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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 248 of 2010

Bajaj Allianz General Insurance Company Limited, Branch Office Opposite Rajkumar College, Main Gate, Near ICICI Bank, G.E. Road, Raipur, District Raipur, Chhattisgarh

---- Appellant

Versus

1. Dayaram Dhurve S/o Late Ghurauram Dhurve, aged about 51 years, Caste Gond.
2. Smt. Jethia Bai, W/o Shri Dayaram Dhurve, aged about 45 years, Caste Gond, Both R/o Wards No.9, New Tikrapara, Khairagarh, Thana & Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh
3. Mo. Abdul Hamid Siddiqui, S/o Abdul Hamid Siddiqui, R/o Old Bus Stand, Khairagarh, Thana & Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh

---- Respondents

For Appellant	:	Shri S.S. Rajput, Advocate
For Respondents	:	None

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

23/12/2016

1. This appeal by the Insurance Company is directed against the award dated 22.10.2009 passed by the Additional Motor Accident Claims Tribunal, Khairagarh District Rajnandgaon (hereinafter called 'the Tribunal') in Claim Case No. 52 of 2008 whereby the learned Tribunal awarded compensation of Rs. 1,66,500/- as compensation to the claimants.

2. The short but interesting question which arises in this appeal is whether the claim petition is maintainable on behalf of a person who was driving the motorcycle.

3. Briefly stated the facts of the case are that the Respondents No.1 and 2/ claimants are parents of deceased Omprakash. It was alleged that on 23.05.2008 deceased Omprakash along with his friend was going to Chhuikhadan from Khairagarh on a Bajaj Motorcycle bearing registration No. CG-08H/6564 and at about 23:30 hours when they reached gas godown of village Pipariya the motorcycle slipped as a result of which, the deceased who was driving the vehicle sustained injuries and thereafter succumbed to the same. Respondent No.3 is the owner of the said motorcycle.

4. Under the law of torts, the principal wrong doer is the driver of the vehicle who has caused 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.

5. In *Ningamma & Another v. United India Insurance Co. Ltd. r*eported in 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?"

6. 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.

> 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."

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

8. 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.

9. 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 163-A of the Motor Vehicles Act.

10. In view of the above discussion, the appeal filed by the Insurance Company is allowed. The award of the learned Tribunal dated 22.10.2009 passed in Claim Case No. 52 of 2008 is set aside and the claim petition of the Claimants is dismissed.

11. Send down the records forthwith.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

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