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HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 441 of 2014

Iffco Tokio General Insurance Co. Limited 3rd Floor, Shop No. 345-347 Ganga Shopping GE Road, Raipur, Tehsil & District Raipur, Chhattisgarh

----Appellant

VERSUS

1. Smt. Sarojini Shrivas, widow of Late Shri Tilakram Shrivas, aged about 48 years,
2. Mahabir Shrivas, son of Late Shri Tilakram Shrivas, aged about 29 years,
3. Santosh Kumar Shrivas, son of Late Shri Tilakram Shrivas, aged about 27 years,
4. Manoj Kumar Shrivas, son of Late Shri Tilakram Shrivas, aged about 23 years,

All respondents resident of No.1 Dafai, Chhurakachhar, Katghora, Korba, Chhattisgarh

------Respondents

For Appellant	:	Mr. Amrito Das, Advocate
For Respondents	:	Mr. Amiyakant Tiwari, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

26/06/2019

1. The appellant/insurance company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter "the Act 1988") challenging the impugned award dated 20.12.2013, passed by the Additional Motor Accidents Claims Tribunal, Katghora, Korba (CG) in CT No. 74/2012 wherein the learned claims tribunal allowed the claim application and

awarded a total sum of Rs.1,00,000/- as compensation to the claimants along with interest @ 6% p.a. from the date of filing of the claim application till its realization.

2. Brief facts relevant for disposal of this appeal are that on 12.10.2010, at about 9.15 pm when Tilakram was travelling on his TVS Moped bearing No.CG 12 AA 4261 at that relevant time, suddenly one animal came on the road due to which he met with an accident and fell down. He suffered grievous injuries over his head. He was taken to hospital where during the course of treatment he succumbed to those injuries suffered by him.

3. The claimants who are widow and children of the deceased filed a claim application before the competent claims tribunal under Section 163A of the Act 1988 claiming Rs. 20,00,000/- as compensation. The non-applicant/insurance company submitted its reply to the claim application and pleaded that as the deceased himself was owner and driver of the two-wheeler which met with an accident, therefore, the application under Section 163A of the Act 1988 is not maintainable. They have also raised the ground with respect to the violation of conditions of insurance policy.

4. On appreciation of the pleadings and evidence placed on record by the respective parties, the learned claims tribunal held that the deceased died in the motor accident driven by him i.e. TVS Moped bearing No. CG 12 AA 4261. While deciding the other issues with respect to violation of the conditions of insurance policy and where owner and the driver of the vehicle has as treated 3rd party, in negative the learned claims tribunal awarded a total sum of Rs.1,00,000/- as compensation on the ground that the driver of the offending vehicle paid premium towards personal

accident for owner to the tune of Rs.50/-.

5. Learned counsel for the appellant/insurance company submits that the claim application under Section 163A of the Act itself is not maintainable as the primary liability for payment of compensation is on the owner of the vehicle and therefore, he could not claim compensation against himself. He further submits that the learned claims tribunal committed error in not framing any issue with regard to the maintainability of the application under Section 163A of the Act 1988 though they have pleaded very specifically in the claim application.

6. Per contra, learned counsel appearing for the respondents/claimants submits that the learned claims tribunal has awarded the amount towards personal accident to the owner for which the owner has paid the premium.

7. I have heard learned counsel for the parties and perused the record.

8. It is not in dispute that on the date of accident, the insurance policy of the offending vehicle was in existence. It is also not in dispute that the insured has paid premium towards personal accident for covering risk of personal accident of owner cum driver as Rs.50/- which is evident from Ex. P12.

9. It will be beneficial to glance the provisions of Section 163A of the Act 1988. 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.

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).

(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.

(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”.

10. From bare perusal of Section 163A of the Act 1988 it is clear that it provides for liability upon the owner (insured) and insurer to pay the amount of compensation in case of death or permanent disablement arising out of the use of motor vehicle to the legal heirs of the victim.

11. The issue with respect to the maintainability of the application under Section 163A of the Act 1988 by the owner cum driver of the vehicle has been dealt with by the Hon'ble Supreme Court in the matter of **Ningamma & Another Vs United India Insurance Company Limited** reported in **(2009) 13 SCC 710** and 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."

12. If in the light of the aforementioned law laid down by the Hon'ble Supreme Court and the facts of the case at hand is considered, it is the owner cum driver of the vehicle met with an accident and the claim is against the death of owner cum driver of the vehicle. There is no involvement of any other motor vehicle in the accident. Therefore, in the facts of the case and the aforementioned law laid down by the Hon'ble Supreme Court will apply with full force. The Claims Tribunal fell into error in entertaining an application under Section 163-A of the Act 1988 which was not maintainable.

13. In the above discussion, the claim application filed by the respondents/claimants under Section 163A of the Act 1988 is not maintainable and therefore, the impugned award passed by the learned claims tribunal is liable to be set aside. In the result, the appeal is allowed and the impugned award passed by the learned claims tribunal in CT No. 74/2012 is hereby set aside.

Sd/

(Parth Prateem Sahu)

Judge

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