AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on: 07/11/2016

Judgment Delivered on : 23/12/2016

Miscellaneous Appeal No. 129 of 2006

Oriental Insurance Company Ltd. Through its Branch Manager, Oriental Insurance Company Ltd. Dayalbandh, Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. Ku. Chanchal Khatri, aged 10 years.
2. Darshan Kumar, aged 7 years.

   Both children of Late Vijay Kumar Khatri, Minors, through their guardian Ramesh Khatri (Uncle) S/o Late Molchand, aged 36 years.

   Both R/o Near Radhakrishan Mandir, Torwa, PS Torwa, District Bilaspur, Chhattisgarh.
3. Vishwanath S/o Ramji Dhuri, aged 22 years, R/o Butapara Do Muhani, PS Torwa, District Bilaspur, Chhattisgarh.

---- Respondents

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---- Respondents

For Appellant/Insurance Company	:	Shri Abhishek Sinha and Shri Ghanshyam Patel, Advocates.
For Respondents/Claimants	:	Shri Akash Pandey, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

C.A.V. Judgment

1. These two appeals are being disposed of by a common judgment since they arise out of one accident.

2. The facts relevant for disposal of these appeals are that on 22.12.2003, deceased Vijay Kumar Khatri alongwith his wife Smt. Meena Khatri were returning back from Bhilai to Bilaspur in Alto Car bearing registration No. CG-10-BB-1133 which was being driven by Respondent No. 3-Vishwanath. The deceased Vijay Kumar Khatri was the owner of the said car. This car hit a tree, as a result of which Vijay Kumar Khatri and his wife Smt. Meena Khatri sustained injuries and died. Thereafter, children of deceased Vijay Kumar Khatri and Smt. Meena Khatri, namely Ku. Chanchal Khatri and Darshan Kumar filed two claim petitions claiming compensation under Section 166 of the Motor Vehicles Act. It is alleged that the vehicle was being driven by Respondent No. 3-Vishwanath S/o Ramji Dhuri in a rash and negligent manner and the accident occurred due to his negligence.

3. The Insurance Company contested both the claim petitions and the stand of the Insurance Company was that since Vijay kumar Khatri was himself owner of the vehicle and the claimants were legal heirs of Vijay Kumar Khatri and had become owners of the vehicle after death of Vijay Kumar Khatri and Smt. Meena Khatri, they could not claim compensation in respect of death of Vijay Kumar Khatri and Smt. Meena Khatri. It is alleged that the deceased Vijay Kumar Khatri and Smt. Meena Khatri could not be termed to be third parties. The learned Claims Tribunal framed issue No. 4 in this regard. The finding of the Tribunal is that since the vehicle was insured and clause (3) of the Insurance Policy provides that the owner is to be reimbursed for any loss which may occur and therefore, the Insurance Company was liable to pay the amount.

4. The main contention of Shri Abhishek Sinha, learned counsel appearing for the Insurance Company is that as far as Vijay Kumar Khatri is concerned, he being the owner of the vehicle, no claim petition is maintainable with regard to his death in the same vehicle. As far as Smt. Meena Khatri is concerned, the main contention is that as soon as Vijay Kumar Khatri died, Smt. Meena Khatri and the claimants became owners of the vehicle and therefore, they stepped into the shoes of the owner and therefore they cannot be both claimants and respondents at the same time.

5. The interesting question which arises in these appeals is whether the legal heirs of a person who was the owner of the vehicle and died in the accident would be entitled to claim compensation.

6. Under the law of torts, the principal wrong doer is the driver of the vehicle who has caused the accident due to his rash and negligent driving. The owner of the vehicle becomes liable only because of the application of the principle of vicarious liability whereby the employer is made liable for the wrongful acts of his employees. The insurance company is there to indemnify the owner. In a case of this nature the driver being the principal wrong doer has to be held jointly and severally liable to pay the compensation alongwith the owner and though finally the insurance company may be directed to deposit the compensation, the insurance company is only to indemnify the owner in terms of the policy and the owner is liable because of the wrongful acts of his employee.

