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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on: 04/11/2016

Judgment Delivered on : 23/12/2016

Miscellaneous Appeal (C) No. 346 of 2006

The Oriental Insurance Company Ltd. Branch Manager, Ambedkar Chowk, Near Ambikapur, District Sarguja Chhattisgarh, Through Divisional Manager, The Oriental Insurance Company Limited, Division Office, Korba, Chhattisgarh.

---- Appellant

Versus

1. Manbodh Sahu S/o Ramkhelawan Age about 50 years.
2. Fulkunwar W/o Manbodh Sahu, age about 48years.
3. Gudita Widow Late Ramkumar Sahu, aged about 22 years.
4. Radha D/o Late Ramkumar Sahu, age about 2 years.
5. Shivkumar S/o Manbodh Sahu, age about 18years.
6. Rajesh Kumar S/o Manbodh Sahu, age about 16 years.
7. Babulal S/o Manbodh Sahu, age about 14 years.

   All R/o Village Salaka, Police Chouky Bhatgaon and Tahsil Surajpur, District Sarguja, Chhattisgarh.

   Respondent No. 4, 6 and 7 are minor through guardian Respondent No. 1, Manbodh Sahu.
8. Basant Lal Gupta S/o Devnarayan Age about 45 years, Occupation Teacher, Resident of village and PO Salaka Aghina District Sarguja, Chhattisgarh.

---- Respondents

Miscellaneous Appeal No. 674 of 2006

1. Manbodh Sahu S/o Ramkhelawan, aged about 50 years.
2. Fulkunwar wife of Manbodh, aged about 48 years.
3. Gudita, widow of Late Ramkumar Sahu, aged about 22 years.
4. Radha D/o Late Ramkumar Sahu, aged about 2 years.
5. Shivkumar S/o Manbodh Sahu, aged about 18 years.
6. Rajesh Kumar S/o Manbodh Sahu, aged about 16 years.

7. Babulal S/o Manbodh Sahu, aged about 14 years.

   Appellant No. 4, 6 and 7 minor through guardian (Appellant No. 1.)

   All R/o village Salka, PS Bhatgaon, Tahsil Surajpur, District Surguja, Chhattisgarh.

---- Appellants

Versus

1. Basant Lal Gupta S/o Devnarayan aged about 45 years, Occupation Teacher R/o village and post Salka (Adhina) District Surajpur, Chhattisgarh.
2. The Oriental Insurance Company Limited, Through the Branch Manager, Near Ambedkar Chowk, Ambikapur, District Surguja, Chhattisgarh.

---- Respondents

For Appellant/Insurance Company	:	Shri Sudhir Agrawal, Advocate.
For Respondents/Claimants	:	None.

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 short but interesting question which arises in these appeals 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 claimants who are the parents, widow, minor daughter, brothers and sisters of deceased Ram Kumar initially filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 in respect of death of Ram Kumar. In this claim petition, it was alleged that the deceased Ram Kumar used to work in the shop of Basantlal Gupta who was a Teacher by profession but he was also running an electronics and photography shop. The deceased was a photographer working in the said shop. On 07.01.2004, both of them went to Ambikapur on a motorcycle to purchase certain goods. Next day, i.e. on 08.01.2004, Basantlal Gupta returned alongwith the goods on a bus and on the asking of Basantlal Gupta, deceased Ram Kumar drove the Hero Honda motorcycle bearing registration No. CG-15-3801 and on the way the rear tyre of the motorcycle burst and the vehicle struck against a tree and as such, Ram Kumar died.

4. The claim petition was filed in the year 2004 but on 27.02.2006, an amendment was moved whereby the claim petition was converted to one under Section 163-A of the Motor Vehicles Act, 1988. The column with regard to the income of the deceased was not changed and his income was shown to be Rs. 150/- per day from photography and Rs. 25,000/- per year from agriculture. Therefore, according to the claimants, deceased Ram Kumar was earning Rs. 4500/- per month and Rs.54,000/- per annum from photography and Rs.25,000/- per annum from agriculture. Therefore, his total income is alleged to be Rs. 79,000/- per annum.

5. In *Deepal Girishbhai Soni & Others v. United Indian Insurance Co. Ltd. Baroda,* reported in (2004) 5 SCC 385, the Apex Court has clearly held that where income of the deceased is more than Rs. 40,000/- per annum, no claim petition under Section 163-A of the Motor Vehicles Act is maintainable.

6. The learned Tribunal gravely erred in permitting the claim petition filed under Section 166 to be converted to one under Section 163-A of the Motor Vehicles Act and that too, when admittedly the income alleged was Rs. 79,000/- per annum.

7. As far as claim petition under Section 166 of the Motor Vehicles Act is concerned, the deceased was not an engaged driver and since the accident occurred while he was driving the motorcycle, it was incumbent upon the claimants to show that the accident occurred due to the negligence of some other person. The claimants have failed to prove negligence of any other person. Their claim is that the tyre of the motorcycle burst. They have not even alleged that the motorcycle was not maintained properly. Therefore, it cannot be said that there is allegation of any negligence.

8. The facts of the present case are very similar to the facts of *Ningamma & Another v. United India Insurance Co. Ltd. r*eported in 2009 ACJ 2020 in which the Apex Court held 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?"

9. 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."

10. 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.

11. 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.

12. 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.

13. In view of the above discussion, Miscellaneous Appeal (C) No. 346 of 2006 filed by the Insurance Company is allowed and the award of the learned Tribunal dated 28.02.2006 passed in Claim Case No. 32 of 2004 is set aside. However, Miscellaneous Appeal No. 674 of 2006 filed by the claimants is dismissed.

14. Send down the records forthwith.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Subbu