

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Miscellaneous Appeal (C) No. 1268 of 2007**

1. Smt. Radha Bai, aged about 32 years, wrongly mentioned as 65 years, widow of Basant Singh.
2. Ku. Arti, aged about 12 years, D/o Basant Singh, Minor.
3. Ku. Savitri, aged about 10 years, D/o Basant Singh, Minor.
4. Sagar Singh, aged about 05 years, S/o Basant Singh, Minor.
5. Ankush Singh, aged about 02 years, S/o Basant Singh, Minor.

Appellant No. 1 to 5 are caste Rathore, No. 2 to 5 are minors and through natural guardian mother Smt. Radha Bai, all R/o Newsa, PS Gourela, Tahsil Pendra Road, District Bilaspur, Chhattisgarh.

---- Appellant

**Versus**

1. The Oriental Insurance Company Limited, Branch Bilaspur, District Bilaspur, Chhattisgarh.
2. Laxmi Singh aged about 60 years, S/o Bodhan Singh R/o Village Newsa, PS Gourela, District Bilaspur, Chhattisgarh.

---- Respondents

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| For Appellant/Claimant | : None |
| For Respondents        | : None |

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**Hon'ble Shri Deepak Gupta, Chief Justice****Judgment on Board****02/12/2016**

1. This case was earlier dismissed on 17.02.2012 for non-appearance of the counsel for the Appellants. It was restored on 20.11.2015. Today also, none is present on behalf of the Appellants. Therefore, I proceed to decide this appeal on merits.
2. This appeal by the claimants is directed against the award dated 14.08.2007 passed by the Additional Motor Accident Claims Tribunal,

Pendra Road, District Bilaspur (hereinafter called 'the Tribunal') in Claim Case No. 35 of 2006 whereby the learned Tribunal dismissed the claim petition filed by the claimants.

3. Briefly stated the facts of the case are that the claimants are widow and four minor children of deceased Basant Kumar Rathore. It was alleged that he was the driver of Mahindra Champion Minidoor bearing registration No. CG-10-A-6836, owned by his father Laxmi Singh. On 23.05.2005, when he was going from Gaurela to his village Newsa, on the crossing of Gorakhpur, the rear tyre of the minidoor burst and the vehicle overturned as a result of which, the driver suffered injuries and died.
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 *Oriental Insurance Co. Ltd. v. Jhuma Saha & 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.
6. In *Ningamma & Another v. United India Insurance Co. Ltd.* reported 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?”

7. 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.”

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. The principle remains that the wrong doer cannot claim any compensation for injury which may have been caused to him due to his own wrong doing. A person cannot be the plaintiff and the defendant in the same suit. He cannot be the claimant and also the wrong doer.
10. In view of the above discussion, I find no merit in the appeal which is accordingly dismissed.
11. Send down the records forthwith.

Sd/-  
(Deepak Gupta)  
**CHIEF JUSTICE**