IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.4204 OF 2016

Bajaj Allianz General
Insurance Co. Ltd.,
Through its Branch Manager
/ Authorized Signatory,
2nd Floor, Rajendra Bhavan,
Adalat Road, Next to LIC
Building, Aurangabad

= **APPELLANT**
(Orig. Resp. No.2)

VERSUS

1. Shaikh Ashabee W/o.
   Shaikh Lala Alias Akil,
   Age: 26 years,
   Occu. Household,

2. Shaikh Shahana D/o.
   Shaikh Lala Alias Akil,
   Age: 6 years,

3. Shaikh Suhana D/o.
   Shaikh Lala alias Akil,
   Age: 3 years,

4. Shaikh Ayas S/o.
   Shaikh Lala alias Akil,
   Age: 3 years,

   No.2 to 4 are Minors
   U/g. Of mother petition
   no.1 Shaikh Ashabee

5. Shaikh Rubabee W/o.
   Shaikh Najir,
   Age: 59 years,
   Occu. Household,

6. Shaikh Najir S/o.
   Shaikh Wajir,
   Age: 69 years, Occu. Nil,

All R/o. Chinchwadgaon,
Tq. Wadwani,District Beed

7. Santosh S/o. Vaijnath
Munde,
Age: 28 years,
Occu. Business,
R/o. Chinchwadgaon,
Tq. Wadwani,Dist. Beed

= **RESPONDENTS**
**(Resp.No.1 to 6 –
Orig. Claimants
Resp. No. 7 –Orig.
Resp. No.1)**

Mr. Mohit Deshmukh, Advocate h/f.Mr.S.G.Chapalgaonkar
Advocate for Appellant;
Mr.R.B. Bhosale, Advocate for Respondent Nos.1 to 6;
Mr.S.R. Kedar, Advocate for Respondent No.7

CORAM : P.R.BORA, J.

DATE : 24th July,2017.

ORAL JUDGMENT:

1) Heard. Admit. With consent of leaned Counsel appearing for the parties, taken up for final disposal.

2) Appellant insurance company has filed the present appeal taking exception to the judgment and Award passed by the Motor Accident Claims Tribunal, Mazalgaon (hereinafter referred

to as the Tribunal) in MACP No.13/2013 on 28th June, 2016.

3) Present Respondent Nos. 1 to 6 had filed the aforesaid claim petition, claiming compensation on account of death of one Shaikh Lala in a vehicular accident happened on 1st July, 2011. It was the case of the claimants before the Tribunal that deceased Shaikh Lala when was proceeding on a motorcycle bearing registration No.MH-44-F-6853 along with Shri Santosh Mundhe, i.e. owner of the said motorcycle, the said motorcycle was dashed by one unknown vehicle and in the accident so happened, Shaikh Lala died on the spot.

4) As stated in the claim petition, age of the deceased on the date of the accident was 25 years and he was working as labour and used to earn around Rs.3,000/- per month. The claimants had, therefore, claimed the compensation amounting to Rs.3,91,000/- from the owner and

insurer of the motorcycle.

5) The claim petition was resisted by the insurance company mainly on the ground that the petition itself was not maintainable against the appellant insurance company since the insurance policy in respect of the offending vehicle was not covering the risk of the deceased. The defence so raised by the insurance company was, however, turned down by the Tribunal and the insurance company has been held liable to pay the amount of compensation to the claimants. The tribunal has determined the amount of compensation to the tune of Rs.4,40,000/- and has directed the owner and insurer of the said motorcycle to pay the amount of compensation. Aggrieved by, the appellant insurance company is in appeal before this Court.

6) Shri Deshmukh, learned Counsel appearing for the appellant, submitted that the Tribunal has grossly erred in appreciating the relevant

legal provisions, under the Motor Vehicles Act, because of which an illegal award has been passed against the appellant Insurance Company. The learned Counsel submitted that admittedly, the deceased himself was riding the said motorcycle and as such he does not come withing the purview of term 'person' within Section 147 of the Act. The risk of deceased was, thus, not covered by the insurance policy pertaining to the said vehicle, the learned counsel added.

