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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 920 of 2012

National Insurance Company, Branch Office- Gumla Jharkhand, Local Branch Office Priyadarshani Nagar, Bilaspur, Through: Authorised Signatory, National Insurance Company Limited, B-1, Taha Complex, First Floor, Priyadarshani Nagar, Vyapar Vihar Road, Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Smt. Nimanti Bai W/o Late Ajit Singh Aged About 35 Years
2. Narendra Kumar Singh S/o Late Ajit Singh Aged About 18 Years
3. Minor Ku. Salika Singh D/o Late Ajit Singh Aged About 14 Years Through Next Friend Mother Smt. Nimanti Bai

   All above R/o Ichkela, Tahsil And District Jashpur Nagar, Chhattisgarh
4. Raj Kumar Sidar S/o Chand Ram Sidar R/o. Village Ichkela, Tahsil And District Jashpur Nagar, Chhattisgarh

---- Respondents

For Appellant	:	Mr. B.N. Nande, Advocate

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

16/02/2018

1. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 06.07.2012, passed by the Motor Accident Claims Tribunal, Jashpur, Chhattisgarh, in Motor Accident Claim Case No. 20/2010.

2. Vide the impugned award, the Tribunal in a death case under Section 163A of Motor Vehicles Act has awarded a compensation of Rs.3,75,000/- with interest @ 6% per annum from the date of application.

3. None appears for the Claimants inspite of service. The respondent no.4 also is not traceable inspite best efforts being made.

4. This Court considering the seniority of the matter proceeds to decide the case in absentia of any representation on behalf of the respondents.

5. The contention for the Insurance Company is that the finding of the Tribunal is erroneous to the extent that the claim application itself was not sustainable under Section 163A of the Motor Vehicles Act. He submits that it is a case where the deceased, who was driving a motorcycle belonging to the respondent no.4 met with an accident with another vehicle driven by one Vijay Shukla, who has also died from the said accident. He submits that the Claimants have claimed compensation only against the respondent no.4 and the present appellant who is the insurer of the motorcycle which the deceased himself was driving at the time of accident.

6. The contention of the counsel for the appellant is that the deceased in the instant case would not fall within the ambit of third party as the policy which was issued by the Insurance Company was only covering the risk of third party i.e. “Act Only Policy”. Under the circumstances, the claim application so far as the Insurance Company is concerned; they would not have been liable to pay any compensation as he was himself driving the vehicle, for whose risk no premium was paid.

7. The counsel for the Insurance Company further submits that it is a case where the deceased had borrowed the vehicle from the Owner i.e. respondent No.4 and therefore he would step into the shoes of the Owner and the Owner would not be entitled for claiming a compensation for the death caused under the provisions of Section 163A of the Motor Vehicles Act unless extra premium paid.

8. Counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in the case of "***Ningamma and Another vs. United India Insurance Company Limited"*** reported in ***(2009) 13 SCC 710***, wherein in paragraphs No. 21 & 22, the Hon'ble Supreme Court has held that:-

> ***21. In our considered opinion, the ratio of the 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.***
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> ***22. 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. Having heard the contentions put forth on either side and on perusal of record what stands admitted is the date of accident to be 09.12.2008 and the deceased moving on a motorcycle bearing registration No. CG/14/1209. Further the motorcycle owned by the respondent No.4 Rajkumar Sidar. The deceased collided with another motorcycle driven by one Vijay Shukla. As a result two

Drivers of the two motorcycles which had collided died from the said accident. The legal representatives of the deceased Ajit Singh i.e. respondents No. 1 to 3, who was driving the motorcycle belonging to the respondent No.4 filed the claim application under Section 163A of the Motor Vehicles Act. The only evidence which have come on record is the evidence of N.A. No.1 i.e. the widow of the deceased and N.A. No.2 the son of the deceased. From the evidence of these witnesses on the part of the Claimants it is established that on the date of accident, the deceased had borrowed the vehicle from the respondent No.4. This by itself would establish that the moment he borrowed the vehicle, he stepped into the shoes of the Owner of the vehicle.

10. Under the circumstances, what has to be looked into is the policy which was issued. Undisputedly, the policy which is issued is an Act Only Policy and no extra premium covering the risk of the Owner or the Driver has been paid by the respondent No.4 and under the Act Only Policy, the risk which the Insurance Company covers is that of a third party. The deceased in the instant case Ajit Singh in the light of the judgment of the Hon’ble Supreme Court in the case of “Ningamma” (supra) cannot be brought within the ambit of a third party. Under the circumstances, this Court has no hesitation in reaching to the conclusion that the Claimants in the instant case would not be entitled for any compensation under the provisions of Section 163A of the Motor Vehicles Act.

11. The appeal of the Insurance Company thus deserves to be allowed and the impugned award dated 06.07.2012 stands set-aside/quashed.

12. It is made clear that any amount which has been deposited and which is not disbursed to the Claimants, the same shall be refunded back to the Insurance Company. However, in case, if it has been disbursed the same would not be recovered by the Insurance Company.

Sd/-
(P. Sam Koshy)
Judge

Ved