

(2010) 05 P&H CK 0335
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 1200 of 2008

United India Insurance Company Ltd.	APPELLANT
Vs	
Angrej Singh and Another	RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2012) ACJ 1329 : (2011) 3 TAC 219

Hon'ble Judges : Tej Pratap Singh Mann, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.R.S. Mann, J.—Against the impugned award passed by Motor Accidents Claims Tribunal, Fast Track Court, Sirsa, the Insurance Company has filed the present appeal with a prayer that the said award is set aside qua the Insurance Company whereas the claimant has filed F.A.O. No. 3759 of 2008 wherein he has prayed for enhancement of the amount of compensation. Accordingly, both the appeals are being decided together. In his claim-petition filed u/s 163A of the Motor Vehicleless Act, claimant-Angrej Singh prayed for grant of compensation of Rs. 8,00,000/- alongwith interest @ 18% per annum on account of the injuries and permanent disability sustained by him in a motor vehicular accident arising out of use of scooter No. HR-25A-6305. According to him, he alongwith his brother Devender Singh was going on the aforementioned scooter from Mandi Dabwali towards his village Alikan. When they reached near Shergarh, their scooter struck a car. A case bearing FIR No. 230 dated 5th November, 2004 was registered at Police Station City, Dabwali in respect of the accident. According to the claimant, he sustained serious and grievous injuries in the accident. His monthly income was not more than Rs. 4,000/-. He remained admitted in several hospitals and spent more than Rs. 1,50,000/- on his treatment. Despite the same, he required further treatment. The aforementioned scooter, which the claimant and his brother Devender Singh were riding on the day of accident, was

owned by their brother Jitender Singh and insured with United India Insurance Company. Accordingly, Jitender Singh was arraigned as Respondent No. 1 while Insurance Company as Respondent No. 2 in the claim petition. Upon notice, Respondent No. 1 was proceeded against ex parte. However, Respondent No. 2 filed the written statement wherein apart from taking preliminary objections regarding maintainability, cause of action, suppression of truth and material facts, petition being vague, incomplete and insufficient pleadings etc., it was alleged that the accident took place due to rash and negligent driving on the part of the driver of Fiat car bearing registration No. DDU-6212. However, the said car was not insured and for that reason the claim-petition had been filed u/s 163A of the Motor Vehicleless Act so as to claim compensation for the injuries received by the claimant on account of use of a Motor Vehicles. After hearing Learned Counsel for the parties and going through the records, learned Tribunal held that the accident in question had taken place due to use of scooter bearing No. HR-25A/6305. Although the claim was sought on the basis of no fault liability but even if the driver of the car was facing criminal proceedings, it made no difference,. Accordingly, the Tribunal awarded an amount of Rs. 1,64,700/- to the claimant as compensation against the Respondents jointly and severally alongwith interest @ 7% per annum. Admittedly, the scooter bearing registration No. HR-25A/6305 which was being used by the claimant and his brother for going from Mandi Dabwali towards their village Alikan, was owned by their brother Jitender Singh. For that reason, he filed the claim-petition u/s 163A of the Motor Vehicleless Act by impleading his brother Jitender Singh as Respondent No. 1 and United India Insurance Company Limited, the insurer of the scooter belonging to Jitender Singh, as Respondent No. 2.

2. It has been held by the Hon"ble Supreme Court in *Ningamma and Anr. v. United India Insurance Company Ltd.* 2009 (3) R.C.R. (Civil) 435 : 2009 (3) T.A.C. 13 that where the borrower of a vehicle died in the accident, his legal heirs were not entitled to claim compensation u/s 163A of the Act as borrower would be considered owner of the vehicle. The relevant observations made by the Hon"ble Supreme Court are as follows:

In the case of *Oriental Insurance Company Ltd. v. Rajni Devi and Ors.* 2008 (4) R.C.R. (Civil) 817 : 2008 (2) T.A.C. 752 wherein one of us, namely, Hon"ble Justice S.B. Sinha is 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. It was held in the said decision that Section 163A of the Motor Vehicleless Act cannot be said to have any application in respect of an accident wherein the owner of the Motor Vehicles himself is involved. The decision further held that the question is no longer *res Integra*. The liability u/s 163A of the Motor Vehicleless Act 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 163A of the M.V. Act. In our considered opinion, the ratio of the aforesaid decision 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 employee of the owner of the motorbike although he was authorized 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 163A of the Motor Vehicleless Act 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 Vehicles 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 u/s 163A. But if it is proved that the driver is the owner of the Motor Vehicles, 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 163A of the M.V. Act. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the Motor Vehicles could not have claimed compensation u/s 163A of the M.V. Act. 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 u/s 163A of the Motor Vehicleless Act 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.

3. In *New India Assurance Company Ltd. v. Sadanand Mukhi and Ors.* 2009 (1) R.C.R. (Civil) 817 : 2009 (1) T.A.C. 425 the Hon'ble Supreme Court held that the owner of a vehicle was not entitled to any claim where the accident took place on account of some animal coming in front of a Motor Vehicles. Even son of owner was not a third party in relation to Insurance Company.

4. In view of the above, learned Tribunal was not justified in accepting the claim-petition filed by the claimant u/s 163A of the Motor Vehicleless Act, by granting him compensation to the tune of Rs. 1,64,700/-.

5. Resultantly, the present appeal, i.e. F.A.O. No. 1200 of 2008 filed by the Insurance Company is accepted and the impugned award passed by Motor Accidents Claims Tribunal while granting amount of; Rs. 1,64,700/- to the claimant is set-aside. As a corollary thereof, F.A.O. No. 3759 of 2008 filed by the claimant for enhancement of the amount of compensation is dismissed.

Appeal allowed.