

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 28.01.2019

Order delivered on : 08.03.2018

MAC No. 406 of 2013

1. Laxmin Bai, Widow of late Santosh Khunte Aged About 30 Years
2. Lokesh S/o Late Santosh Khunte Aged About 14 Years Minor
3. Kamlesh S/o Late Santosh Khunte Aged About 12 Years Minor

Appellants 2 and 3 Thru- Mother Laxmin Bai

All R/o Achanakpali Churela, Tah. Sarangarh, Distt. Raigarh, Chhattisgarh

---- Appellants

Versus

1. United India Insurance Comp. Ltd. S/o Branch Office, Raigarh Thru- Branch Manager., Chhattisgarh
2. Dhaniram Jangde S/o Seetaram Jangde R/o Barbhantha, Post- Bade Gantuli, Tah. Sarangarh, Distt. Raigarh C.G

---- Respondents

For Appellants	: Shri BL Sahu, Advocate on behalf of Shri UR Koshaley, Advocate
For Respondent- 1 / Insurance Company	: Smt Chitra Shrivastava, Advocate
For Respondent- 2/ Owner	: None appears

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

08.03.2018

1) By this appeal, the appellants are challenging the legality and validity of the award dated 31.01.2013 passed by the Additional Motor Accident Claims Tribunal (FTC), Sarangarh (for short, 'Claims Tribunal') in claim case No.03 of 2011, whereby learned Claims Tribunal partly allowed the claim application and awarded a sum of Rs.2,80,000/- in total as compensation and exonerated the Insurance Company from the liability of payment of compensation.

2) Brief facts for disposal of this appeal are that, 02.04.2010 deceased- Santosh Khunte was travelling on motorcycle bearing registration No.CG 13-K 9225, which is owned by respondent- 2 and going from Bade Gantuli to village- Achanakpali to take his father. Suddenly some animals obstructed his way and he could not control the vehicle due to which fell down and sustained grievous injuries all over his body. He succumbed to those injuries on the spot.

3) On account of aforementioned untimely death of deceased Santosh Khunte, his legal representatives who are wife and children have filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and claimed Rs.19,70,000/- as compensation mentioning therein that the deceased was aged about 35 years, earning Rs.3,000/- per month and due to his death, all of them were in loss of dependency on the earnings of the deceased.

4) Respondent- 1/ Insurance Company after service of notice submitted its reply and denied all the adverse pleadings made in the claim application and pleaded that the accident occurred on account of self negligence of driver of the motorcycle himself. It was also pleaded that the motorcycle was borrowed by the deceased from respondent- 2 and therefore, claim application filed under Section 163(A) of the Act is not maintainable. Other defence that has been taken by the Insurance Company was with regard to the fact that on the date of accident, deceased was not having any valid and effective driving license to drive the motorcycle, meaning thereby, there is violation of conditions of Insurance Policy. Respondent- 2, owner of the offending vehicle remained

absent and did not appear before the Tribunal and was proceeded *ex-parte*.

5) Learned Tribunal on the basis of pleadings made by the respective parties framed three issues for consideration including the issue with regard to the maintainability of the claim application under Section 163(A) of the Act. Finally, the Tribunal allowed the claim application in part and awarded a sum of Rs.2,80,000/- in total as compensation and held respondent- 2 (owner) to satisfy the award and exonerated the Insurance Company from its liability.

6) Learned counsel for the appellants submits that the Tribunal has committed an error in holding the income of the deceased at Rs.15,000/- per year and further that in not awarding any amount towards future prospects and thereby awarded lesser amount of compensation in the facts and circumstances of the case. He further submitted that the amount of compensation awarded by the Tribunal may be suitably enhanced.

7) On the other hand, learned counsel appearing for the Insurance Company submits that it has rightly been exonerated from the liability of payment of compensation and further that the amount awarded by learned Claims Tribunal is just and proper in the facts and circumstances of the case.

8) I have heard learned counsel appearing for the parties and perused the impugned award.

9) Undisputedly, there is specific pleading that at the time of accident deceased was going on a motorcycle, owned by respondent- 2. This fact also emerges from an affidavit filed by appellant- 1 under Order 18 Rule 4 of the CPC. In para-2 of the said affidavit it was stated specifically that the deceased borrowed the motorcycle owned by respondent- 2 and while going to village-Achanakpali, he met with an accident and succumbed to the injuries. The appellant, therefore, stepped into the shoes of its owner and application filed by the claimants under Section 163(A) of the Act is not maintainable.

10) The above issue was considered 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."

11) In view of above, this court is not inclined to entertain the appeal for enhancement of the award filed by the appellants/claimants. As the award was not challenged by the owner on whom the liability has been fastened for payment of amount of compensation, this Court refrains itself from interfering with the impugned award.

12) Accordingly, the appeal being devoid of merit, is liable to be and is hereby dismissed.

13) No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 242 of 2019

1. Laxmin Bai Wd/o Late Santosh Khunte, Aged About 30 Years
2. Lokesh S/o Late Santosh Khunte, Aged About 14 Years, Minor.
3. Kamlesh, Late Santosh Khunte, Aged About 12 Years, Minor.

Appellants No.2 & 3 through Mother Laxmin Bai

All R/o Village Achanakpali (Churela) Tehsil Sarangarh District Raigarh Chhattisgarh.

---- Appellants

Versus

1. United India Insurance Company Limited, Branch Office Raigarh, Through Branch Manager, Chhattisgarh
2. Dhaniram Jangde, S/o Seetaram Jangde, R/o Barbhantha, Post Bade Gantuli, Tah. Sarangarh, District Raigarh (CG)

---- Respondent

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

19/03/2019

1. This is an office reference for correction in the final order passed in MAC No.406/2013.
2. Perused.
3. On going through the order, it appears that though the order was delivered on 8.3.2019, but due to inadvertent typographical mistake, the date of delivery of order has been wrongly mentioned as "8.3.2018 instead of "8.3.2019".
4. The same being pure bona fide typographical error is hereby rectified. The date of delivery of order mentioned at the top of cause title be read as '08.03.2019 in place of '08.03.2018' .
5. The MCC stands disposed off.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-