7) The learned Counsel further submitted that though a witness was examined by the appellant insurance company and the insurance policy and its terms and conditions were duly proved, the learned Tribunal has failed in appreciating the terms of the insurance policy and has drawn some wrong inferences, thereby holding the insurance company also liable to pay the amount of compensation.

8) In order to support the contentions

raised by him, the learned Counsel, relied upon the two judgments of the Hon'ble Apex Court first in the case of N*ingamma and Anr. Vs. United India Insurance Co. Ltd. - AIR 2009 SC 3056* and another in the case of *New India Insurance Company Ltd. vs. Sadanand Mukhi and Ors. - AIR 2009 SC 1788*.

9) Shri Thombre, learned Counsel appearing for the original claimants, supported the impugned judgment and award. The learned Counsel submitted that the deceased was, at the relevant time, riding the motorcycle under the authority and under the directions of the owner of the said motorcycle and as such, his risk was perfectly covered by the insurance policy. The learned Counsel, relying upon the judgment of the learned Single Judge of this Court (Coram: A.V.Nirgude,J.) in the case of *Walmik Devram Patil and Anr. Vs. Gulab Daga Patil and Anr. - First Appeal No.2655/2015 decided on 26th August, 2016*, submitted that in view of the observations made and the conclusions recorded in the said

judgment, no fault can be found in the judgment and award impugned in the present appeal. The learned Counsel further submitted that the risk of the deceased was fully covered by the insurance policy and as such, the Tribunal has rightly held the appellant insurance company liable to pay the amount of compensation.

10) Shri S.R.Kela, learned counsel appearing for Respondent No.7, also supported the impugned judgment and award. He adopted the arguments advanced by Shri Thombre, leaned Counsel appearing for the claimants. Placing reliance on the same judgment of the learned Single Judge of this court he submitted that there is no substance in the appeal filed by the appellant insurance company and, therefore, prayed for dismissal of the appeal.

11) I have carefully considered the submissions made by the learned Counsel appearing for the respective parties. It is not in dispute

that the deceased Shaikh Lala was riding the motorcycle owned by present Respondent No.7, when the alleged accident happened. Deceased Shaikh Lala had thus stepped into the shoes of the owner of the vehicle. The question is in such circumstances, whether the legal representatives of deceased Shaikh Lala can claim compensation under Section 163-A of the Motor Vehicles Act ?

12) The similar issue was raised before the Hon'ble Apex court in the case of **Ningamma and Anr. Vs. United India Insurance Co. Ltd.** (cited suupra). In the said matter, a person by name Ramappa was travelling on a Hero Honda Motorcycle, which he had borrowed from its real owner for going from Ilkal to his native place Gudur. When the said motorcycle was proceeding on Ilkal–Kustagl, National Highway, a bullock cart proceeding ahead of the said motorcycle carrying iron-sheet suddenly stopped and consequently said Ramappa, who was proceeding on the said motorcycle dashed against it.

Consequent to the aforesaid accident, Ramappa sustained fatal injuries over his vital part of body and on the way to Govt. Hospital, Ilkal, he died. The motorcycle, which the deceased was riding at the time of the accident, was owned by one Parnagouda and insured with United India Insurance company. The legal heirs of deceased Ramappa filed a claim petition under Section 163-A of the Motor Vehicles Act, claiming compensation from said Parnagouda, and United India Insurance Company. Though the claim petition was resisted on the ground of maintainability of the said petition under Section 163-A of the Act, the Tribunal held the owner and insurer of the said motorcycle responsible to pay the amount of compensation to the legal heirs of said Ramappa. The insurance company then preferred an appeal before the High court of Karnataka, which came to be allowed and while allowing the appeal, the Karnataka High Court held that the claim petition before the Tribunal was not maintainable under Section 163-A of the Act. The Judgment of the Karnataka High court was challenged by the legal heirs of Ramappa before the Hon'ble Apex court by filing Special Leave Petition. While deciding the said Special Leave Petition, the Hon'ble Apex court held that the legal heirs of deceased Ramappa could not have claimed compensation under Section 163-A of the Motor Vehicles Act. The Hon'ble Apex court held that since deceased Ramappa had borrowed the vehicle from the real owner, he stepped into the shoes of the owner of the vehicle and as such, his legal representatives could not have claimed compensation under Section 163-A of the Act. The Hon'ble Apex court has further said that in such a case, the owner could not himself be a recipient of compensation as a liability to pay the same is on him.

