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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 736 of 2013

- National Insurance Company Limited Branch Office Korba, Distt. Korba C.G., Thru- Auth.Sign. National Insu.Co.Ltd., Divisional Office- B-1 Taha Complex, Ring Road-2, Priyadarshani Nagar, Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Ramcharan Uraon, S/o Boti Lal Aged About 50 Years, Occupation Agriculture
2. Sukwara Bai W/o Ramcharan Uraon Aged About 45 Years, Occupation House Wife, Cast Halba
3. Dileswari Uraon W/o Late Prem Uraon Aged About 21 Years, Occupation House wife

   All above R/o village Jaamchuva (Kalmibhata) P.S./P.O. Sakti, Tah. Sakti, Distt. Janjgir-Champa, Chhattisgarh (Claimants)
4. Chait Ram Uraon S/o Raghu Ram Uraon Aged About 45 Years, Occupation Agriculture R/o Navadih Ghui Chuva, Tah., P.S. And P.O. Sakti, Tehsil Sakti Distt. Janjgir-Champa, Chhattisgarh (Owner)

---- Respondents

For Appellant	:	Shri BN Nande, Advocate
For Respondents	:	None appears though served

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

08.05.2019

1. By this appeal, appellant/Insurance Company assailed impugned award dated 02.04.2013 passed by learned First Additional Motor Accident Claims Tribunal, Sakti (for short, 'Claims Tribunal') in Claim Case No.29 of 2012 wherein learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.4,62,000/- as compensation to claimants in a death case.

2. Brief facts for disposal of this appeal are that Respondent- 4 Chait Ram Uraon is owner of motorcycle bearing No.CG 11 CF- 3330 (offending vehicle) which was insured with appellant/ Insurance Company. On 05.08.2012 Prem

Uraon was driving motorcycle and going from Tamnar to Ganiyari to bring his wife from his in-law's house. On his way at about 9.20 am when he reached near Cherinala Padarmuda, he met with an accident and fell down due to mechanical failure of motorcycle. He was immediately taken to Civil Hospital, Kharsiya, where he succumbed to injuries sustained by him and matter was reported to concerned Police Station.

3. On account of death of Prem Uraon, his legal representatives filed claim application under Section 163-A of Motor Vehicle Act, 1988 before competent Claims Tribunal claiming total amount of Rs.13,50,000/- as compensation on grounds mentioned therein.

4. Respondent-4 owner of offending vehicle after notice appeared before learned Claims Tribunal and submitted reply to claim application stating that deceased Prem Uraon was known to him and he was engaged as driver with Paramjeet Singh Company, Tamnar. Respondent- 4 handed over his motorcycle to deceased Prem Uraon, looking to his driving license. On account of use of aforementioned motorcycle deceased Prem Uraon met with an accident and succumbed to injuries sustained by him. He also submitted that motorcycle was insured with appellant- Insurance Company from 29.08.2011 to 28.08.2012, therefore, liability if any, would be on the Insurance Company. He also specifically stated that there was no mechanical fault on his motorcycle.

5. Insurance Company, appellant herein submitted its reply to claim application and pleaded that there was violation of conditions of Insurance Policy, as rider of motorcycle was not possessing valid and effective driving

license to drive offending vehicle. Further Insurance Company opposed pleadings made in the claim application.

6. Based on pleadings and material available on record, learned Claims Tribunal framed as many as five issues for consideration including the issue with respect to violation of conditions of Insurance Policy, whether claimants are entitled for compensation from non-applicants therein and whether accident took place due to negligence of deceased himself.

7. Learned Claims Tribunal while appreciating pleadings and evidence available on record, arrived at a conclusion that there is no violation of conditions of Insurance Policy. Further it is held that there is no negligence on the part of deceased, rider of motorcycle at the time of accident as the accident took place due to mechanical failure of motorcycle, allowed claim application in part and awarded a sum of Rs.4,62,000/- as compensation.

8. Learned counsel for appellant argued that except pleading in claim application and oral statement of applicant witnesses, there is no specific evidence and material placed on record showing any mechanical fault or defect of motorcycle causing accident. He also submits that motorcycle was not examined by any mechanic or any report to this effect has been filed along with claim application to prove the same by the said witnesses. He further argued that application filed under Section 163A of Motor Vehicle Act, 1988 (for short, '1988 Act') is not maintainable in the facts and circumstances of case as deceased borrowed offending vehicle from its owner and he stepped into shoes of its owner, therefore, he cannot claim against himself.

9. I have heard argument raised on behalf of learned counsel for appellant and perused record.

10. So far as 1st ground raised by learned counsel for the appellant that accident took place due to self negligence of rider of offending vehicle ie deceased himself is concerned, there is no mention in claim application filed by claimants that cause of accident is mechanical fault or defect of motorcycle and this fact has come, for the first time, on record only in statement of Ramcharan Uraon (AW1), father of deceased. In absence of specific pleading in claim application regarding cause of accident due to which deceased died, mere oral statement made by witnesses cannot be treated as *Gospel truth*. Particularly in a case where witnesses were not present on spot nor are eyewitness. Even otherwise, claimants have not produced any mechanical examination report of motorcycle before Claims Tribunal to prove that cause of accident was a mechanical fault or defect occurred in offending vehicle.

11. In view of above material and evidence available on record, learned Claims Tribunal committed an error in recording a finding that accident took place due to mechanical defect occurred in offending vehicle. The said finding recorded by learned Claims Tribunal is without any clinching and reliable piece of evidence, therefore, it is not sustainable under law and the same is hereby set aside.

12. Next argument raised by learned counsel for the appellant that claim application itself is not maintainable under Section 163A of 1998 Act is concerned, though appellant has not taken any specific plea in their reply to this effect, but have only pleaded that claim application filed by claimants is

not maintainable. As maintainability of claim application under Section 163A of 1998 Act in these facts and circumstances is purely a legal question which is to be decided on the basis of facts narrated in the claim application itself therefore, I am proceeding to decide the grounds raised by learned counsel for the appellant.

13. Undisputedly, deceased borrowed offending vehicle from its owner for the purpose of bringing back his wife from his in-laws' house. There is no evidence that deceased was employee of owner of offending vehicle nor is a paid driver of that vehicle. Section 163A of 1988 Act is a special provision as to payment of compensation on structure formula basis. Section 163A (1) specifically provides that :-

> "[163A. Special provisions as to payment of compensation on structured formula basis.—
> (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).”

14. As the status of deceased in present case is of owner himself as he stepped into shoes of owner having borrowed offending vehicle, issue with respect to maintainability of claim application filed by owner himself under Section 163A has been dealt with by Hon'ble supreme Court in the matter of **New India Assurance Company Limited Vs Sadanand Mukhi and others**

reported in 2009 (2) SCC 417 and also in **Ningamma & Another Vs United India Insurance Company Limited** reported in (2009) 13 SCC 710.

15. Hon'ble Supreme Court in the matter of **Ningamma** (supra) 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?
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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."

16. In the facts and circumstances of case at hand, it is very clear as per pleadings and evidence itself that deceased borrowed offending vehicle from its owner and while driving the same, he met with and accident. There is no involvement of any other vehicle therefore, in the facts and circumstances of

case, law laid down by Hon'ble Supreme Court in the matters of **Sadanand Mukhi** (supra) applies with full force.

17. In view of aforementioned discussion and the law laid down by Hon'ble Supreme Court, appeal filed by Insurance Company is allowed and the award passed by learned Claims Tribunal is hereby set aside.

18. Appellant/Insurance Company may take recourse to recover the amount deposited with Claims Tribunal in accordance with law.

19. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma