

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 FIRST APPEAL NO. 135 OF 2015
WITH CA/529/2015 IN FA/135/2015

NATIONAL INSURANCE CO. LTD.
VERSUS
ASHA BHASKAR JAWALE AND ANOTHER

...
Advocate for the Appellant : Mr. S. R. Bodade
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CORAM : V. K. JADHAV, J.
DATED : 8th JUNE, 2016

PER COURT:-

1. Being aggrieved by the judgment and award passed by learned Member, Motor Accident Claims Tribunal, Beed dated 01.10.2014 in M.A.C.P. No. 86 of 2008, the original respondent No.2-insurer has preferred this appeal.

2. Brief facts giving rise to the present appeal are as follows:

a. On 11.09.2012, deceased Amit, along with his friend Rohan Gethe, was riding motorcycle from Pune to Aurangabad. On way, at about 8.00 p.m., within the limits of village Perne, Taluka Haveli, District Pune, the motorcycle got skidded on the road. In consequence of which, deceased Amit sustained injuries and he died on spot. The motorcycle bearing registration No. MH-23-M-774 is owned by father of deceased Amit i.e. original respondent No.1.

Claimant, who is the mother of deceased Amit, has preferred the claim petition before Motor Accident Claims Tribunal, Beed for grant of compensation under various heads.

b. Original respondent No. 1 did not file his written statement, and thus, the claim petition ordered to be proceeded without his written statement. Original respondent No. 2-insurer strongly resisted the claim petition by filing written statement Exh. 23. It is contended that risk of the deceased was not covered under the policy. Owner of motorcycle was the father and the applicant/claimant is the mother of deceased. It is further contended that the claim petition is not maintainable.

c. Learned Member of the tribunal, by its impugned judgment and award dated 01.10.2014, partly allowed the claim petition with proportionate costs and thereby directed the respondents jointly and severally to pay compensation of Rs.1,00,000/- alongwith interest. Hence this appeal.

3) Learned counsel for the appellant-insurer, submits that deceased Amit, while riding motorcycle, met with an accident without involving any other vehicle. In any manner, deceased Amit cannot be treated as a third party and the claimant is not entitled to claim compensation under Section 163-A of the Motor Vehicles Act. The

claim petition under Section 163-A, filed before the tribunal is itself not maintainable. Learned counsel, in order to substantiate his contentions, placed reliance on the judgments in following two cases:

1. ***Ningamma and another v/s United India Insurance Co. Ltd.***, reported in ***AIR 2009 SC 3056***, and
2. ***New India Assurance Company Ltd. v/s Sadanand Mukhi***, reported in ***AIR 2009 SC 1788***.

4) None appears for the respondents/original claimants though duly served with the notice of final hearing of the appeal.

5) In the case of ***Ningamma and another v/s United India Insurance Co. Ltd.*** (*supra*), wherein similar question falls for consideration that “whether the legal representative 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 Motor Vehicles Act or under any other provisions of law and also whether the insurer, who issued the insurance policy would be bound to indemnify the deceased or his legal representative?” After considering the provision of Section 163-A of the Motor Vehicles Act, the Supreme Court has concluded the issue that the claim petition itself is not maintainable and 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 Motor Vehicles Act. In view of the above authoritative pronouncement and in view of the legal position that the claimant is not entitled to claim compensation under Section 163-A of the Motor Vehicles Act, the impugned judgment and award passed by the tribunal is liable to be quashed and set aside. Hence the following order:

O R D E R

- I. The appeal is hereby allowed.
- II. The judgment and award dated 01.10.2014 passed by the Member, M.A.C.T., Beed in MACP No. 86 of 2008 is hereby quashed and set aside. The MACP No. 86 of 2008 (Asha w/o Bhaskar Jawale v/s Bhaskar s/o Sopanrao Jawale and another) is hereby dismissed.
- III. The appeal is accordingly disposed of. In the circumstances, there shall be no order as to costs.
- IV. In view of disposal of First Appeal, nothing survives for consideration in the pending Civil Application and the same is also disposed of.

(V. K. JADHAV, J.)