7. Even if the driver was responsible, Vijay Kumar Khatri by applying the principle of vicarious liability also became liable to pay compensation. Therefore, in case he had suffered injuries, he could not have filed a claim petition against himself being owner of the vehicle. No person can be a plaintiff and a defendant at the same time. Unfortunately, Vijay Kumar Khatri died. This will not change the situation because the claimants, who were the legal heirs of Vijay Kumar Khatri cannot claim compensation for the death of Vijay Kumar Khatri when he himself was the owner of the vehicle. The Insurance Company was to indemnify Vijay Kumar Khatri for any compensation he may be liable to pay due to the negligence of his driver to third parties. However, as far as death of Vijay Kumar Khatri is concerned, the Insurance Company is not liable.

8. In this behalf, Shri Abhishek Sinha has place reliance on the judgment of this Court in *Oriental Insurance Company Ltd. v. Pooranlal & Another,* reported in AIR 2006 Chhattisgarh 77. Reliance has also been placed on the judgment of another Single Judge of this Court in *The Oriental Insurance Co. Ltd. v. Naresh Kumar Agrawal & Another,* reported in (2006) 2 CGLJ 388 wherein the owner of the vehicle had claimed compensation and the learned Court held that he was not entitled to claim compensation. The reasoning given in both the judgments appears to be that since the insurance policy is only required to cover liability of third parties, the owner not being a third party is not covered by the insurance policy.

9. I am in total agreement with the aforesaid view but in my view what is even more important is the fact that the owner cannot file a claim virtually against himself. In this behalf, reference may be made to the judgment of the Apex Court in *Dhanraj v. New India Assurance Company Ltd. & Another,* reported in (2004) 8 SCC 553. In this case, the Apex Court, after dealing with the provisions of Section 147 of the Motor Vehicles Act, 1988 held 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.
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> 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."

10. In *Oriental Insurance Company Ltd. v. Jhuma Saha (Smt.) & Others* reported in (2007) 9 SCC 263, the owner himself was driving the vehicle which due to his negligence dashed with a tree on the roadside and as a result of which he died. It was held that the claim on behalf of his legal heirs was not maintainable and unless it is shown that an additional premium for death of the owner is paid, the claim petition would not be maintainable. The Apex Court held as follows:

> "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."

11. Thereafter, the Apex Court referred to the judgment in *Dhanraj (supra)* and came to the conclusion that since no additional premium is paid covering risk of death of the owner, the Insurance Company could not be held liable.

12. In *Oriental Insurance Company Ltd. v. Rajni Devi & Others* reported in (2008) 3 ACJ 1441, the owner and another person were riding a motor cycle. However, there was no clear cut evidence as to who was driving the motor cycle. The motor cycle went out of control resulting in death of both the riders. The legal representatives of the owner filed claim petition under Section 163-A of the Motor Vehicles Act. The Apex Court following the judgment in *Oriental Insurance Company Ltd. v. Jhuma Saha (supra)* and *Dhanraj (supra),* held that the claim petition was not maintainable under Section 163-A of the Motor Vehicles Act. The relevant portion of the judgment reads as follows:

> "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 recipient. The heirs of Janak Raj 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."

13. In *Ningamma & Another v. United India Insurance Co. Ltd. r*eported in 2009 ACJ 2020, the Apex Court was dealing with a case in which 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?"

14. The Apex Court after referring to the legal provisions and various other judgments including *Oriental Insurance Co. Ltd. v. Rajni Devi and others,* reported in 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.
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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."

15. In *National Insurance Co. Ltd. v. Sinitha & Others* reported in (2012) 1 ACJ 1, the Apex Court, dealing with Section 163-A of the Motor Vehicles Act, held that where the deceased himself is responsible for the accident, his legal representatives would not be entitled to claim compensation. The relevant portion of the judgment reads as follows:

> "16. At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that section 163-A of the Act has an overriding effect on all other provisions of the *Motor Vehicles Act, 1988.* Stated in other words, none of the provisions of the *Motor Vehicles Act* which is in conflict with Section 163-A of the Act will negate the mandate contained therein (in section 163-A of the Act). Therefore, no matter what, section 163-A of the Act shall stand on its own, without being diluted by any provision. Furthermore, in the course of our determination including the inferences and conclusions drawn by us from the judgment of this court in *Oriental Insurance co. Ltd. v. Hansrajbhai v. Kodala,* 2001 ACJ 827 (SC), as also the statutory provisions dealt with by this court in its aforesaid determination, we are of the view that there is no basis for inferring that section 163-A of the Act is

