NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 676 of 2012

1. Smt. Khemin Bai, aged about 38 years, Widow of late Ishwar Lal Sahu,
2. Birendra Kumar Sahu, aged 22 years, son of late Ishwar Lal Sahu,
3. Manmohan Kumar Sahu, aged about 20 years, son of late Ishwar Lal Sahu,

All R/o Village and Post Darba, Tahsil Kurud, District Dhamtari (C.G.), at present Gayatri Furniture, Lalpur, Dhamtari Road, Raipur (C.G.).

---- Appellants

Versus

1. Jeevan Lal Sahu son of Sukhi Ram Sahu, R/o Village Darba, Tahsil Kurud, District Dhamtari (C.G.) (Driver),
2. Pardeshi Ram Sahu, son of Tulsi Ram Sahu, R/o Village Murra, Post Darba, Tahsil Kurud, District Dhamtari (C.G.) (Owner),
3. The Oriental Insurance Company Limited, in front Branch Office, Adarsh Bal Mandir, Main Raod, Dhamtari (C.G.) (Insurer).

---- Respondents

For Appellants	: Mr. Raghvendra Pradhan and Mr. Shikhar Sharma, Advocates
For Respondents No.1 and 2	: None
For Respondent No. 3	: Mr. R. N. Pusty, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

03/05/2019

1. By this instant appeal, appellants/claimants who are widow and children of the deceased Ishwar Lal Sahu have challenged the legality, validity and propriety of impugned award dated 07/04/2012 passed by learned Fifth Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.09/2011 whereby learned Claims Tribunal dismissed the claim application filed by claimants.

2. Brief facts for disposal of this appeal are that on 12/09/2006, Ishwar Lal Sahu went on motorcycle bearing registration No.CG-05-B-0947 from village Darba to Sankara along with Tikeshwar Sahu. When they were returning from village Sankara to Darba, one unknown Tractor dashed the motorcycle, due to which, Ishwar Lal Sahu sustained grievous injuries and during course of treatment, Ishwar Lal Sahu succumbed to those injuries on 13/09/2006. Matter was reported to the concerned Police Station on 13/09/2006 at about 10.00 am by Jeevan Lal.

3. On account of death of Ishwar Lal Sahu, appellants/claimants have filed claim application under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the competent Claims Tribunal for grant of compensation claiming Rs.10,25,000/- on all heads.

4. Respondent No. 1 who was claimed to be driver of motorcycle did not choose to appear before the learned Claims Tribunal and proceeded *ex parte*.

5. Respondent No.2 who is owner of motorcycle denied all the adverse pleadings made against him in the claim application and pleaded that deceased Ishwar Lal Sahu was himself driving motorcycle, therefore, claim application under the provisions of Section 163-A of the M.V. Act is not maintainable. He further pleaded that the motorcycle was borrowed by deceased for his personal work. He lastly pleaded that motorcycle was insured with respondent No.3/Insurance Company,

therefore, the liability, if any, to pay the amount of compensation is on the Insurance Company.

6. Respondent No. 3/Insurance Company submitted separate reply to claim application and denied all the adverse pleading made in the claim application against it. It has been pleaded that claimants are not entitled for any amount of compensation on the ground that there was violation of conditions of insurance policy because on the date of accident driver of motorcycle (deceased) was not possessing valid and effective driving licence.

7. Learned Claims Tribunal while appreciating the oral and documentary evidence available on record arrived at a finding that claim application filed by claimants under Section 163-A of M.V. Act is not maintainable as the deceased himself was driving motorcycle after borrowing it from its original owner, therefore, he stepped into shoes of owner of vehicle and cannot claim compensation himself being insured of vehicle and dismissed the claim. It has further been held that on the date of accident, deceased Ishwar Lal Sahu was not possessing valid and effective driving licence to driver the motorcycle.

8. Learned counsel appearing for appellants/claimants submitted that on the date of accident, Ishwar Lal Sahu was not driving motorcycle, but travelling on motorcycle as pillion rider. He further submitted that learned Claims Tribunal ought to have allowed the claim application

for compensation against the Insurance Company to the extent of Rs.1,00,000/- as provided in the policy for the owner-cum-driver.

9. Per contra, learned counsel appearing for respondent No.3/Insurance Company supported the impugned award and submitted that though in the First Information Report, it has been mentioned that there is involvement of other Tractor in the accident, but owner, driver and insurer of the said Tractor were not made necessary party, therefore, it cannot be said that owner, driver and insurer of the said Tractor will be responsible. He further submitted that learned Claims Tribunal has rightly held that it is the driver of motorcycle himself who is responsible for the accident. He lastly submitted that on the date of accident, deceased was not possessing valid and effective driving licence with him and he himself was driving the motorcycle after borrowing it, therefore, he stepped into shoes of owner of vehicle and learned Claims Tribunal has rightly dismissed the claim application filed by claimants.

