed

Judgement

This is appeal against the award dated 14.05.2010 passed by Motor Accident Claims Tribunal, Amritsar, whereby the petition filed by claimant Surjit Kaur under Section 163-A of Motor Vehicles Act was allowed and a compensation of Rs.3,40,500/- was awarded to the claimant for death of her son Jagjit Singh in a motor vehicle accident that took place on 07.12.2007 due to use of motorcycle bearing registration No.PB-02-AS-2158, owned by respondent No.2-Gurmej Singh.

Learned counsel for the appellant has argued that the present claim petition filed by mother of deceased Jagjit Singh claiming compensation under Section 163-A of Motor Vehicles Act is not maintainable as the motorcycle which met with the accident, was owned by father of deceased namely Gurmej Singh-respondent No.2.

The tribunal has discussed the brief facts of the case in para 2 of the award, which reads as follows:-

"2. Briefly, the facts of the claim petition are that on 07.12.2007, Jagjit Singh son of Gurmej Singh, on his motor-cycle bearing registration No.PB-02-AS-2158 and his elder brother Gurpreet Singh son of Gurmej Singh on his motor cycle

along with his father's younger brother Sukhdev Singh son of Inder Singh (pillion rider) residents of Village Bhalaipur Dogran, were going to meet their father's sister Manjit Kaur wife of Balwinder Singh, resident of Village Dulo Nagpal. At about 6.45 p.m. when they reached little ahead of Pull Cheema Baath Pheruman, a tractor trolley was coming from village Cheema Baath from opposite direction. The driver of the tractor trolley took his vehicle on the wrong side of the road and struck his tractor trolley against the motor cycle of Jagjit Singh and due to its impact, Jagjit Singh along with his motorcycle fell on the ground on the road and received serious head injuries and died at the spot. The motor-cycle was badly damaged. The driver of the tractor trolley ran away towards village Blue Nangal along with tractor trolley. It was dark in the night. Neither driver of the tractor trolley, nor, its number could be identified. The accident had occurred, which arose out of the use of motor cycle No.PB-02-AS-2158 and a compensation for the sum of Rs.20 lacs has been claimed."

The claim petition has been filed against the owner of the motorcycle which the deceased was driving and its insurer. The question, which arises for consideration, in brief, is as to whether liability of the insurer under Section 163-A Motor Vehicles Act is attracted?-

Learned counsel for the appellant has relied on the observations of Hon'ble Apex Court in case of Nigamma & Anr. Vs. United India Insurance Co. Ltd. 2009(13) SCC 710, wherein it was observed as follows:-

"18. 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 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.

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 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."

Section 163-A of Motor Vehicles Act specifically provides that owner of the motor vehicle or 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.

As per provisions of Section 163-A, which have been defined in case of Nigamma & Anr. Vs. United India Insurance Co. Ltd. (supra), the liability of owner and authorised insurer of the offending vehicle is to pay the compensation to the legal heirs or the victim as the case may be. In this case, the deceased was the borrower of the offending vehicle owned by respondent No.1 and Hon'ble Apex Court has specifically held that the legal heirs of the owner or the borrower are not entitled to claim compensation under Section 163-A. The tribunal, while passing the award, has not looked into the ratio of law in case of Nigamma & Anr. Vs. United India Insurance Co. Ltd. (supra).

As a sequel of my above discussion, this appeal has merits and the same is accepted. Impugned award dated 14.05.2010 passed by the tribunal is set aside. The appellant is entitled to recover the amount of compensation, if already paid to the claimant.