> founded under the 'no fault' liability principle. Additionally, we have concluded hereinabove that on the conjoint reading of sections 140 and 163-A, the legislative intent is clear, namely, that a claim for compensation raised under section 163-A of the Act need not be based on pleadings or proof at the hands of the claimants showing absence of 'wrongful act', being 'neglect' or 'default'. But that is not sufficient to determine that the provisions falls under the 'fault' liability principle. To decide whether a provision is governed by the 'fault' liability principle, the converse has also to be established, i.e. whether a claim raised thereunder can be defeated by the concerned party (owner or insurance company) by pleading and proving 'wrongful act', 'neglect' or 'default'. From the preceding paras (commencing from para 12), we have no hesitation in concluding that it is open to the owner or the insurance company, as the case may be, to defeat a claim under section 163-A of the Act by pleading and establishing through cogent evidence a 'fault' ground ('wrongful act', 'neglect' or 'default'). It is therefore, doubtless that section 163-A of the Act is founded under the 'fault' liability principle. To this effect, we accept the contention advanced at the hands of the learned counsel for the petitioner."

16. Following the judgment in *Sinitha (supra)* a Full Bench of High Court of Kerala in *Oriental Insurance Company Ltd. v. Joseph & Others* (2012) 3 ACJ 1441 held that when a motorcyclist died due to his own negligence, the Insurance Company could not be held liable to pay compensation under Section 163-A of the Motor Vehicles Act. It would however be pertinent to mention that in *United India Insurance Company Ltd. v. Sunil Kumar & Another* reported in (2013) ACJ 2856, the correctness of the view rendered in *Sinitha* (supra) was doubted by the Apex Court and the matter was referred to Larger Bench. However, till date, the judgment rendered in *Sinitha (supra)* holds the field.

17. 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 Tgeneral*

Insurance Co. Ltd. v. Gaddam Swami Reddy & Another, by the Chhattisgarh High Court in 2014 ACJ 1010*, New India Assurance Co. Ltd. v. Prahlad Sahu & Another,* the Allahabad High Court in 2014 ACJ 252, *Raj Kumar Chaurasia and others v. New India Assurance Co. Ltd.,* the Punjab and Haryana High Court in 2014 ACJ 2803*, Bajaj Allianz General Insurance Co. Ltd. v. Kanchan and others* and many other judgments.

18. Therefore, I am clearly of the view that the claim petition in respect of death of Vijay Kumar Khatri was not maintainable.

19. However, as far as claim petition with regard to Smt. Meena Khatri is concerned, in my view the same was maintainable. Smt. Meena Khatri was not the owner of the vehicle. She may have been wife of the owner but that does not mean that she is the owner.

20. It is contended by Shri Abhishek Sinha, learned counsel for the Insurance Company that after the death of Vijay Kumar Khatri, Smt. Meena Khatri became the owner. Nobody knows who died first. Smt. Meena Khatri may have died first. She may have died simultaneously or soon thereafter. Whatever be the situation, the claim petition with regard to death of Smt. Meena Khatri is maintainable.

21. Another contention raised by Shri Abhishek Sinha is that the claimants themselves become owners of the car after the death of their parents and therefore, they cannot be permitted to file a claim virtually against themselves. In my view, this argument is without merit. The claimants were not owners when the accident took place. The accident had taken place due to the negligence of the driver of the vehicle-Vishwanath. At that time, their father was the owner and in case their father had not died, they would have been entitled to claim compensation for death of their mother in the accident. It would be a travesty of justice to hold that since both the mother and father died in the accident, the claim petition in respect of the mother is also not maintainable. Therefore, as far as the claim petition relating to Smt. Meena Khatri is concerned, I hold that the same is maintainable.

22. No appeal has been filed by the claimants for enhancement of the compensation with regard to the claim of Smt. Meena Khatri. The claimants who are minors should not be deprived of their legitimate right to get just compensation only because their guardian has not chosen to file an appeal for enhancement of the compensation. It is the duty of the Court to ensure that justice is done and the minors are awarded an amount which is legally due and payable to them.

23. The learned Claims Tribunal held that no evidence has been led to show that Smt. Meena Khatri was earning any amount. The Tribunal therefore assessed the income of the deceased at Rs. 15,000/- per annum. By deducting 1/3rd towards her personal expenses, the Tribunal assessed the dependency of the claimants to be Rs. 10,000/- per annum. Since deceased Smt. Meena Khatri was aged about 35 years, the Tribunal applying the multiplier of 16, assessed the compensation on account of loss of income at Rs.1,60,000/-. In addition thereto, the Tribunal also awarded Rs. 50,000/- each towards loss of love and affection and Rs. 5000/- for cremation expenses. Thus, the Tribunal awarded a total compensation of Rs.2,65,000/-.