10. I have heard learned counsel appearing for parties and perused entire record carefully.

11. Perusal of record would show that the complaint was lodged by Jeevan Lal against unknown Tractor driver. On the basis of complaint, *Rojnamchasanha* was recorded vide Ex. P-7 and based on *Rajnamchasanha*, First Information Report (Ex. P-2) was registered by Assistant Sub Inspector of concerned Police Station. In *Rojnamchasanha*, it has been mentioned that the complainant along

with Ishwar Lal Sahu was travelling on the motorcycle and driver of the Tractor by driving his vehicle rashly and negligently, dashed the motorcycle. After investigation, final report was prepared in which, it has also been mentioned that the deceased was travelling from Nagri to Darba on motorcycle and on the way, some unknown Tractor dashed motorcycle, due to which, Ishwar Lal Sahu sustained grievous injuries and succumbed to those injuries during the course of treatment.

12. Perusal of application under Section 163-A of M.V. Act filed by claimants, it would show that Ishwar Lal Sahu was travelling on a motorcycle as a pillion rider and after the accident, first time this fact has come on record that deceased was travelling as pillion rider.

13. Khemin Bai (AW-1) stated in her statement that contents of Ex. P-1 is correct which is final report submitted by Police against unknown driver for closer of crime and there is no material placed on record in the shape of evidence to prove that on the date of accident, Jeevan Lal was driving the vehicle and Ishwar Lal Sahu was a pillion rider.

14. Respondent No.2- Pardeshi Ram Sahu examined himself as NAW-1 who stated in his evidence that his wife told him that on the date of accident when he along with his son went to Raipur for getting treatment, Ishwar Lal Sahu came to his house and requested his wife to provide him motorcycle bearing No.CG-05-B-0947 registered in the name of respondent No.2 to bring medicines and wife of

respondent No.2 accepted the request of Ishwar Lal Sahu and permitted him to take motorcycle for his use.

15. From above evidence, it is apparent that it is Ishwar Lal Sahu who borrowed the motorcycle and therefore, there is presumption that he himself was driving the motorcycle at the time of accident when there is no specific evidence brought by claimants to prove their pleadings made in the claim application. There is no material available on record to show that deceased Ishwar Lal Sahu was travelling as pillion rider.

16. In view of document Ex. P-1 and categorical statement made by respondent No.2 Pardeshi Ram Sahu (NAW-1), which remained uncontroverted, learned Claims Tribunal has rightly held that at the time of accident, deceased Ishwar Lal Sahu himself was driving motorcycle which met with an accident.

17. From the facts and evidence emerging on record, it is clear that the application under Section 163-A of the M.V. Act with respect to driver of motorcycle, who is borrower and stepped into shoes of owner, could not be maintainable. The issue with regard to the claim made with respect to death of driver of borrower vehicle has been considered and decided by the Hon'ble Supreme Court in the matter of **Ningamma and Another v. United India Insurance Company Limited**[1], in which, the Hon'ble Supreme Court held as under :-

1 **(2009) 13 SCC 710**

“21. In our considered opinion, the ratio of the decision in ***Oriental Insurance Co. Ltd. v. Rajni Devi, [(2008) 5SCC 736]*** 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 an 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. We have already extracted Section 163-A of the MVA herein before. 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.

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.
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> 23. 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."

18. In the case at hand, there is specific evidence of the owner of motorcycle, namely, Pardeshi Ram Sahu (NAW-1) that his wife intimated him that it is Ishwar Lal Sahu who borrowed his motorcycle from her to purchase some medicines. This evidence was not controverted and apart from this, there is no evidence placed on record by claimants to show that deceased was not driving motorcycle, but was travelling as pillion rider, therefore, this pleading could not be accepted to be correct.

19. In view of above, learned Claims Tribunal has not committed any error in holding that deceased Ishwar Lal Sahu himself was driving motorcycle and in view of judgment passed by Hon'ble Supreme Court in the matter of **Ningamma** (supra), the deceased stepped into shoes of owner of vehicle, therefore, the claim application filed by claimants could not be maintainable under the provisions of Section 163-A of M.V. Act.

20. Next argument raised by learned counsel for appellants/claimants that as the Insurance Company has taken a premium for personal accident of owner and driver and is covering risk of Rs.1,00,000/- is also not sustainable, particularly, in view of specific evidence led by Khemin Bai (AW-1), wife of deceased wherein she categorically stated that the deceased was not having any driving licence. In view of specific evidence that the deceased was not possessing valid and effective driving licnece, therefore, there is breach of conditions of insurance policy.

21. In view of above facts and evidence available on record as well as law laid down by the Hon'ble Supreme Court in the matter of **Ningamma** (supra), learned Claims Tribunal has not committed any error in dismissing the claim application filed by appellants/claimants.

22. In the result, the appeal being devoid of any substance is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh