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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1310 of 2014

- The New India Insurance Company Limited Branch Office Baloda Bazar C.G., Chhattisgarh

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Versus

1. Sumitra Bai W/o Late Kewal Ram Banjare Aged About 34 Years R/o Village- Khorsi Nala Pangaon, Thana And Tah. Baloda Bazar, Distt. Raipur C.G., Chhattisgarh
2. Arun Kumar S/o Late Kewal Ram Banjare Aged About 18 Years R/o Village- Khorsi Nala Pangaon, Thana And Tah. Baloda Bazar, Distt. Raipur C.G., District : Raipur, Chhattisgarh
3. Ku. Hetkumari D/o Late Kewal Ram Banjare Aged About 16 Years Minor, Thru- Mother Smt. Sumitra Bai, R/o Village- Khorsi Nala Pangaon, Thana And Tah. Baloda Bazar, Distt. Raipur C.G., District : Raipur, Chhattisgarh
4. Sunil Kumar S/o Late Kewal Ram Banjare Aged About 15 Years Minor, Thru- Mother Smt. Sumitra Bai, R/o Village- Khorsi Nala Pangaon, Thana And Tah. Baloda Bazar, Distt. Raipur C.G., District : Raipur, Chhattisgarh
5. Sunita D/o Late Kewal Ram Banjare Aged About 13 Years Minor, Thru- Mother Smt. Sumitra Bai, R/o Village- Khorsi Nala Pangaon, Thana And Tah. Baloda Bazar, Distt. Raipur C.G., District : Raipur, Chhattisgarh
6. Fuleshwari D/o Late Kewal Ram Banjare Aged About 9 Years Minor, Thru- Mother Smt. Sumitra Bai, R/o Village- Khorsi Nala Pangaon, Thana And Tah. Baloda Bazar, Distt. Raipur C.G., District : Raipur, Chhattisgarh
7. Madhav Prasad Verma S/o Ganesh Ram Verma Aged About 40 Years R/o Gaitra, Thana And Tah. Baloda Bazar, Distt. Raipur C.G., District : Raipur, Chhattisgarh
8. Narsingh Verma S/o Tularam Aged About 45 Years R/o Baloda Bazar, Thana And Tah. And Distt. Baloda Bazar C.G., District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate
For Respondent No.1 to 7	:	None
For Respondent No.8	:	Shri SP Sahu, Advocate.

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

15/05/2019

1. Appellant - Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 24.9.2014 passed by learned 3rd Additional Motor Accident Claims Tribunal, Balodabazar (for short 'the Claims Tribunal') in Claim Case No.53/11 whereby learned Claims Tribunal has partly allowed claim application, awarded total sum of Rs.5,25,000/- along with interest @ 6% p.a. to claimants and fastened liability upon appellant-insurance company to satisfy the award.
2. Facts of the case in nutshell are that on 13.8.2009 Kewal Ram Banjare along with Swami Madhav Verma was going on motorcycle bearing registration number CG04-CN-6317 to Giraudhpuri Mela from Khorsi Nala Pangaon and when they reached near village Chachi Sail, said Kewal Ram Banjare lost control over motorcycle, dashed it against a tree on the side of road. As a result, said Kewal Ram Banjare sustained grievous injuries on his head & other parts of body and was admitted at Medical College Hospital, Raipur where he succumbed to injuries on 22.8.2009, while undergoing treatment. Matter was reported to the Police Station Kasdol based on which Crime bearing No.286/09 was registered.
3. Claimants, who are widow and legal representatives of deceased Kewal Ram Banjare filed claim application seeking compensation of Rs.11,75,000/- along with interest @ 9% p.a. against non-applicants.

4. Non-applicant No.1, subsequent purchaser of motorcycle in question, filed reply to claim application denying all adverse pleadings made in claim application. He further pleaded that deceased was unemployed and he was not earning Rs.3,000/- per month as Mechanic. On the date of accident, deceased was driving motorcycle under the influence of liquor and due to rash and negligent driving he lost control over motorcycle and met with accident which resulted into his death.

5. Non-applicant No.2- registered owner of motorcycle, also submitted his reply to claim application and denied all adverse pleadings made against him. He pleaded that no accident took place by motorcycle bearing registration number CG04-CN-6317. It was also pleaded that on 13.8.2009 deceased was having valid and effective driving license and only after perusal of driving license, non-applicant No.1 handed over his motorcycle to him. Further, on the date of accident, the motorcycle was insured with non-applicant No.3 Insurance Company.

6. Non-applicant No.3 - Insurance Company also filed its reply to claim application and pleaded that on the date of accident deceased was not having valid and effective driving license and accident took place due to own negligence of deceased and therefore the claimants are not entitled for any amount of compensation.

7. On appreciation of pleadings and evidence adduced by respective parties, the Claims Tribunal held that non-applicant No.1 was owner of motorcycle; deceased died due to injuries

sustained by him in a motor accident; and that there is nothing to show that deceased was riding motorcycle under the influence of liquor. Consequently, the Claims Tribunal awarded compensation of Rs.5,25,000/- and held that liability to satisfy the impugned award would be that of insurance company.