13) In the instant case also, deceased Shaikh Lala had borrowed the motorcycle from Respondent No.7, the owner of the said motorcycle and had thus stepped into the shoes of the owner

of the said motorcycle and as such, the legal representatives of deceased Shaikh Lala could not have claimed compensation from the owner of the said motorcycle. The ratio laid down in the case of **Ningamma and Anr.** thus, squarely applies to the facts of the present case.

14) Similar were the circumstances in the case of **New India Insurance Company Ltd. Vs. Sadanand Mukhi and Ors.** In the said case, son of the owner of the motorcycle met with an accident and consequently suffered death in the said accident. The legal heirs of the deceased, therefore, filed a claim petition, seeking compensation under the provisions of the Motor Vehicles Act. The question raised in the matter was, whether the deceased in the said case would come within purview of the term `person' within section 147 of the Motor Vehicles Act. The Hon'ble Apex court while deciding the said matter held that the deceased would not come within the purview of term `person' within Section 147 of

the Act. The Hon'ble Apex court further held that the insurer would be liable to cover risk of third party and not others, who would not otherwise come within the purview thereof. In the instant case also, deceased Shaikh Lala, who had borrowed the motorcycle from the real owner, would not come within the purview of term `person' within section 147 of the Motor Vehicles Act. On the contrary, as held by the Hon'ble Apex court in the case of **Ningamma** (cited supra), deceased Shaikh Lala had stepped into the shoes of the owner of the vehicle. It was thus evident that the legal heirs of deceased Shaikh Lala, who had stepped into the shoes of the owner, could not have claimed compensation under Section 163-A of the Act.

15) Though the judgment of the learned Single Judge of this Court (Coram: A.V.Nirgude,j.) in the case of **Walmik Devram Patil and Anr. Vs. Gulab Daga Patil and Anr. - First Appeal No. 2655/2015 decided on 26th August,**

<u>2016</u>, was heavily relied upon by the original claimants, it has to be stated that in view of the law laid down by the Hon'ble Apex court in the case of **Ningamma** and **Sadanand Mukhi** (cited supra), the said judgment of the learned Single Judge cannot be applied in the present case. It has to be further stated that in the aforesaid judgment, it appears that the aforesaid judgments of the Hon'ble Apex court in the case of **Ningamma** and **Sadanand Mukhi** (cited supra), were not cited by either of the parties.

16) It was further sought to be canvassed by the learned Counsel appearing for the claimants that the insurance policy pertaining to the offending motorcycle was covering the risk of the owner of the motorcycle as well as driver of the motorcycle. However, the argument so made also cannot be accepted. As was pointed out by the learned Counsel appearing for the insurance company, the coverage given for owner-driver means, if the owner himself is driving the said

motorcycle.

17) After having considered the term of `insurance policy' and the law laid down by the Hon'ble Apex Court in the case of **Ningamma and Anr.** and in the case of **New India Insurance Company Ltd. Vs. Sadanand Mukhi** (cited supra) I have no doubt in my mind that the Tribunal has committed an error in fastening liability on the appellant insurance company to pay the amount of compensation to the legal heirs of deceased Shaikh Lala. No such liability could have been fastened on the appellant insurance company since the petition under Section 163-A of the Act itself was not maintainable.

18) For the reasons stated above, the Award passed against the appellant insurance company deserves to be quashed and set aside and is accordingly set aside. No order as to cost. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE