

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 323 of 2017**

I C I C I Lombard General Insurance Co. Ltd. through its Branch Manager
 Vanijaya Bhawan, Devendra Nagar Tiraha, Jail Road Raipur, District Raipur,
 Chhattisgarh(Respondent No.2)

---- Appellant**Versus**

1. Smt. Nilima Sheel W/o Late Shri Jaideep @ Jaidev Sheel, aged about 35 Years R/o 18-Block, Mana Camp, Police Station Mana Camp, Tehsil and District Raipur, Chhattisgarh
2. Mantosh Kumar Sheel S/o Late Shri Jaideep @ Jaidev Sheel, aged about 10 Years Minor Represented Through Natural Guardian Mother Smt. Nilima Sheel, W/o Late Shri Jaideep @ Jaidev Sheel, R/o 18-Block, Mana Camp, Police Station Mana Camp, Tehsil and District Raipur, Chhattisgarh
3. Ashutosh Kumar Sheel S/o Late Shri Jaideep @ Jaidev Sheel, aged about 8 Years Minor Represented Through Natural Guardian Mother Smt. Nilima Sheel, W/o Late Shri Jaideep @ Jaidev Sheel, R/o 18-Block, Mana Camp, Police Station Mana Camp, Tehsil and District Raipur, Chhattisgarh(Claimants)
4. Mahavir Jain, R/o Malakangiri, District Malakangiri, Odisha ...(Owner)
5. Smt. Sumola Sheel W/o Late Shri Shishir Ranjan Sheel, aged about 70 Years (Wrongly Mentioned As Son) R/o Village M.V.63, Kurkunda Block, Police Station Kalimela, Post Pulimetla, District Malkangiri, Odisha
6. Tapan Mandal S/o Shri Aditay Mandal, aged about 35 Years R/o Village M.B.98, Post Chitrangpali, Police Station Kalimela, District Malkangiri, Odisha (Wrongly mentioned as Tehsil and District Raipur)

---- Respondents

For Appellant	:	Shri P. Acharya under instructions of Shri Amritodas, Advocate
For Respondent no.4	:	Shri A. L. Singroul, Advocate
For Respondent no.6	:	Shri Shivendu Pandya, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order On Board

18/07/2017

Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 24.12.2016 passed in Claim Case No. 53 of 2013 decided by the 3rd Motor Accident Claims Tribunal, Raipur.

2. The fact in nutshell is that Jaideep @ Jaidev Sheel met with an accident on 02.10.2009 when he was travelling along with his friend Robin Das on a motorcycle bearing registration No. OR 30 0287, enroute the motorcycle dashed against a large stone which was lying on the road on account of which Jaideep lost control over the Motorcycle and fell on the road resulting in grievous injuries to which he later succumbed. The claimants who are the wife and children of the deceased filed a claim application under Section 163A of the Motor Vehicles Act seeking compensation.

3. It was avered by the original owner of the motorcycle Mahabir Jain that he had sold the motorcycle to one Tapan Mandal though the name of the subsequent owner i.e. Tapan Mandal was not changed in the office of the Regional Transport Authority and the vehicle stood in the name of Mahabir Jain. It was alleged that while the deceased was going for some personal work he met with an accident resulting in his death.

4. The Tribunal after considering the evidences which have come on record vide its order dated 24.12.2016 reached to the conclusion that the claimants are entitled for a compensation of Rs.3,69,000/- and accordingly passed the award in favour of the claimants.

5. It is this award which is under challenge in the present appeal.

6. Contention of the counsel for the appellant is that the claim application of the claimants itself was not maintainable on account of the fact that there

was no negligence on the part of the owner of the vehicle as the deceased himself had borrowed the motorcycle from the owner and met with an accident on account of his own fault when he dashed against a stone lying on the road. Therefore, the claim application should have been dismissed by the Tribunal. He relied upon the decision of the Supreme Court in the case of Ningamma and another Vs. United India Insurance Company Limited reported in (2009) 13 SCC 710. According to the counsel for the appellant, since the deceased stepped into the shoes of the owner which has to be presumed as if it was the owner who had met with an accident. Thus, the owner cannot become a third party and the Insurance Company therefore cannot be fastened with the liability of payment of compensation. Thus, prayed that the impugned award may be set aside holding that the Insurance Company not liable for payment of compensation.

7. Per contra, counsel appearing for the respondents opposing the appeal submit that the issue involved in the present case already stands decided by the judgment of the Division Bench of this Court in MAC No. 435/2012 decided on 21.06.2012 as also by the Co-ordinate Bench in MA No.58 of 2006 decided on 25.03.2014. Thus, prayed for rejection of the appeal.

8. Having considered the rival contentions put forth on either side and on perusal of the record, the undisputed facts which comes out is the date of accident being 02.10.2009 and the vehicle involved being the motorcycle bearing registration No. OR-30-0287 which was insured with the present appellant. In the course of accident, the deceased succumbed to the injuries sustained by him. There does not seems to be any grievance so far as the wages and the quantum of compensation awarded by the Tribunal. The sole ground on which the Insurance Company is aggrieved is that invoking the provisions of Section 163A of the MV Act, the Tribunal should not have entertained the application considering the deceased to be the owner himself

in the light of the fact that he had borrowed the vehicle from the actual owner. Since the deceased had stepped into the shoes of the owner, he has to be treated as the owner. However, the Tribunal has minutely considered the evidence of the claimants adduced before the Tribunal particularly the evidence of the widow of the deceased wherein she has made a statement in her cross-examination that he was an employee of the actual owner Mahavir and that the deceased was going for some work to Dantewada when the accident arose. This piece of evidence of the claimant stood unrebutted. The Insurance Company also could not produce any substantial evidence to either disprove this contention or to prove it otherwise that there was no employer employee relationship between the owner of the vehicle and the deceased. Further what cannot be brushed aside was also the fact that the statement of the claimant also establishes that the vehicle was originally owned by Mahavir but was subsequently transferred to Tapan Mandal though the name of the subsequent purchaser i.e. Tapan Mandal was not got changed in the office of RTO.

9. In the aforesaid factual backdrop of the case and also relying upon the judgments passed by the Division Bench as well as the Coordinate Bench of this Court cited by the counsel for the respondents which have been passed subsequent to the judgment which has been relied upon by the Insurance Company, this Court does not find any strong case made out for interference with the impugned award. Thus, the appeal being devoid of merits deserves to be and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**