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HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1168 of 2013

IFFCO Tokio General Insurance Co. Ltd. 3Rd Floor, Shop No. 345-347 Ganga Shopping, GE Road, Raipur, Tehsil & District Raipur, Chhattisgarh.

----Appellant

VERSUS

1. Lal Bahadur Singh, son of Late Shri Badrinath Singh, aged about 48 years,
2. Smt. Kanti Devi, wife of Shri Lal Bahadur Singh, aged about 45 years,

Both residents of Kabir Nagar, MIG 91, Thana Aamanaka, Raipur, District Raipur Chhattisgarh.

------Respondents

For Appellant	:	Mr. Amrito Das, Advocate
For Respondents	:	None

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

25/06/2019

1. The appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter "the Act 1988") challenging the impugned award dated 31.10.2013, passed by the 4th Additional Motor Accidents Claims Tribunal, Raipur (CG) in Claim case No. 54/2011 wherein the learned claims tribunal allowed the claim application in part and awarded a total sum of Rs.1,00,000/- as total compensation.
2. Brief facts relevant for disposal of this appeal are that the claimants who are parents of Ritu Singh filed claim application under Section 163A of the Act 1988 mentioning therein that on 5.11.2010, at about 6.30 pm when

Ritu Singh was driving her two wheeler Hero Honda (Pleasure) No. CG 07 LT 5926 and coming to her house at that relevant time, when she reached near village Dashmera, the two wheeler slipped on road due to which Ritu Singh fell down and suffered injuries on her head. She was taken to hospital and during the course of treatment she succumbed to those injuries. It was also pleaded that at the time of accident, the offending vehicle (Pleasure) was owned and driven by the deceased Ritu Singh herself. The claimants have not filed this claim application claiming compensation on account of the death of Ritu Singh. The application under Section 163A was filed by the claimants only for compensation on the head of personal accident covered for owner/driver of the vehicle on account of her accidental death claiming Rs.1,00,000/- on account of the premium of Rs.50/- charged by the Insurance company towards personal accident covered to owner cum driver.

3. The non-applicant/insurance company submitted reply to the claim application and specifically pleaded that the claim application under Section 163A of the Act 1988 itself is not maintainable as the deceased herself was owner/insurer and she cannot claim against herself. They have also pleaded that the claimants can claim for the amount towards personal accident claim but they are required to produce succession certificate of the competent Court as in the policy names of the claimants have not been mentioned as nominee.

4. Learned claims tribunal on appreciation of pleadings and evidence placed on record held that death of Ritu Singh was in a motor accident when she slipped while driving her own two wheeler bearing No. CG 07LT 5926, it

was not proved that there was no driving licence and awarded a sum of Rs.1,00,000/- on the head of personal accident to owner cum driver.

5. Learned counsel for the appellant submits that the claim application can be filed before the learned claims tribunal under the provisions of Section 163A of the Act 1988 by 3rd party only and not by the owner of the vehicle. At the time of accident, the deceased/owner cum driver of the offending vehicle was not possessing valid and effective driving licence and the driving licence was not produced before the claims tribunal. The claim under the personal accident can be awarded to the driver of the vehicle when he is possessed with valid and effective driving licence. On the aforementioned grounds he submits that the impugned award passed by the claims tribunal is illegal and liable to be set aside as the application under Section 163A before the claims tribunal itself was not maintainable.

6. I have heard learned counsel for the appellant and perused the record.

7. Perusal of the application under Section 163A of the Act 1988 itself would show that the claim application has been filed only towards the claim under personal accident cover in which Rs.50/- has been paid as premium at the time of purchasing the insurance policy. Copy of the insurance policy is filed as Ex.P8. Perusal of Ex.P8 would show that there is risk cover of Rs.1,00,000/- against personal accident to owner cum driver and Rs.50/- has been charged as premium.

8. From perusal of document Ex.P8 also it revealed that in limitation as to use, Driver Clause has been mentioned specifically in which it has been mentioned that the vehicle should be driven by the person holding valid and effective driving licence and if the owner cum driver was having the

learner's licence then he can drive the vehicle subject to the fulfillment of the requirement of Rule 3 of the Central Motor Vehicles Rules 1989.

9. Undisputedly, in the case at hand, the claimants have not filed the copy of the driving licence before the claims tribunal. In fact, in their statement before the Court for the first time they have stated that at the time of accident, the licence was lost. Lal Bahadur Singh(AW1) who is applicant 1 and father of deceased though stated in his cross-examination that he made oral complaint to the police with regard to missing of the purse of the deceased Ritu Singh but, he had not filed any written report to the concerned police authority or any higher official of the police department. In para 9 of his cross-examination, he further admitted that he did not made any effort to take out the duplicate copy of the driving licence.

