

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 503 of 2013

- The Oriental Insurance Company Limited Dhamtari, Through The Branch Manager, Dhamtari, Tah., P.S. And Distt. Dhamtari C.G.

---- Appellant

Versus

1. Smt. Menka Sahu W/o Late Tekuram Sahu Aged About 27 Years
2. Himanshu Sahu S/o Late Tekuram Sahu Aged About 9 Years
3. Gagan Sahu S/o Late Tekuram Sahu Aged About 4 Years
4. Jayram Sahu S/o Lachchhiram Sahu Aged About 60 Years
5. Smt. Bahura Bai W/o Jayram Sahu Aged About 55 Years

Respondents No. 2 & 3 are minor through legal guardian mother Smt. Menka Sahu, wife of late Tekuram Sahu.

Respondents No. 1 to 5 are resident of Village Dhaneli, Tahsil & Police Station Gurur, Distt. Durg (CG)

6. Khuman Singh Sahu S/o Jayram Sahu Aged About 32 Years R/o Dhaneli, Tah. And P.S. Gurur, Distt. Durg C.G.

---- Respondents

For Appellant	:	Shri HS Patel, Advocate.
For Respondent Nos. 1 to 5	:	Shri Atanu Ghosh, Advocate.
For Respondent No.6	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

02/04/2019

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 12.2.2013 passed by Additional Motor Accident Claims Tribunal, Balod, Distt. Durg in Claim Case No.304/11 awarding total compensation of Rs.4.43 lacs with interest @ 6% per annum from the date of application till realization,

fastening liability on non-applicant No.2/insurance company jointly and severally along with non-applicant No.1.

02. As per claim petition, on 1.6.2011 Tekuram Sahu, 31 years of age, earning Rs.3300/- per month from a private business, was riding the motorcycle bearing No. CG 07 LN 8413 and his wife was sitting as a pillion rider. However, on the way one bullock-cart came in front of the motorcycle. Though Tekuram tried to save the bullock-cart, but in this process the motorcycle got hit by the front part of the bullock-cart. As a result of this accident, Tekuram and his wife Menka Sahu suffered grievous injuries and Tekuram ultimately succumbed to the same. At the time of accident, the motorcycle was owned by non-applicant No.1 and insured with non-applicant No.2.

03. On claim petition being filed by the claimants, wife, children and parents of the deceased under Section 163A of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company submits that the Tribunal has wrongly fastened liability on the insurance company of paying compensation to the claimants whereas according to the evidence adduced by the parties, it stands proved that on the date of accident the deceased after borrowing the motorcycle from its registered owner/non-applicant No.1 was riding the same and as such, he had stepped into the shoes of the owner and therefore, the claim petition under Section 163A of the Act was not maintainable. Reliance has been placed on the decision of this Court in ***Sakun Kushwaha and another Vs. Dhaniram and another, 2012 (2) ACCD 748 (CG)***.

05. On the other hand, learned counsel for the respondents/claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court as deceased was not owner of the motorcycle in question, he had only borrowed the same and as such, he was a third party. Alternatively, he submits that if this Court finally comes to the

conclusion that the deceased had stepped into the shoes of the owner, in that eventuality, considering the fact that premium of Rs.50/- was taken by the insurance company towards PA coverage of owner-driver vide insurance policy of Ex.D/2C which has been duly proved by NAW-1 Sunil Kumar, Development Officer of the insurance company, the insurance company is liable to pay Rs. 1 lac as compensation against the death of the deceased to the claimants with interest as awarded by the Tribunal.

Reliance has been placed on the decisions of the Hon'ble Supreme Court in ***Ningamma vs. United India Insurance Co. Ltd. AIR 2009 (SC) 3056*** and ***Oriental Insurance company Limited Vs. Rajni Devi and others (2008) 5 SCC 736***.

06. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

07. Heard learned counsel for the parties and perused the material available on record.

08. From the evidence available on record, including the evidence of AW-1 Smt. Menka Sahu, wife of the deceased, it stands proved that on the date of accident the deceased was riding the motorcycle in question after borrowing the same from its registered owner non-applicant No.1, who is the real brother of the deceased and on the way the deceased met with an accident which led to his death. Thus, in view of decision in *Sakun Kushwaha* (supra), the claim petition filed under Section 163A of the Act by the legal representatives of the deceased was not maintainable. However, keeping in view the decisions of the Hon'ble Supreme Court in ***Ningamma*** and ***Rajni Devi*** (supra), considering the fact that premium of Rs.50/- was taken by the insurance company towards PA coverage of owner-driver vide insurance policy of Ex.D/2C, the insurance company cannot escape its liability of paying Rs. 1 lac as compensation against the death of the deceased to the claimants.

09. In the result, the appeal is allowed in part. The impugned award is hereby modified to the extent that the insurance company is liable to

pay only Rs.1 lac with interest @ 6% per annum from the date of application till realization to the claimants. However, rest of the conditions of the impugned award shall remain intact. If any amount has already been deposited by the insurance company, the same shall be adjusted accordingly.

Sd/

(Gautam Chourdiya)

Judge

Khan