

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 71 of 2014**

1. Smt. Saraswati Sahu aged about 30 years W/o Lt. Vijay Kumar Sahu,
2. Harsh Kumar aged about 13 years S/o Lt. Vijay Kumar Sahu,
3. Ku. Khushbu aged about 11 years D/o Lt. Vijay Kumar Sahu,
4. Bholaram Sahu aged about 57 years, S/o Lt. Samaru Sahu,
5. Smt. Gayatri Bai aged about 49 years W/o Bholaram Sahu,
6. Hemant Sahu aged about 26 years S/o Bholaram Sahu,
7. Kanta Sahu aged about 29 years, D/o Bholaram Sahu,
8. Kaushal Sahu aged about 24 years S/o Bholaram Sahu,

Appellant No. 2 and 3 are minor through natural guardian mother Smt. Saraswati Sahu W/o Lt. Vijay Kumar Sahu.

All the appellants are R/o Shanti Nagar, Ward No. 4, Rajnandgaon, Tah.- Rajnandgaon, Civil and Revenue District- Rajnandgaon (C.G.)

---- Appellants/Claimants**Versus**

1. Sohan Lal Sahu aged about 54 years S/o Kartikram Sahu, R/o H- 573, Ward No. 2, Rajeev Nagar Durg, Tah.- Durg, Civil and Revenue Distt.- Durg (C.G.).
2. The Branch Manager, United India Insurance Co. Ltd., Branch Office- Kamthi Line Rajnandgaon, Tah.- Rajnandgaon, Civil and Revenue District- Rajnandgaon (C.G.).

wrongly mentioned Tah. And District- Durg (C.G.) in certified copy of judgment.

---- Respondents

For Appellants : Shri Rakesh Thakur, Advocate.
For Respondent No. 2 : Ms. Chitra Shrivastava, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

31.01.2019

(1) This appeal has been filed by the claimants, who are unfortunate wife, children & parents of deceased – Vijay Kumar Sahu, under Section 163-A Motor Vehicles Act, 1988 (henceforth “Act, 1988”) against the award passed by Motor accident claims Tribunal Rajnandgaon in claim case No. 37/11 on 24.09.2012 dismissing the claim petition.

(2) Facts of the case leading to filing of the claim petition are that when on 17.01.2011 Vijay Kumar Sahu (since deceased) was going alongwith his relative - Chandresh on motorcycle bearing registration No. CG07LU/3165 as a pillion rider, near pulgaon Naka one unknown car dashed the motorcycle driven by Chandresh, due to which he (Vijay Kumar Sahu) sustained multiple injuries and succumbed to those injuries.

(3) As per evidence available on record, the Claims Tribunal has clearly recorded a finding that the deceased – Vijay Kumar Sahu was not a pillion rider and he himself was driving the motorcycle at the time of accident, and due to the road accident occurred on 17.01.2011, he died on the spot. The Claims Tribunal further recorded a finding that the motorcyclist was not a third party and he steps into the shoes of the owner and rejected the claim petition filed by the claimants. The Tribunal also recorded a finding that the deceased was earning Rs. 3,000/- per month, therefore, the application is tenable under Section

163-A of the Act, 1988 but since they come into the shoes of the owner, therefore, the application as framed and filed under Section 163-A of the Act, 1988 was dismissed.

(4) Learned Counsel for the appellants/claimants submits from the pleadings of the parties and the evidence adduced by them it is established that on the date of accident the deceased was riding the motorcycle after borrowing the same from its owner / non-applicant no.1 Sohan Lal Sahu and as such he had stepped into the shoes of the owner. It is not in dispute that the said motorcycle was duly insured with respondent No. 2/Insurance Company. Further it is also not in dispute that the Insurance Company had taken premium of Rs.50 towards PA coverage of owner-driver and its maximum liability for the owner-cum-driver was limited to Rs.1,00,000/- and, therefore, the Tribunal has erred in rejecting the claim petition filed by the claimants, who have filed the appeal before the Claims Tribunal under Section 163-A of the Act, therefore, it is prayed that the claimants are entitled for Rs. 1,00,000/- for which the premium of Rs. 50/- was taken for the owner-driver of the offending vehicle.

(5) Learned counsel for the respondent/Insurance Company opposes the contentions made by learned counsel for the appellants and submits that if any claim arisen from any contract as per insurance policy Ex. P/7, then the claimants should have approached before the proper forum, which they did not do and, therefore, no appeal is tenable before this court for claiming compensation.

(6) Heard and perused the record of the concerned Tribunal and the award impugned.

(7) Looking to the evidence adduced by both the parties and from the focused perusal of the FIR (Ex.P-2), it is noticed that the deceased was himself driving the motorcycle at the time of accident and one unknown vehicle i.e. car dashed the said vehicle, as a result of which, he died and since the documents to this effect were filed and proved by the claimants, therefore, they have no right to given any contrary statement against those documents. In para 7 & 8 of the award the learned Claims Tribunal while appreciating the evidence adduced before it, has recorded a finding that according to statement of Sarsawati Bai (AW-1), Chandrashekhar is riding the motorcycle at the time of accident and deceased Vijay Kumar Sahu was sitting in the said motor cycle as pillion rider but the said Chandresher has not been examined and cross examined before the Tribunal to prove the aforesaid fact.

(8) In this case the as per Insurance policy (Ex.P/6), the limited liability of Rs. 1,00000/- as compensation would be against the death of owner-driver as against the premium of Rs.50/- taken by the insurance company. Therefore, considering the terms and conditions of the insurance policy and the decisions of the Hon'ble Supreme Court in **Ningamma vs. United India Insurance Co. Ltd. AIR 2009 (SC) 3056 and Oriental Insurance company Limited Vs. Rajni Devi and others (2008) 5 SCC 736**, this Court is of the opinion that the Insurance Company is held liable to pay compensation of Rs. 1,00,000/- alongwith 6% interest from the date of application till its realisation to the claimants for the death of deceased in the motor accident occurred way back on 17.01.2011.

(9) In the result, the appeal is allowed in part to the above extent.

Sd/-

(Gautam Chourdiya)
Judge

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