10. In view of the aforementioned categorical statement made by the father of the deceased i.e. Lal Bahadur Singh (AW1), it is apparently clear that the claimants have not filed the copy of licence in support of their claim application though they have claimed compensation only against the personal accident cover to owner cum driver. The use of the vehicle insured by the appellant/insurance company is required to be done in accordance with the limitation clause provided in the insurance policy. In absence of non-availability of the copy of driving licence of the deceased-owner/driver of the vehicle, the claimants failed to fulfill the driver clause as mentioned in the insurance policy, wherein it limits the use of vehicle only by the person holding valid and effective driving licence to drive the vehicle.

11. In view of the aforementioned discussion and specific evidence of Lal

Bahadur Singh (AW1) that copy of the licence could not be produced before the claims tribunal in the opinion of this Court, the claims tribunal committed an error in shifting the burden of proof on the insurance company that the insurance company failed to prove that the deceased/owner cum driver of the offending vehicle was not possessing effective and valid driving licence. The claims tribunal has failed to consider that the applicants have filed the claim application claiming an amount of compensation on the head of personal accident which is a contractual liability and therefore, it is onus of the claimants to prove the fact that at the time of accident, the owner cum driver of the vehicle was driving the vehicle after possessing valid and effective driving licence to drive the same. After claiming an amount of compensation under the personal accident producing evidence with respect to holding effective and valid driving licence by the owner cum driver is a per-requisite, without which the claim itself is not maintainable. The claims tribunal has posed wrong question itself by taking into consideration that once the claimants have pleaded that there was a licence then it is the burden of insurance company to prove that on the date of accident, the driver of the vehicle was not possessing effective and valid driving licence. Unless and until the particulars of the licence is brought on record, the claimants cannot be said to have discharged their burden that on the date of accident the owner cum driver was driving the vehicle with valid and effective driving licence and therefore, the said finding recorded by the claims tribunal that the insurance company failed to discharge its liability to prove the fact that the driver cum owner of the vehicle was not possessing valid and effective driving licence is illegal and not sustainable.

12. So far as the filing of claim application under Section 163A of the Act 1988 is concerned on account of the accidental death of driver cum owner of the vehicle, perusal of Section 163A would be beneficial. Section 163A of the Act 1988 is reproduced herein below :

> "**163-A. 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.
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> 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).
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> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
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> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule".

13. Section 163A specifically provides liability on the owner (insured) and insurer to pay the amount of compensation to the legal heirs of the victim. The provision of Section 163A is very specific that the owner or the authorized insurer is liable to specify the claim of the victim. In view of the

above provision available under the Act 1988 owner of the vehicle cannot claim compensation from herself. The liability of the insurer is only to indemnify the owner on account of premium charged by him/her for other persons.

14. The issue with respect to the claim under Section 163A of the Act 1988 has been considered by the Hon'ble Supreme Court in the matter of Oriental Insurance Company Limited Vs. Rajni Devi And Others, reported in (2008) 5 SCC 736 and held in para 11 as under :

> “11. The liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The heirs of Janak Raj could not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to”.

13. The Hon'ble Supreme Court while considering the scope of Section 163-A of the Act 1988 has again considered the scope of Section 163-A in the matter of **Ningamma and Another v. United India Insurance Company Limited**[1]**,** in which, the Hon'ble Supreme Court held as under :-

> “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

1 **(2009) 13 SCC 710**

> 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.
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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.

14. As the Hon'ble Supreme Court in the aforementioned matters has categorically held that the owner of the vehicle cannot be both, a claimant as also a recipient and therefore, the heirs of the deceased owner cum driver of the vehicle could not have maintained a claim in terms of Section 163-A of the Act.

15. In view of the aforementioned discussion and the law laid down by the

Hon'ble Supreme Court, the application under Section 163-A of the Act 1988 itself is not maintainable and the learned claims tribunal committed error in entertaining the application.

16. So far as the liability of the insurance company for granting compensation under personal accident cover head is concerned, it is to be claimed before the different forum when the insurer failed to comply this part of the contractual liability even after making any application claiming the amount of compensation on the head of personal accident cover. The Hon'ble Supreme Court in the matter of Rajni Devi (supra) has held that looking to the pendency of the case, the claimants therein would be entitled for an amount of compensation according to the terms of the contract of insurance policy. The contract of insurance so far as it relates to personal accident cover for the driver cum owner of the vehicle, it is necessary that on the date of accident, the driver cum owner of the offending vehicle possessed valid and effective driving licence.

17. In the result, the appeal filed by the insurance company is allowed and the award of compensation passed by the claims tribunal is set aside.

Sd/

(Parth Prateem Sahu)

Judge

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