8. Learned counsel for appellant would submit that intimation regarding sale of motorcycle in question, as required under Section 157 (2) of the Act of 1988, has not been given to insurance company. He further argued that deceased was not possessing valid and effective driving license and even along with application filed under Order 11 Rule 12 of CPC the license was not produced by claimants before the Claims Tribunal. This application was rejected by the Claims Tribunal. He further argued that premium towards PA to owner-cum-driver has not been paid and therefore the insurance company is not liable to pay any compensation under that head. He further submits that the Claims Tribunal has wrongly deducted one-fourth towards personal and living expenses of deceased because in the Scheduled appended to Section 163A of the Act of 1988 only one-third deduction is provided. He further submits that in compliance of the Court's order dated 5.1.2015, appellant Insurance Company has already deposited 50% of the awarded amount which included mandatory deposit of Rs.25,000/-, therefore, while absolving insurance company from its liability, said amount be ordered to be recovered from registered owner and also subsequent purchaser of motorcycle in question, jointly & severally.

9. Per contra, learned counsel appearing on behalf of non-applicant No.2 / respondent No.8 (registered owner of motorcycle), supported the impugned award and submitted that the impugned award granting compensation to claimants and fastening liability on the insurance company to satisfy the award has been passed on proper appreciation of evidence brought on record by respective parties and the same does not call for any interference in exercise of appellate jurisdiction.

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

11. As far as first ground urged by learned counsel for appellant that on the date of accident, deceased was not having valid and effective driving license and even after their best efforts they could not prove said defence for want of copy of driving license is concerned, I have perused order dated 12.10.2013 wherein the Claims Tribunal has considered and decided application filed under Order 11 Rule 12 of CPC filed by appellant for production of driving license before the Claims Tribunal. In the said application the insurance company has specifically pleaded that as copy of driving license is not made available to them, therefore, they are not in a position to get it verified. Said application was objected on behalf of claimants and it was submitted that deceased possessed driving license but the same was lost at the spot and therefore it could not be produced before the Claims Tribunal. The Claims Tribunal relying on oral submission made by learned counsel appearing on behalf of claimants rejected aforesaid

application. However, this Court feels that the Claims Tribunal erred in rejecting aforesaid application for the reason that claimants being legal representatives of deceased driver of motorcycle are under legal obligation to prove that at the time of accident the deceased was having a valid license to drive motorcycle, but they failed to discharge this burden. In the case at hand, though it is not the case that insurance company has not made any effort to get copy of license or to prove defence taken by them that on the date of accident, driver of motorcycle in question was not holding valid and effective driving license but present is a case where application has been filed for production of license so as to enable the insurance company to get it verified from the office of concerned licensing authority. Requirement of law is that a person holding license issued by competent licensing authority is only authorized to drive motor vehicle. Failure to produce driving license would be sufficient to draw an inference that driver of motorcycle did not possess valid and effective driving license. In these circumstances, I am of the considered view that finding recorded by the Claims Tribunal that insurance company failed to discharge its burden of proving the fact that driver of motorcycle was not holding valid and effective driving license is erroneous to the facts and evidence available on record and being so, the same is hereby set aside. As the driver of motorcycle was not possessing valid and effective driving license on the date of accident, therefore, there was breach of condition of insurance policy and appellant cannot be held liable for any amount of compensation.

12. Another aspect of the case at hand is that on the date of accident, deceased was driving motorcycle owned by one Madhav Verma. Accident took place as motorcycle driven by deceased dashed against a standing tree on road side. There is no involvement of any other motor vehicle. There is no pleading in claim application to the effect that accident took place due to some mechanical fault in motorcycle. A bare reading of statement of AW-1 Sumitra Bai makes it clear that Kewalram was not engaged as Driver to drive motorcycle. In fact, he had borrowed motorcycle from Madhav Verma, who himself was travelling as pillion rider at the time of accident. Thus, the deceased had stepped into shoe of owner of motorcycle. Issue with respect to death of a person who was driving motorcycle, after borrowing it from its registered owner has been dealt by Hon'ble Supreme Court in the matter of **Ningamma and anr v. 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?
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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."

13. In the above judgment, the Hon'ble Supreme Court has held in categorical terms that if injured/deceased driver of motorcycle borrows motorcycle from its registered owner and met with an accident while driving it, then legal representatives of deceased who stepped into shoes of owner of motorcycle, cannot claim compensation under Section 163A of the Act of 1988.

14. In the case at hand, it is the case of claimants themselves that at the time of accident, deceased was driving motorcycle after borrowing it from its registered owner, therefore, the principles laid down by Hon'ble Supreme Court in the matter of Ningamma (supra), are applicable to the facts of present case with full force. Thus, in the considered opinion of this Court, the claim application under Section 163A of the Act of 1988 itself was not maintainable and the Claims Tribunal erred in entertaining the same and passing impugned award.

15. Accordingly, the appeal is allowed and impugned award passed by the Claims Tribunal is hereby set aside.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-