HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.285 of 2013

ORDER:

This appeal is filed against the order and decree dated 30-07-2011 passed in O.P.No.60 of 2010 by the VI Additional District Judge, Anatapur at Gooty granting compensation of Rs.3,50,000/- in favour of respondent No.1 in the appeal.

The case of appellant is that the respondent No.1 filed OP.No.60 of 2010 in respect of death of her son Ranganayakulu, while he was driving the Motor cycle along with one Laxminarayana, a lorry driver proceeding to Gooty from Anantapur to bring spare parts. After purchasing the spare parts. While they were returning, their Motor cycle dashed against the stationed tractor at Gooty-Ananthapur cross. As a result, the deceased sustained head injury and also other parts of the body and deceased was shifted to Government hospital, Gooty, where he was declared as dead. Police registered a case in Cr.No.172 of 2007. The 2nd respondent herein is the driver of the offending tractor and the appellant herein is the Insurance Company.

The 1st respondent before the Tribunal i.e. owner of the offending tractor remained exparte. Insurance Company took a plea before the Tribunal that the accident took place due to rash and negligent driving of the Motor cycle by deceased, when it dashed against the offending tractor which was stationed on the road. Three persons are riding on the
Motor cycle as against the terms and conditions of the policy. There is no valid driving licence to the deceased. As such, the appellant is not liable to pay compensation. The trial Court basing on the evidence of Pw.1 and Exs.A-1 to A-3 and basing on the evidence of RW.1 and Exs.B.1 to B-3 awarded compensation in favour of respondent No.1 herein.

Learned counsel for the appellant submits that deceased himself was driving the vehicle rash and negligently, as such, the Insurance Company is not liable to pay compensation. Section 163-A of Motor Vehicles Act (for short "the Act") is not applicable to the present case, since deceased himself was driving the vehicle rash and negligently. The said Section applies in case deceased is a third party and the Tribunal wrongly held that the claimant is not required to plead and establish the act of negligence or default of deceased. In support of his contentions, he relied on the judgment of **Ningamma and another v. United India Insurance Company Limited**[1] and states that facts of the present case and in the Supreme Court case are almost identical. He also relied on the judgment of **Oriental Insurance Company Limited v. Rajni Devi and others**[2] and **Appaji (since deceased) and another v. M.Krishna and another**[3] **and** judgment of this Court in **Bajaj Alianz General Insurance Co.Ltd v. Gaddam Swami Reddy & another** in MACMA No.496 of 2011.

Though notice is served on the respondents, none appeared.

This Court in MACMA.No.496 of 2011 held as follows:

> 8. "Learned Tribunal below fastened the liability on the appellant-Insurance Company taking the view that in a claim preferred under Section 163-A of the Motor Vehicles Act, the claimant is not required to plead or establish that the permanent disablement is the result of any wrongful act, negligence, or defect of the owner of the vehicle concerned. The principle contention of the Insurance company is that since the accident was on account of the fault of the claimant himself, he cannot maintain a claim under Section 163-A of the Act.
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> 9. In view of the legal position discussed above, the claim made under
> Section 163-A of the Act is founded on the fault liability principle. The law only enables the claimant to seek relief under Section 163-A of the Act on structured formula basis. To fasten the liability on the insurance company, the claimant is required to establish either that he is a third party or that his risk covered under the terms and conditions of the policy. The claimant in the instant case is admittedly not a third party. He did not adduce any evidence showing that the accident occurred in the course of his employment with the second respondent-owner of the vehicle or that under the terms and conditions of the policy under which the car involved in the accident was insured with the appellant-insurance company his risk is covered. The Tribunal had recorded a categorical finding that the accident was on account of the fault of the claimant himself who was driving the vehicle at material time. Therefore, under law, he is not entitled to maintain a claim under the provisions of Section 163-A of the Motor Vehicles Act which founded on fault liability principle. Therefore, the Tribunal in my considered view went wrong in holding that the claim under Section 163-A of the Act is maintainable before it and that the insurance company is liable to pay compensation to the claimant. The said finding is liable to be set aside in the present appeal."

This Court followed several judgments in the above said MACMA viz., **Oriental Insurance Company Limited v. Meena Variyal and others**[4]**, Oriental Insurance Company Limited v. Dhanbai Kanji Gadhvi and others**[5]**, National**

Insurance Company Limited v. Sinitha and others[6], Appaji (Since deceased) and another v. M.Krishna and another[7].

In the judgment cited (1 supra), the Apex Court in para Nos 18, 19 held as follows:

> 18. " In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, 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 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.
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> 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."

In view of the law laid down by Apex Court and the judgment of this Court referred to supra the findings of the Tribunal that respondent No.1/claimant need not plead and prove rash or negligence act on the part of owner of the offending vehicle to claim compensation is erroneous. Accordingly, the impugned order is set aside and the matter is remanded to the Tribunal to decide the same afresh. It is needless to observe that the amount withdrawn by the respondent No.1 will always be subject to the result of O.P.

Accordingly, the MACMA is allowed to the extent indicated above. As a sequel to the disposal of this Appeal, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

23-11-2015
Note:
Issue C.C. in two weeks.
B/o.
Nvl

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[1] 2009 ACJ 2020

[2] 2008 ACJ 1441

[3] 2004 ACJ 1289

[4] 2007 LAWS (SC) 4-7

[5] 2011 ACJ 721

[6] 1 (2012) ACC 524 (SC)

[7] 2004 ACJ 1289