

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 23 of 2010

1. Smti Suchitra Choudhuri (Dey),
W/O – Late Apan Dey.
2. Smti Rishipta Dey,
D/O – Late Apan Dey.
(Being a minor represented by her mother
Smti Suchitra Dey).
Both are resident of Krishna Nagar,
Nutunpalli, Agartala, West Tripura.

..... *Appellants*

- Vs. -

1. Sri Naresh Debbarma,
S/O Sri Dinesh Debbarma,
R/O – Vill – Kalyan Thakur para,
P.O. – Birendranagar, P.S. – Jiraniya,
West Tripura.
2. The Divisional Managar,
The Oriental Insurance Co. Ltd.,
Agartala, West Tripura.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants	: Mr. A. De, Advocate.
For the respondent No.2.	: Mr. P. Gautam, Advocate.
Date of hearing	: 28.01.2015.
Delivery of Judgment & order	: 24.02.2015.
Whether fit for reporting	: Yes.

JUDGMENT & ORDER

The short but interesting question which arises in this appeal is whether the legal heirs of a person who himself was

driving the vehicle and was responsible for the accident are entitled to claim compensation under Section 163A of the Motor Vehicles Act, 1988?

2. The widow and daughter of late Apan Dey filed a claim petition under Section 163A of the Motor Vehicles Act before the Motor Accident Claims Tribunal. In this claim petition, it was alleged that the deceased Apan Dey was driving a Bajaj Pulser motor cycle owned by Sri Naresh Debbarma. It is alleged that when Apan Dey driving the motor cycle reached near Madhab bari, the motor cycle went out of control and he fell down and died. According to the claimants this happened because there was a speed breaker and while crossing the speed breaker Apan Dey lost control of the bike hit a tree, suffered injuries on his head and expired. The learned Tribunal held that the claim petition was not maintainable against the insurance company, but awarded Rs.1,00,000/- as compensation to the claimants on the ground that under the terms of insurance there was a cover of Rs.1,00,000/- for personal accident insurance.

3. In ***Oriental Insurance Co. Ltd. vs. Jhuma Saha and others, 2007 ACJ 818***, the Apex Court held that where the owner of the vehicle himself is to be blamed for the accident and no other motor vehicle is involved then his heirs cannot claim any compensation. The principle laid down was that a person cannot be

a plaintiff and the defendant at the same time. The insurance company is only to indemnify the owner and the legal heirs of the owner cannot file a claim against the insurance company.

4. In ***Ningamma and another vs. United India Insurance Co. Ltd., 2009 ACJ 2020***, the Apex Court was dealing with a case the facts of which case are similar to the facts of the present case. In that case, the deceased had borrowed a motor cycle from the owner. He while driving the motor cycle hit a bullock cart, but no other motor vehicle was involved. The Apex Court held that the borrower of the motor cycle steps into the shoes of the owner and since the owner cannot himself be a recipient of compensation as liability to pay the same is on him the borrower in case of injury or his legal heirs in the case of death of borrower of the vehicle are not entitled to claim compensation. The question considered by the Apex Court has been set out in para 13 of the report which reads as follows:-

"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 the 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 representative?"

5. The Court after referring to the legal provisions and various other judgments including ***Oriental insurance Co. Ltd. vs. Rajni Devi and others, 2008 ACJ 1441*** held as follows:-

"18. In the case of Oriental Insurance Co. Ltd. v. Rajni Devi, 2008 ACJ 1441 (SC), wherein one of us, namely, Hon'ble Justice S.B. Sinha was 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 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA 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 163-A of the MVA. 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 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."

The present case is clearly covered by the aforesaid judgments.

6. Thereafter, in **2012 ACJ 1, National Insurance Co. Ltd. v. Sinitha and others**, the Apex Court held that even liability under Section 163A is founded on fault liability principle. It may, however, be pertinent to mention that the correctness of the judgment rendered in **Sinitha's (supra)** case has been doubted by another two Judge Bench of the Apex Court in **2013 ACJ 2856, United India Insurance Co. Ltd. vs. Sunil Kumar and another**, which ordered as follows:-

"9. We, therefore, find ourselves unable to agree with the reasoning of the two-Judge Bench in Sinitha's case, 2012 ACJ 1 (SC). Consequently, the matter is placed before the learned Chief Justice of India for referring the matter to a larger Bench for a correct interpretation of the scope of section 163-A of the Motor Vehicles Act, 1988, as well as the point Nos. (iii) to (v) referred to in Shila Datta's case, 2011 ACJ 2729 (SC)."

However, the law as laid down in **Rajni's (supra)** case and **Nigamma's (supra)** case continues to hold the field.

7. It would be pertinent to mention that this view has been followed by the High Court of Andhra Pradesh in **2013 ACJ 2586, Bajaj Allianz General Ins. Co. Ltd. v. Gaddam Swami Reddy and another**, by the Chhattisgarh High Court in **2014 ACJ**

101, New India Assurance Co. Ltd. vs. Prahlad Sahu and another, the Allahabad High Court in **2014 ACJ 252, Raj Kumari Chaurasia and others vs. New India Assurance Co. Ltd.**, the Punjab And Haryana High Court in **2014 ACJ 2803, Bajal Allianz General Insurance Co. Ltd. vs. Kanchan and others** and many other judgments.

8. Therefore, I am of the considered view that this case is squarely covered by the Judgment in **Ningamma's (supra)** case and as such the claimants were not entitled to claim compensation under Section 163A of the Act. Since the insurance company has not challenged that portion of the award which is made in favour of the claimant I need not go into that aspect of the matter.

9. Therefore, I find no merit in this appeal which is accordingly dismissed.

CHIEF JUSTICE

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