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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1185 of 2011

United India Insurance Company Limited through its Branch Manager, Branch Office, Tara Complex, Power House, G.E. Road, Bhilai, District Durg (CG)

---- Appellant

Versus

1. Bhuneshwari Sahu D/o K. L. Sahu, aged about 25 years, R/o village Amapara, Balod, Thana & Tahsil Balod, District Balod (CG)
2. Smt. Sandhya Nishad, aged about 32 years, Wd./o late Jeevan Lal Nishad
3. Ku. Samiksha Nishad, aged about 14 years
4. Ku. Muskan Nishad, aged about 12 years

Both respondents 3 & 4 are minors represented through Vali mother Smt. Sandhya Nishad, Wd./o late Jeevan Lal Nishad

5. Gosai Ram Nishad, aged about 70 years, S/o late Latel Nishad

Respondents 2 to 5 all R/o village Dhaneli, Thana & Tahsil Gurur, District Durg (CG)

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondent no.1	:	Shri Goutam Khetrapal, Advocate
For Respondents 2 to 5	:	Shri A. L. Singroul, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

24/01/2018

Present is an appeal by the Insurance Company assailing the award dated 18.08.2011 passed by the Additional Motor Accident Claims Tribunal, Balod, District Durg (now district Balod) (CG) in Claim Case No. 143 of 2011. Vide the impugned award, the Tribunal, in a death case has awarded a compensation of Rs.3,71,000/- with interest @ 6% per annum from the date of application.

2. While fixing the liability, the Tribunal has ordered the entire compensation to be paid by the Insurance Company since the vehicle involved in the accident was duly insured with it.

3. The relevant facts in the instant case necessary for adjudication of the appeal are that the deceased Jeevan Lal Nishad while travelling on a Hero Honda motorcycle bearing registration No. CG 07 LS 2465 owned by respondent no.1 met with an accidental death on 02.05.2010. The motorcycle which the deceased was riding was hit by an unknown vehicle and the details of the unknown vehicle could not be ascertained. Therefore, the legal representatives of the deceased moved a claim application under Section 163A of the Motor Vehicles Act before the Tribunal making the present appellant Insurance Company which had insured the motorcycle, as respondent and the claim application stood decided vide the impugned order.

4. Contention of the counsel for the appellant Insurance Company is that the insurance Company has been wrongly held responsible for payment of compensation for the reason that since the deceased himself was riding the motorcycle at the time of accident, he stepped into the shoes of the owner and the liability of the owner covered under the policy was to the maximum extent of rupees one lakh, therefore, the award is bad in law. He submits that the Tribunal ought to have ascertained whether the appellant is at all liable to pay compensation for the reason that while driving the motorcycle, the deceased himself had hit an electric post, therefore the present appellant which had insured the motorcycle would not be liable for payment of compensation. If at all if the appellant is liable, it would be only to the maximum extent of rupees one lakh as per the policy and therefore, the impugned award deserves to be set aside. Counsel for the appellant refers to the judgment of the Hon'ble Supreme Court in the case of Ningamma and Another v. United India Insurance Company Limited reported in (2009) 13 SCC 710 and also the case of Oriental Insurance Company Limited Vs. Rajni Devi and Others reported in (2008) 5 SCC 736.

5. Per contra, Shri Goutam Khetrapal, counsel appearing for respondent no.1 owner submits that it is a case where the deceased cannot be said to have stepped into the shoes of the owner for the simple reason that in the claim application itself it was stated that the deceased had gone to discharge certain duties which were assigned to him by respondent no.1 who was the registered owner of the motorcycle. The owner herself in her written statement has admitted the fact that the deceased was sent by her when the accident occurred. Counsel for respondent no.1 submits that there was no such pleading raised by the Insurance Company in their written statement nor is there any denial on the part of the Insurance Company denying the employer and employee relationship between respondent no.1 and the deceased. Counsel for respondent no.1 relied upon the decision of the Supreme Court in the case of National Insurance Company Limited Vs. Sinitha and Others reported in (2012) 2 SCC 356. He further relied upon the decision of the Division Bench of this Court dated 21.06.2012 passed in MAC No. 435 of 2012 (Rekhram Sahu Vs. Santram Suryawanshi & Ors.) and also a recent order passed by this Bench in MAC No.1052/2011 on 08.01.2018 (IFFCO Tokio General Insurance Co. Ltd. Vs. Smt. Vinita Joshi & Others).

6. A perusal of the record would reflect that the claimants in their claim application have pleaded the deceased to have been sent by respondent no.1, the owner for her work and that it was during this time, the accident occurred. There is also an admission on similar line by the owner herself i.e. respondent no.1 in her written statement. There is nothing contrary established that the deceased was not sent or deputed by respondent no.1 when the accident occurred.

7. So far as the question of limited liability to the maximum extent of rupees one lakh is concerned, perusal of the policy would show that the said extent of risk would be applicable only in the event of the vehicle being driven by the registered owner or for that matter the paid driver on behalf of the owner. In the instant case, there is no such evidence led by any of the parties which could establish that the deceased was not engaged by the owner or that there was any sort of relationship between the deceased and the owner except that of employer and employee. In the absence of any such evidence on record, it has to be presumed that what has been stated before the Tribunal by the claimants and which has also been admitted by the owner to be true and under such circumstance, the deceased cannot be brought within the ambit of an owner nor would he step into the shoes of the owner. At this juncture, it would be appropriate to refer to the judgment of the Supreme Court in the case of Sinitha (supra) where in paragraphs 42 & 43 the Supreme Court has held as under:

> "42. To substantiate his second contention, it would be essential for the petitioner to establish, that Shijo having occupied the shoes of the owner, cannot be treated as the third party. Only factual details brought on record through reliable evidence, can discharge the aforesaid onus. During the course of hearing, despite our queries, learned counsel for the petitioner could not point out the relationship between Shijo and the owner of the motorcycle involved in the accident. Shijo is not shown to be the employee of the owner. He was not even shown as the representative of the owner. In order to establish the relationship between the Shijo and the owner, the petitioner-Insurance Company could have easily produced either the owner himself as a witness, or even the claimants themselves as witnesses. These, or other witnesses, who could have brought out the relationship between the owner and Shijo, were not produced by the petitioner herein, before the Tribunal. The petitioner has, therefore, not discharged the onus which rested on its shoulders.
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> 43. Since the relationship between the Shijo and the owner has not been established, nor the capacity in which he was riding the vehicle has been brought out, it is not possible for us to conclude, that Shijo while riding the motorcycle on the fateful day, was an

> agent, employee or representative of the owner. It was open to the petitioner to defeat the claim for compensation raised by the respondents by establishing, that the rider Shijo represented the owner, and as such, was not a third party, in terms of the judgment rendered by this Court in Oriental Insurance Company Limited case (supra). The petitioner failed to discharge the said onus. In view of the above, it is not possible for us to accede to the second contention advanced at the hands of the learned counsel for the petitioner.

8. In the light of the said judgment of the Supreme Court so also the two decisions of this Court i.e. in the case of Rekhram Sahu (supra) and IFFCO Tokio General Insurance Co. Ltd. (supra), this Court is of the opinion that no strong case has been made out by the Insurance Company calling for an interference with the impugned award.

9. So far as the two judgments cited by the counsel for the Insurance Company are concerned, the case of Rajni Devi is distinguishable on its facts itself where it was not a case that the deceased was engaged as an employee by the owner rather it was a case where the owner himself was riding the motorcycle when the accident occurred. As regards Ningamma case, the Supreme Court in the case of Sinitha (supra) has considered the ratio laid down in the case of Ningamma while deciding the said case. Since the case of Sinitha is a subsequent judgment, this Court is inclined to accept the analogy laid in the case of Sinitha (supra) and for this reason, the judgment in the case of Ningamma may not come to the aid of the Insurance Company.

10. Consequently, the appeal of the Insurance Company fails and is accordingly dismissed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola