IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.104 OF 2015

The National Insurance Company Ltd.,
Through its Divisional Manager
Divisional Office at Hazari Chamber,
Padam Pura, Railway Station Road,
Aurangabad.

...APPELLANT
(Orig.respondent)

versus

1. Parvatibai Sakharam Kohok,
Age 53 years, Occu: Nil,
r/o. Bhutkarwadi, Ahmednagar,
Tq. & Dist. Ahmednagar.

...RESPONDENT

...

Mr.S.S.Chapalgaonkar, Adv., h/f
Mr. S.P.Chapalgaonkar, Advocate for the appellant.
Mr.N.B.Suryawanshi, Adv. for respondent (sole).

...

CORAM: P.R.BORA, J.

DATE : April 12th, 2016

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ORAL JUDGMENT:

1. Heard. Admit. With the consent of learned Counsel for the parties, heard finally.

2. The appellant Insurance Company has challenged the judgment and award passed in MACP No.202/2009 on 31st October, 2014, by the Motor Accident Claims Tribunal, at Ahmednagar. The aforesaid claim petition was filed by the present respondent claiming compensation on account of death of her husband who died in a vehicular accident happened on 8.12.2004 having involvement of an Auto Rickshaw bearing No.MH-16-9235 which was insured with the appellant Insurance Company. The aforesaid claim petition was filed under Section 163A of the Motor Vehicles Act, 1988, and the appellant Insurance Company was the only party respondent in the said petition.

3. Learned Tribunal, after having assessed the evidence on record, granted compensation to the tune of Rs.2,37,000/- to the claimant from the present appellant along with interest at the rate of 9% per annum from the date of filing of the petition till its realization.

4. The appellant Insurance Company has challenged the impugned award on the ground that the claim petition so filed by the present respondent was not maintainable under Section 163A of the Motor Vehicles Act, 1988. Learned

Counsel for the appellant Insurance Company submitted that deceased Sakharam Kohok, who died in the alleged accident was himself driving the said Auto Rickshaw at the time when the accident happened. Learned Counsel submitted that no other vehicle was involved in the alleged accident. Learned Counsel further submitted that deceased Sakharam Kohok was the owner of the said Auto Rickshaw and considering these circumstances, the claim petition was not entertainable under the provisions of Section 163 of the Motor Vehicles Act, 1988. Learned Counsel further submitted that the learned Tribunal has, however, overlooked these aspects and has passed the award which is unsustainable and he has, therefore, prayed for setting aside the said award.

5. Shri N.B.Suryawanshi, learned Counsel appearing for the respondent i.e. original claimant has supported the impugned judgment and award. Learned Counsel submitted that the Tribunal has considered all the aspects of the matter and relying upon the judgments of the Honourable Supreme Court, in the case of **New India Assurance Co.Ltd. V. Kendra Devi and others (AIR 2008 SC 490)** has awarded the compensation to the present respondent. Learned Counsel submitted that no interference is called for in the judgment and

award impugned in the present appeal.

6. The question raised in the present matter is no more res integra. In the case of **Oriental Insurance Company Ltd. Vs. Rajani Devi (2008 ACJ 1441 (SC))** the Honourable Apex Court has held that, "Section 163 of the Motor Vehicles Act cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved."

It is further held that, "The liability under Section 163A of the Motor Vehicles Act is on the owner of the vehicle. So, a person cannot be both; a claimant as also recipient with respect to the claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163A of the Motor Vehicles Act."

The same issue has been dealt with by the Honourable Apex Court in the case of **Ningamma & Anr vs United India Insurance Co.Ltd (2009 ACJ 2020)** wherein referring to its several earlier judgments, the Honourable Apex Court has held that,

> "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. If the law laid down by the Honourable Apex Court in the aforesaid judgment is applied to the facts of the present case, there remains no doubt that the present claimant was not entitled to claim compensation under Section 163-A of the Motor Vehicles Act. The Tribunal has, thus, grossly erred in passing the impugned award in favour of the respondent claimant.

8. It is not in dispute that the auto rickshaw bearing registration No.MH-16-9235 involved in the alleged accident was owned by deceased Sakharam Kohok. There is further no dispute that the deceased Sakharam was plying the said Auto rickshaw when the alleged accident happened. There is further no dispute that no other vehicle was involved in the occurrence of the alleged accident.

9. It was the specific contention of the appellant Insurance Company before the Tribunal that the Insurance policy in respect of the offending auto rickshaw does not cover the risk of the owner. It was also clarified that the premium paid for own damage is towards the damage to vehicle and not for injury to the owner / insured. Considering the facts as aforesaid in the light of the law laid down by the Honourable Apex Court in the case of **Ningamma & Anr vs United India Insurance Co.Ltd** and **Oriental Insurance Company Ltd. Vs. Rajani Devi** (cited supra), in no case the Tribunal could have passed the impugned award in favour of the respondent claimant. The reliance placed by the learned Tribunal on the judgment of the Honourable Apex Court in the case of **New India Assurance Co.Ltd. Vs. Kendra Devi (AIR 2008 SC 490)** is also misplaced. The aforesaid judgment does not lay down any such law that the legal heirs of the owner of a vehicle involved in an accident resulting in his death can apply for compensation under Section 163A of the Motor Vehicles Act. The said decision was rendered by the Hon'ble Apex Court in the peculiar facts of the said case.

10. During the course of the arguments, it was submitted by the learned Counsel appearing for the appellant

Insurance Company that if the claimant files an application with the appellant Insurance Company in a proper format, claiming compensation on account of death of her husband i.e. owner of the offending auto rickshaw, the said proposal can be processed by the appellant Insurance Company and, in terms of the policy condition if any compensation is found payable, that can be determined and disbursed to the claimant. As such, it would be open for the respondent claimant to apply to the appellant Insurance Company. If such application is made by the respondent claimant, the appellant Insurance Company shall process the same and take appropriate decision and pay the compensation, if any, payable to the respondent claimant in terms of the policy conditions as expeditiously as possible, preferably within six weeks from the date of making such application by the respondent claimant.

11. For the reasons stated above, the appeal is allowed. The impugned judgment and award is quashed and set aside.

Pending Civil Applications, if any, stand disposed of.

The amount, if any, deposited by the appellant Insurance Company in this Court be refunded to it along with the interest accrued thereon. No order as to costs.

(P.R.BORA)
JUDGE

AGP/104-15fa