

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 888 OF 2014
WITH
CA/3773/2014 IN FA/888/2014
WITH
CA/5338/2016 IN FA/888/2014**

**NEW INDIA ASSURANCE CO. LTD.
VERSUS
TARA SHRINIWAS AASAWA AND ANOTHER**

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Advocate for Appellant : Mr D P Deshpande
Advocate for Respondents :Mr Jeevan R Patil h/f R K
Temkar

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**CORAM : V.K. JADHAV, J.
Dated: February 20, 2017**

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award dated 1.1.2014 passed by the Member, MACT, Sangamner in MACP No.93/2010, the original respondent no.2 insurer has preferred this appeal.
3. Brief facts, giving rise to the present appeal are as follows :-
 - a] On 31.1.2010 deceased Shailesh alongwith his friend were coming to Sangamner from Loni on a

motorcycle bearing registration No.MH-17/U-2641. Deceased Shailesh was riding on said motor cycle. At about 8.30 p.m. within the limits of village Nimagaonjali one motor cycle bearing registration No.MH-17/D-1615 came in high speed from the opposite direction and gave dash to the motorcycle of deceased Shailesh. In consequence of which, deceased Shailesh had sustained head injury and he became unconscious on the spot. He was shifted to Dr. Tambe Hospital, Sangamner, where he succumbed to the injuries on 20.2.2010 while under treatment. The motorcycle which deceased Shailesh was riding belonging to his father respondent no.1. He was riding the said motorcycle with the permission of respondent no.1. Motorcycle is insured with the appellant insurer. The mother of the deceased Shailesh approached the Tribunal Sangamner by filing MACP No.93/2010 under section 163A of Motor Vehicles Act, 1988 for grant of compensation under various heads. It has contended in the claim petition that deceased Shailesh was serving in New Sangamner Motor Driving School' on monthly salary of Rs.3,200/- and the claimant has also incurred huge medical expenses for

the treatment of deceased Shailesh.

b] The appellant insurer has strongly resisted the claim petition by filing written statement at exh.18. It has contended that accident had taken place on account of rash and negligent driving of the motorcycle by deceased Shailesh. He was not having driving licence at that time. It has also contended that the mother of deceased Shailesh had filed claim petition against respondent no.1 who is father of deceased Shailesh. Claim petition itself is not maintainable.

c] The respondent-claimant lead oral and documentary evidence in support of her contentions. Respondents have not adduced any evidence. The learned Member of the Motor Accident Claims Tribunal, Sangamner by its impugned judgment and order in MACP.No. 93/2010 partly allowed the claim petition and thereby directed the respondent no.1 owner and appellant insurer to pay jointly and severally amount of Rs.3,76,500/- as a compensation to the respondent claimant together with interest @ 8% p.a. from the date

of petition till its realization. Hence, this appeal.

4. The learned counsel for the appellant insurer submits that, deceased Shailesh was riding motorcycle belonging to his father respondent no.1. He had stepped in the shoes of respondent no.1. Thus, claim petition even filed under section 163-A of the Motor Vehicles Act is not maintainable. The learned Member of the Tribunal has not considered this position and fastened the liability on the appellant insurer jointly with respondent no.1 owner.

5. The learned counsel for the appellant in order to substantiate his contention placed his reliance on following judgments :-

1. United India Insurance Company Ltd., Vs. Angrej Singh and another reported in 2012 ACJ 1329.
2. New India Assurance Company Ltd., Vs. Sadanand Mukhi and others reported in (2009) 2 SCC 417.

6. Learned counsel for respondent original claimant submits that, deceased Shailesh though riding motorcycle of his father, dash was given to his

motorcycle by another motorcycle. It was not a self accident and rider of the another motorcycle was responsible for the accident. Thus, the claim under section 163A of the Motor Vehicles Act is maintainable and the respondent claimant need not prove fault on the part of the rider of the other motorcycle. Learned counsel submits that, in collusion with the relatives of rider of the motorcycle, after death of Shailesh concerned Police Station falsely registered crime against deceased Shailesh and accordingly case was closed.

7. Admittedly, deceased Shailesh had taken motorcycle of his father with his permission and thus on the date of accident he was riding said motorcycle on road. Deceased Shailesh had stepped into shoes of his father.

8. In a case of United India Insurance Company Ltd., Vs. Angrej Singh and another, Punjab and Haryana High Court has referred the judgment of the Supreme Court in case of Nigamma and another Vs. United India Insurance Co. Ltd., and also Oriental Insurance

Company Ltd., Vs. Rajni Devi and others. In both the cases, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited, however, if the 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 163A of the Motor Vehicles Act cannot be said to have any application in respect of an accident wherein the owner of the motor vehicles himself is involved. It is further held in the said cases that 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 a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of section 163A of the Motor Vehicles Act. In view of the above ratio laid down, Punjab and Haryana High Court set aside the order of the Tribunal by observing that the Tribunal was not justified in accepting the claim petition

filed by the claimant under section 163A of the Motor Vehicles Act.

9. In the instant case, deceased Shailesh was not owner of the motor vehicle. He had taken said motorcycle from his father respondent no.1. Thus, he stepped into shoes of his father. Thus, the claim petition under section 163-A of the Motor Vehicles Act is not maintainable. Accordingly, the legal heirs of the deceased who has stepped into shoes of the owner of the Motor vehicle could not have claimed the compensation under section 163-A of the Motor Vehicles Act. However, respondent-claimant may take recourse to any other provisions of the Motor Vehicles Act to claim the compensation. Hence, I proceed to pass the following order.

O R D E R

- I. First Appeal is hereby allowed. No costs.
- II. The judgment and Award passed by the Member, Motor Accident Claims Tribunal, Sangamner dated 1.1.2014 in MACP No.93/2010 is hereby quashed and set aside and MACP No.93/2010 is hereby dismissed.

- III. The claimants, however, are at liberty to claim the compensation under any other provisions of the Motor Vehicles Act, 1988.
- IV. Appeal is accordingly disposed of.
- V. Pending civil applications also disposed of.
- VI. The appellant-insurer has deposited the amount before the Tribunal. Same shall be refunded to the appellant insurer.

sd/-

(V.K. JADHAV, J.)

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aaa/-