

**(2011) 01 RAJ CK 0064**

**Rajasthan High Court (Jaipur Bench)**

**Case No:** Civil Miscellaneous Appeal No. 1942 of 2008

Smt. Indira Devi and Others

APPELLANT

Vs

Naresh and Another

RESPONDENT

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**Date of Decision:** Jan. 7, 2011

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 147, 163A

**Hon'ble Judges:** R.S. Chauhan, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

R.S. Chauhan, J.

Aggrieved by the award dated 12.2.2008, passed by the Motor Accident Claims Tribunal (Fast Track) Kotputli, District Jaipur, whereby the learned Tribunal has exonerated the Insurance Company from the liability of paying the compensation amount of Rs. 3,69,500/-, the Appellants-claimants have approached this Court.

2. Shortly, the facts of the case are that according to the Appellants, Santosh Kumar was riding a scooter. When he reached Handi Ka Bas Tan Macha, the scooter collided with a person who was going ahead. Consequently, Santosh Kumar fell from the scooter and sustained grievous injuries. Subsequently, he died. Deprived of the bread earner of the family, the Appellants filed a claim petition before the Tribunal. The Respondents filed their written statements and denied the averments made in the claim petition. On the basis of the pleadings, the learned Tribunal framed five issues. It recorded the evidence adduced by the parties. After hearing both the parties, vide order dated 12.2.2008, the learned Tribunal granted a compensation of Rs. 3,69,500/- in favour of the Appellants. However, it exonerated the Insurance Company from the liability of payment of the said compensation amount. Hence, this petition before this Court.

3. Mr. Vinay Mathur, the learned Counsel for the Appellants, has vehemently contended that according to the learned Tribunal, the vehicle was insured for "OD claim", "owners claim" and "third party claim". According to the evidence available on record, the Respondent No. 1, Naresh, son of the deceased, was the owner of the vehicle. The vehicle was insured with the Respondent No. 2, the Oriental Insurance Company. Thus, the contract was between the Insurance Company and Naresh. The contract was not between the Insurance Company and the deceased. Therefore, according to the learned Counsel, the deceased was "a third party". Since the vehicle was insured for third party claim, the Insurance Company was certainly liable. Moreover, the claim petition was filed u/s 163A of the Motor Vehicle Act("the Act", for short).Section 163A of the Act begins with the non-obstante clause. Therefore, it overrides the requirements of Section 147 of the Act. Hence, the learned Tribunal has erred in absolving the Insurance Company from its liability to pay the compensation amount. In order to buttress this contention, the learned Counsel has relied upon the case of [Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda](#), and on the case of United India Insurance Company Ltd. v. Smt. Rekha and Ors. 2007 R.A.R. 435 (Raj.).

4. On the other hand, Mr. Buddhi Prakash, the learned Counsel for the Insurance Company, has strenuously pleaded that the deceased had expired only due to his own negligence. Therefore, the claim petition was not maintainable u/s 163A of the Act. Secondly, since the deceased was the father of Respondent No. 1, he cannot be considered as "a third party". Thirdly, the Insurance Company had not charged the extra premium to cover the rider of the vehicle. Since the deceased was riding the vehicle at the fatal moment, the Insurance Company is not liable to pay the compensation. Hence, the learned Tribunal was justified in absolving the Insurance Company from its liability.

5. In rejoinder, the learned Counsel for the Appellants has contended that in the case of Deepal Girish Bhai Soni and Ors. (Supra), the Hon"ble Supreme Court has already observed that even if the accident was caused due to the negligence of the deceased himself, even then a petition is maintainable u/s 163A of the Act. Moreover, since the Insurance Company has not filed an appeal against the impugned award, it cannot raise an objection to the maintainability of the petition.

6. Heard the learned Counsel for the parties, perused the case law cited at the Bar, and examined the impugned award.

7. This case raises two legal issues before this Court: firstly, whether a petition u/s 163A of the Act is maintainable, in case the deceased was himself negligent in causing the accident, or not ? Secondly, whether the Insurance Company is liable to pay the compensation amount for the death of Santosh Kumar, who was the father of the owner of the vehicle, or not ? The first issue is no longer res integra as in the case of Smt. Rekha and Ors. (Supra), this Court has already held that in case the accident was caused by the negligence of the driver, even then a claim petition u/s

163A of the Act is maintainable. Therefore, the first contention raised by the learned Counsel for the Insurance Company is not maintainable.

8. So far as the term "third party" is concerned, the insurer is the first party, and the insured is the second party. Therefore, any other person who is not the first party or the second party, obviously would fall in the category of "third party". In the case of [National Insurance Co. Ltd. Vs. Faqir Chand and Others](#), their Lordship of the Hon"ble Jammu and Kashmir High Court dealt with the issue what is the true meaning of the expression "third party". Their Lordship observed as under:

A contract of insurance has two parties to it, the insurer and the insured. These are the contracting parties of the contract of insurance and they, therefore, can be called as the first party and the second party. Any party, therefore, which is not a contracting party to the policy of insurance will automatically be referred to and called as a third party because it is neither the first party (the insurer) nor the second party (the insured) (or vice versa, if one pleases).

The use of the words "third Party" therefore, in Chapter XI of the Motor vehicles Act clearly refers to the intention of the legislature to point out to a party which is neither the first party nor the second party to a contract of insurance.

Other than the contracting parties to the insurance policy, the expression "third party", therefore, should include everyone, be it a person travelling in another vehicle, or one walking on the road or a passenger in the vehicle itself which is the subject-matter of the insurance policy.

9. Applying the said principle, obviously in the present case, the Insurance Company was the first party and the Respondent No. 1, Naresh, was the second party. Therefore, the deceased falls under the definition of words "third party". Moreover, according to the learned Tribunal, the vehicle was insured for third party risk. Therefore, the learned Tribunal is not justified in absolving the Insurance Company from its liability to cover the death of "third party".

10. Hence, this appeal is, hereby, allowed and the award dated 12.2.2008 is, hereby, modified to the limited extent that the Insurance Company is directed to pay the compensation amount to the Appellants-claimants within a period of two months from the date of receipt of the certified copy of this judgment by the learned Tribunal.