NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 739 of 2012

United India Insurance Company Limited, Branch Manager, Branch Office-Paras Complex, In front of SBI, Near Gurudwara, Station Road, Durg, Tahsil and District Durg, Chhattisgarh Through: its Divisional Manager, Divisional Office 2nd Floor Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, District Bilaspur Chhattisgarh

---- Appellant

Versus

1. Janki Bai Dewangan W/o Late Palatram Dewangan, Aged About 25 Years
2. Ku. Dileshwari Dewangan, D/o. Late Palatram Dewangan, Aged about 7 years,
3. Bhuneshwar Dewangan, S/o. Late Palatram Dewangan, Aged about 5 years,

   Respondent No.2 and 3 are Minor through their mother Janki Bai Dewangan (Respondent No.1).
4. Khorbahra Ram Dewangan S/o Late Devlal Dewangan Aged About 56 Years
5. Smt. Kamla Bai Dewangan W/o Khorbahra Ram Dewangan Aged About 52 Years

   Respondent No. 1 to 5 are R/o. Village Suregaon, Post- Suregaon, P.S. Dewari, Tahsil Daundilohara, District Durg, Chhattisgarh
6. Devraj Deshmukh S/o Late Ram Prasad Deshmukh Aged About 48 Years R/o. Village and Post Suregaon, P.S. Dewari, Tahsil Daundilohara, District Durg Chhattisgarh

---- Respondents

For Appellant	:	Mr. Dashrath Gupta, Advocate
For Respondents	:	Mr. Shikhar Bhaktiyar, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/02/2018

1. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 28.04.2012, passed by the Additional Motor Accident Claims Tribunal, Balod, Chhattisgarh, in Claim Case No. 201/2011.

2. Vide the impugned award, the Tribunal in a claim case under Section 163A of the Motor Vehicles Act has awarded a compensation of

Rs.4,43,000/- with interest @ 6% per annum from the date of application.

3. The contention of the counsel for the appellant is that the deceased in the instant case Palatram Dewangan was traveling on a motorcycle Bajaj Discovery bearing registration No. CG/07/LB/9581. He himself skidded on the road and fell sustaining grievous injuries to which he later succumbed. The legal representatives of the deceased filed a claim application under Section 163A of the Motor Vehicles Act. The Tribunal vide the impugned award has awarded the compensation and has fastened the liability upon the Insurance Company, which is under challenge in the present appeal.

4. There is no representation on behalf of the Claimants inspite of proper service being made.

5. By virtue of the interim order granted by this Court 50% of the awarded amount has already been deposited before the Tribunal concerned and 25% of the awarded amount was permitted to be disbursed and the execution of the remaining part of the award was stayed by this Court.

6. The contention of Mr. Dashrath Gupta, appearing for the Insurance Company is that it is a case where the claim application was not maintainable and the same deserves to be rejected. According to him, it was a case where the deceased was driving the motorcycle of the Owner i.e. the respondent No.6 Devraj Deshmukh. The deceased was a Mechanic. He was returning to the respondent No.6 for handing over the vehicle after some repair work, which the Owner had left at the shop of the deceased.

7. The contention of the counsel for the appellant is that since he was authorized by the Owner, it would be a case wherein he would step into the shoes of the Owner and the Owner cannot be a recipient of the claim application himself particularly when the accident occurred for the fault of the deceased himself. It was further contended that it is a case where there was no other vehicle involved or any other person responsible for the accident except for the person driving the motorcycle i.e. the deceased himself.

8. The counsel for the appellant relied upon the judgment of Hon'ble Supreme Court in the case of ***"Ningamma and Another vs. United India Insurance Company Limited"*** reported in ***(2009) 13 SCC 710***. He further relied upon the judgment of Division Bench of Karnataka High Court in the case of ***"Smt. Shakuntalmma and another vs. Shivanagouda and another"*** reported in ***2015 AAC 1431 (KAR)***.

9. Furtherance to the arguments of the counsel for the appellant, the respondent No.6 has also contested that they are not responsible for the accident in any manner and that the claim application under Section 163A was not sustainable.

10. At this juncture, it would be relevant to refer to the judgment of "***Ningamma***" (supra), wherein in paragraphs No. 18 to 20, the Hon'ble Supreme Court has held as under:-

> ***"18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736 : 2008 (2) TAC 752, wherein one of us, namely, Hon'ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, 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 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA 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 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision 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.***
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> ***19. 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. 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 <u>Section 163-A</u>. 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.***
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> ***20. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case.”***

11. Applying the same judgment, the Division Bench of the Karnataka High Court also in the case of “***Smt. Shakuntalmma***” (supra) has

held that the claim application under similar circumstances under Section 163A is not maintainable.

12. In view of the aforesaid authoritative decision of the Hon'ble Supreme Court, so also the Division Bench of the Karnataka High Court, this Court also has no hesitation in reaching to the conclusion that in the instant case the deceased Palatram Dewangan was admittedly not an employee of Owner of the vehicle i.e. respondent No.6 and as such though he was authorized to bring the vehicle from the shop to the residence of the respondent no.6 and therefore he would step into the shoes of the Owner and further also cannot be brought within the ambit of a third party. Under the circumstances, the Claimants would not be entitled for any compensation whatsoever and the claim application deserves to be rejected and is accordingly rejected.

13. The appeal stands allowed and it is held that the claim application was not maintainable.

14. Meanwhile whatever amount which has been deposited and which has been released to the Claimants, the same shall not be permitted to be recovered from the Claimants. The appellant-Insurance Company however would not be liable to deposit the balance of amount apart from what has already been deposited and would also be entitled for the refund of any amount which has not been disbursed.

15. The appeal thus stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved