

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 05.07.2018

Judgment delivered on : 31.07.2018

MAC No. 1083 of 2012

- Smt.Purnima Chandrakar W/o Late Bodhan Chandrakar Aged About 20 Years Ghobhagati, Thana- Lormi, P.O. Lormi, Distt. Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Mr.Sirodhan Chandrakr, S/o U.R.Chandrakar Torla, Navapara, Thana-Pandariya, P.O. Nahapuri, Distt. Kawardha, Chhattisgarh
2. Divisional Office The Oriental Insu.Com.Ltd. Front Of Rajiv Plaza, Bus Stand, Bilaspur, Thana- City Kotwali, P.O. Bilaspur, District : Bilaspur, Chhattisgarh

---- Respondents

For Appellant	: Shri Utkal Pradhan, Advocate
For Respondent- 2/Insurance Company	: Shri NK Malviya, Advocate
For Respondent- 1	: None appears

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. By this appeal, the appellant/claimant has challenged the legality and propriety of the impugned award passed by the learned Additional Motor Accident Claims Tribunal, Bilaspur (for short, 'the Tribunal') in claim case No.281 of 2010 whereby the learned Claims Tribunal dismissed the claim application filed by the appellant under provisions of Section 163(A) of the Motor Vehicle Act, 1988 (for short, 'the Act, 1988').

2. The brief facts of the case are, on 14.11.2008 Bodhan Prasad Chandrakar by instructions of respondent- 1 went to purchase medicines on motorcycle bearing No.CG-09A-9583 along with one Tilak Ram Sahu, who was pillion rider. When they reached near village Tilaibhat on

Pandariya Road, at that time they came in contact with the stopper made near polling booth by putting string across the road. Bodhan Prasad Chandrakar could not see the string and met with an accident due to which he suffered severe grievous injuries on person and brought to the government hospital, Pandariya where he was declared dead. The matter was reported to the Police.

3. On account of the aforementioned untimely death, the unfortunate wife of the Bodhan Prasad Chandrakar filed claim application under Section 163(A) of the Act before competent Claims Tribunal claiming Rs.4,50,000/- on all heads. Respondent- 3 /Insurance Company submitted its reply along with the defence with regard to the violation of conditions of Insurance Policy on account of the deceased not possessing valid effective driving licence and further that the risk of the driver was not covered under the Policy and prayed for dismissal of the claim application being not maintainable. The learned Claims Tribunal after conclusion of the trial, held that as the deceased himself was driving the vehicle and not a paid driver and therefore, considering the law laid down by the Hon'ble Supreme Court in the matter of **Ningamma and another Vs United India Insurance Company Limited** reported in **{2009 (13) SCC 710}** dismissed the claim by holding that as the deceased entered into the shoes of owner and the owner himself is not entitled to get compensation from himself and dismissed the claim.

4. In case of **Ningamma** (*supra*) while dealing with identical facts and circumstances, Hon'ble Supreme Court held as under:

"12. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative?

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."

5. Learned counsel for the appellant submitted that as the motorcycle was insured on the date of accident with respondent- 2/ Insurance Company and Policy was effective on the said date with package policy and therefore, it is the liability of the Insurance Company to pay the amount of compensation.

6. I have heard the learned counsel for the parties and perused the record. The appellant/claimant in her pleading in the claim application pleaded that the deceased- Bodhan Prasad Chandrakar while driving the offending vehicle CG-09 A-9583, met with an accident and died; and the

same fact was also deposed by the claimant before the learned Claims Tribunal.

7. Considering the facts and circumstances of the case, material available on record and the law laid down by the Hon'ble Supreme Court in the matter of **Ningamma** (*supra*), the Claims Tribunal not committed any error of law in dismissing the claim application.

8. For the foregoing reasons, the instant appeal is *sans* merit, it deserves to be and is hereby dismissed.

9. No order as to costs.

Sd/-

(Parth Prateem Sahu)
JUDGE