

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No. 522 of 2010**

1. Tata AIG General Insurance Company Ltd., Through Branch Manager, Branch Office, Lal Ganga Shopping Maal, G.E. Road Raipur, Thasil and District Raipur, C.G.
2. Tata AIG General Insurance Company Ltd., Regional Office, Kanstenya Office Complex, Second Floor 11, Dr. U.N. Brahmchari Street, Kolkatta 700017

---- Appellants**versus**

1. Dr. Manoj Kumar Soni, Aged about 3 years, S/o Shri Rame Shah Soni, R/o Kankali para, Raipur, District Raipur, C.G. (Claimant)
2. Manoj Kumar Sood, Aged 27 years, S/o S.K. Sood, R/o C-/180, Shailendra Nagar, Raipur, District Raipur, C.G. (Owner)

---- Respondents

For Appellants	:	Shri Ghanshyam Patel, Advocate
For Claimant/Respondent No.1	:	Shri Sachin Singh Rajput, Advocate
For Owner/Respondent No.2	:	Shri Shivendu Pandya, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice**Judgment on Board****13/01/2017**

1. This appeal by the Insurance Company is directed against the award dated 17.8.2009, whereby the learned Seventh Additional Motor Accident Claims Tribunal, Raipur awarded a sum of Rs.4,53,500/- to the claimant under Section 163-A of the Motor Vehicles Act.
2. At the outset, it may be stated that though the claimant filed a claim petition under Section 163-A of the Motor Vehicles Act, the learned Tribunal has assessed the compensation not by following the Schedule under Section 163-A but by following the principles under

Section 166 of Act. The Tribunal has awarded Rs.2,00,000/- for medical expenses whereas in terms of Motor Vehicles Act maximum of Rs.15,000/- can be awarded in a claim petition filed under Section 163 of the Act. It is more than obvious that basic principles of law of compensation under Section 163-A had not been followed. What can be awarded under Section 163-A is only the amount payable under Schedule-II. When a claim petition under Section 163-A of the Act is entertained, the Tribunal cannot award a penny less or a penny more than what is payable under the Schedule.

3. The main grievance of the Insurance Company in this case is that even as per the case of the claimant, he himself had borrowed the vehicle. He was driving the vehicle when it met with an accident with an unknown truck and therefore, the petition was not maintainable.
4. Relying upon the judgment of the Apex Court in AIR 2009 SC 3056 (Ningamma v. United India Insurance Co. Ltd.), it is urged that the Insurance Company cannot be held liable to pay compensation.
5. On the other hand, Shri Sachin Singh Rajput argued that this defence has not been raised before the Court below or before this Court.
6. It is true that this defence has not been specifically raised but the Insurance Company both before the learned Tribunal as well as this Court has denied the liability to pay compensation for a person driving the car. As far as law in this regard is concerned, the same is well settled.
7. 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?”

8. 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.”

9. 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.

10. 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.

11. 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.

12. In view of the above discussion, the appeal filed by the Insurance Company is allowed. The award of the learned Tribunal dated 17.08.2009 passed in Claim Case No. 26 of 2008 is set aside and the claim petition of the Claimant is dismissed. However, in case the claimant files a petition claiming compensation under hit and run scheme, he can do so, which may be decided on its own merits.

13. Send down the records forthwith.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE