

CASE NO.:
Appeal (civil) 2892 of 2008

PETITIONER:
Oriental Insurance Co. Ltd

RESPONDENT:
Rajni Devi & Ors

DATE OF JUDGMENT: 22/04/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 2892 OF 2008
(Arising out of SLP (C) No.11521 of 2007)

S.B. Sinha, J.

1. Leave granted.
2. Respondent filed an application under Section 163-A of the Motor Vehicles Act, 1988 (the Act) claiming compensation for death of one Janak Raj (the deceased). He was riding on a motorcycle along with one Sukhdev Raj. Who was actually on the driver's seat is not known. The motorcycle is said to have gone out of control resulting in the accident.
3. Appellant herein, having been issued notice, resisted the claim, inter alia, contending that although the owner of the vehicle deposited an extra amount of Rs.50 covering his personal insurance, the same would not cover the case of the pillion rider and in any event, the owner of the vehicle is not a third party within the meaning of Section 147 of the Act. The Motor Vehicles Accident Claims Tribunal, having regard to the pleadings of the parties, framed the following issues :
"1. Whether on 7.9.2004 at 4.05 pm Janak Raj had died in a road accident? OPP
2. Whether the Claimants are LR's and were dependant upon the deceased? OPP
3. Whether the claimants are entitled to compensation? If so, how much and from which of the respondents? OPP
4. Whether the motorcycle was being driven in contravention of terms and conditions of the insurance policy? OPR
5. Whether the driver of the motorcycle was not holding a valid and effective driving licence? OPR
6. Whether the claim petition is bad for non-joinder of necessary parties? OPR
7. Relief."

4. The Tribunal noticed that the First Information Report (FIR) lodged at the Police Station in relation to the said accident was not clear to establish as to who was driving the motorcycle but despite the same proceeded to determine the question as to whether Janak Raj being himself the tortfeasor, any application under Section 163-A of the Motor Vehicles Act was maintainable. The premise on which the Tribunal proceeded to determine the said issue was that a comprehensive insurance policy having been taken, the only question which arose for its consideration was as to whether the

accident took place by reason of use of the motor vehicle irrespective of the fact as to whether the deceased or the said Sukhdev Raj was driving the motorcycle or not. It, however, held that if the deceased was the tortfeasor, the question of reimbursement of any amount of compensation by the insurer would not arise, opining :

"If we presume that deceased had no comprehensive policy even then, claimants are entitled to compensation because evidence is silent as to who was driving the offending vehicle."

5. On issue Nos.4, 5 and 6, the Tribunal held :

"Onus to prove all the issues was upon the Insurance Company. As discussed in the preceding issues, offending vehicle was insured but no evidence on the file as to who was driving the motor cycle. That is whether Janak Raj was driving the motorcycle or Sukhdev Raj was driving the motorcycle. Janak Raj and Sukhdev Raj were on the motor cycle. Both received injuries in the accident. Sukhdevraj had succumbed to his injuries in the Civil Hospital, Dalhousie. Janak Raj was shifted to different hospitals. Ultimately, Janak Raj had also succumbed to his injuries. Motorcycle was owned by Janak Raj. Counsel for the company failed to convince how the petition is bad for non-joinder of necessary parties and what is the effect of non-production of driving licence when evidence is not clear as to who was driving the offending vehicle. So, all the issues are decided against the Insurance Company."

6. It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. 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 insurance company would depend upon the terms thereof.

7. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle.

Section 163-A reads thus :

163A. Special provisions as to payment of compensation on structured formula basis\027(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 sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (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."

The said provision cannot be said to have any application in regard to an accident wherein the owner of the motor vehicle himself is involved. The question is no longer res integra.

8. In *Oriental Insurance Co. Ltd. v. Smt. Jhuma Saha & Ors.* [AIR 2007 SC 1055], it was held :

"10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.

11. Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise.

12. In *Dhanraj v. New India Assurance Co. Ltd.*² it is stated as follows :

"8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

* * *

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs 4989 paid under the heading 'Own damage' is for covering liability towards personal injury. Under the heading 'Own damage', the words 'premium on vehicle and non-electrical accessories' appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."

9. In *National Insurance Co. Ltd. v. Laxmi Narain Dhut* [2007 (4) SCALE 36], it has been held :

"Where the claim relates to own damage claims, it cannot be adjudicated by the insurance company. But it has to be decided by another forum i.e.

forum created under the Consumer Protection Act, 1985(in short the 'CP Act'). Before the Tribunal,, there were essentially three parties i.e. the insurer, insured and the claimants. On the contrary, before the consumer forums there were two parties i.e. owner of the vehicle and the insurer. The claimant does not come into the picture. Therefore, these are cases where there is no third party involved."

The said principle has been reiterated recently in Prem Kumari & Ors. v. Prahlad Dev & Ors. [2008 (1) SCALE 531] and Oriental Insurance Co. Ltd. v. Prithvi Raj [2008 (1) SCALE 727].

10. The liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a receiptent. The heirs of Janakraj could not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to.

11. According to the terms of contract of insurance, the liability of the insurance company was confined to Rs.1,00,000/- (Rupees one lac only). It was liable to the said extent and not any sum exceeding the said amount.

12. To the aforementioned extent, the appeal is allowed. No costs.