

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1580 OF 2013
WITH
CIVIL APPLICATION NO. 3287 OF 2012

The New India Assurance Co. Ltd. .. Appellant
vs.
Rani Sanjay Kenjale and ors. .. Respondents

Mr. S.S. Jinsiwale along with Mr. Ketan Joshi for the Appellant.
Mr. S.R. Ganbawle i/b Mr. Sangramsinh Yadav for Respondent Nos.1 to 4.

CORAM : M. S. SONAK, J.
DATE : 7 FEBRUARY 2017.

P.C. :-

1] Heard learned counsel for the parties.

2] Respondent No.5 in this appeal is the owner of the vehicle, who, though served, choose not to remain present in the proceedings before the Motor Accident Claims Tribunal (MACT), which has made the impugned award. For the order which is proposed to be made, presence of Respondent No.5 is not necessary though, respondent No.5 can always be given an additional opportunity before the MACT, in pursuance of the remand which is proposed.

3] Learned counsel for the appellant and respondent Nos.1 to 4 agree that this appeal can be disposed of, at this stage itself, in light of the decision of the Hon'ble Supreme Court in *Ningamma and anr v. United India Insurance Company Limited – (2009) 13 SCC 710*.

4] In this case, the claimants instituted a petition under section 163-A of the Motor Vehicles Act, 1988 (said Act) for compensation on account of demise of Sanjay N. Kenjale. Sanjay Kenjale was proceeding to Aundh on motorcycle No. MH-11-AN-2020, which he has borrowed from his friend, where he unfortunately, met with an accident and suffered fatal injuries. The claimants have invoked the provisions of section 163-A of the said Act, since, the accident was on account of sudden locking of rear wheel of the motorcycle, which consequently, dashed railing of the bridge causing fatal injuries to Sanjay.

5] Section 163-A of the said Act reads thus:

"163-A. Special provisions as to payment of compensation on structured formula basis.--

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

6] The said section has been interpreted by the Hon'ble Supreme Court in *Ningamma (supra)* in a some what similar fact situation. In

the said case, the claimants had instituted a petition under section 163-A of the said Act on account of demise of Ramappa who was driving a Hero Honda Motorcycle, which he has borrowed from the real owner for going to his native place. On the highway, the bullock cart, which the motorcycle was following, suddenly stopped and the motorcycle dashed against the bullock cart resulting in demise of Ramappa. The Hon'ble Supreme Court, following its earlier decision in ***Oriental Insurance Co. Ltd. v. Rajni Devi - (2008) 5 SCC 736***, held that where the deceased was not the owner of the motorbike in question but had only borrowed the motorbike from the real owner, such the deceased person would step into the shoes of the owner of the motorbike. Further, since, section 163-A of the said Act is inapplicable in case of death of the owner of the motorbike, the same principle will apply, where, the motorbike has been borrowed by the driver, who meets with fatal incident. In paragraphs 21, the Hon'ble Supreme Court has observed thus:

“21] In our considered opinion, the ratio of the aforesaid decision in Oriental Insurance Co. Ltd. case 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. 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.”

7] In *Ningamma (supra)*, the Hon'ble Supreme Court clarified that even though a petition may not be maintainable under section 163-A of the said act, the dependents of the deceased can always

maintain a petition under section 166 of the said Act. In this regard, reference can usefully be made to the observations in paragraphs 24 and 25, which read thus:

24. However, the question remains as to whether an application for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased; or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

25. When an application of the aforesaid nature claiming compensation under the provisions of Section 166 is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 162, by determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs.”

8] In view of the aforesaid, it will be appropriate if the impugned award is set aside and the matter is remanded to the concerned MACT. In the peculiar facts and circumstances of the present case, leave is granted to respondent Nos.1 to 4 (claimants) to convert the petition under section 163-A of the said Act to a petition under section 166 of the said Act. If necessary, respondent Nos.1 to 4 may effect the necessary amendment by addition of further particulars or

grounds within a period of four weeks from today. The petition, which is now to be regarded as a petition under section 166 of the said Act shall be heard and disposed of by the MACT as expeditiously as possible and in any case within a period of six months from today. The said petition will be decided on its own merits and in accordance with law. Consequently, the defences which are available to the appellant and respondent No.5 are kept open and such defences, if raised, shall have to be decided by the MACT on their own merits and in accordance with law.

9] In terms of no fault liability, the provisions contained in section 140 of the said Act, it will be appropriate, in the facts and circumstances of the present case, that the appellant Insurance Company pay to respondent Nos.1 to 4 or deposit before the concerned MACT an amount of Rs.50,000/- within a period of four weeks from today. The amount of Rs.25,000/- deposited by the appellants in this court to be transmitted by the Registry to the concerned MACT within a period of two weeks from today, so that, respondent Nos.1 to 4 can withdraw the same. In such a situation, the appellant to pay respondent Nos.1 to 4 or deposit before the concerned MACT, an amount of Rs.25,000/- within a period of four weeks from today.

10] The first appeal and the civil application stand disposed of in the aforesaid terms.

11] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)