24. To say the least, the approach of the learned Tribunal is not at all correct. The deceased belonged to a family where her husband was owner of a car and had employed a driver. Therefore, to assess her income only at Rs. 15000/- per annum is totally unjustified. Even assuming that the deceased was not working, she being a household lady, must have been contributing to her family.

25. In *Arun Kumar Agrawal v. National Insurance Co. Ltd.,* AIR 2010 SC 3426, the Apex Court, while dealing with the issue as to how the income of a housewife has to be assessed, approved the observation of the Andhra Pradesh High Court in the following terms:

> "**27**. In A. Rajam v. M. Manikya Reddy, 1989 ACJ 542 (Andhra Pradesh HC), M. Jagannadha Rao, J. (as he then was) advocated giving of a wider meaning to the word 'services' in cases relating to award of compensation to the dependents of a deceased wife/mother. Some of the observations made in that judgment are extracted below:
>
> > "The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of 'services' to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense

> of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife.

> While estimating the 'services' of the housewife, a narrow meaning should not be given to the meaning of the word 'services' but it should be construed broadly and one has to take into account the loss of 'personal care and attention' by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services."

26. The Apex Court, in *Arun Kumar Agrawal case* (supra), recognised the fact that the contribution made by the housewife to her house is invaluable and cannot be computed in terms of money. The gratuitous services, which are rendered by a housewife or a mother, are services rendered with true love and affection. These services can never be replaced by hiring a maid. One must remember that in Indian society, a mother not only serves her children, but she is also a teacher, guide, mentor and philosopher for them. A mother inculcates good habits in her children. It is the mother who teaches her children what is good and what is bad. These are moral values which can be taught by a mother only and no one else. While assessing the contribution of a mother, the Court should not only be guided by the material aspects, but also by the nature of the duties performed by her. A mother works with selfless devotion. She has no hours of work. She can be the first person to get-up in the morning in the house and can be the last person to go to sleep in the night. The contribution of a mother, in fact, can never be converted into rupees and paise. But, within the constraints of law and facts of each case, this Court has to decide what is the contribution of a mother?

27. Therefore, I assess the contribution of the deceased-Smt. Meena Khatri to the house at Rs. 4,000/- per month. Since, what I have assessed is the contribution of the deceased towards her family, no further deduction is required to be made because this is the assessment of the contribution being made by her to her family members and not the assessment of her earning capacity. Therefore, the annual income works out to (Rs.4,000/- x 12 =) Rs.48,000/-. By applying the multiplier of 16, the compensation on account of loss of income works out to (Rs.48,000/- x 16) Rs. 7,68,000/-. In addition thereto, a sum of Rs.50,000/- is awarded towards loss of love and affection and Rs. 25,000/- is awarded for funeral expenses. Thus, the total compensation works out to (Rs.7,68,000+50,000+25,000) Rs.8,43,000/-. Thus, the amount of compensation of Rs. 2,65,000/- awarded by the Claims Tribunal to the Claimants is enhanced to Rs.8,43,000/-. The amount of compensation shall be apportioned between the claimants equally.

28. On the amount of compensation of Rs.8,43,000/-, the Claimants shall also be entitled to interest @ 9% per annum shall from the date of filing of their claim petition till payment of the full amount of compensation. Amount of compensation already paid, if any, shall be adjustable in the amount of compensation awarded hereinabove.

29. The amount payable to claimants shall be kept in fixed deposits in a nationalised bank till they attain age of 21 years. However, the interest accruing on the deposit shall be paid to their guardian for meeting their day to day expenses.

30. In view of the above discussion, Miscellaneous Appeal No. 129 of 2006 is allowed and the award of the Tribunal dated 20.11.2004 in Claim Case No. 64 of 2004 is set aside and the claim petition filed by the claimants in respect of death of their father is dismissed. However, Miscellaneous Appeal No. 130 of 2006 is dismissed and the award of the Tribunal dated 20.11.2004 passed in Claim Case No. 65 of 2004 in respect of mother is modified to the extent indicated above.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Subbu