

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 737 of 2013**

1. Sadharam Netam S/o Laxmansingh Aged About 50 Years,
 2. Smt. Chandrawati W/o Sadharam Netam Aged About 45 Years
- Both above R/o Village Chhaprapara Dudhava, Police Station Dudhava Chowkai, Tahsil Narharpur Revenue, Civil & Police District North Bastar Kanker, District North Bastar Kanker (C.G.).

---- Appellants**Versus**

1. Anil Markam S/o Lakhanlal Markam Aged About 24 Years R/o Village Chhaprapara Dudhava, Police Station Dudhava Chowki, Tahsil Narharpur Revenue, Civil & Police District North Bastar Kanker, District North Bastar Kanker (C.G.).
2. Future General India Insurance Company Limited, Through its Branch Manager, Divisional Office Shop No. 1, Second Floor, B Block, G.E. Road, Raipur, Kumharpara Road, Revenue, Civil & Police District Raipur District Raipur (C.G.).

---- Respondents

For Appellants	:	Mr. Anshul Tiwari, Advocate on behalf of Mr. Manoj Paranjpe, Advocate
For Respondent No. 1	:	None
For Respondent No. 2	:	Mr. Rohitashva Singh, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgment On Board****30/01/2019**

1. The appellants/claimants who are unfortunate parents of the deceased, namely, Manesh Kumar Netam have challenged the legality, validity and propriety of the impugned award dated

19/04/2012 passed by Motor Accident Claims Tribunal, North Bastar Kanker, C.G. (hereinafter referred to as 'Claims Tribunal') in Claim Case No.91/2009 wherein learned Claims Tribunal dismissed the claim application filed by the claimants.

2. Brief facts for disposal of this appeal, are that, on 25/02/2009, at about 8.00-8.30 pm, Manesh Kumar Netam along with Puran Patel went to Karap on the motorcycle bearing registration No. CG/19/B/5304 (hereinafter referred to as 'offending vehicle') owned by respondent No. 1- Anil Markam. On the way, accident of motorcycle took place, due to which, both the riders of motorcycle, namely, Manesh Kumar Netam and Puran Patel fell down. On account of which, Manesh Kumar Netam sustained severe head injury and he succumbed to the said injury on the spot. The other person Puran Patel who was pillion rider sustained injuries over his person.
3. On account of death of Manesh Kumar Netam, appellants/claimants have filed claim application under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') mentioning therein that on the date of accident, Manesh Kumar Netam was earning Rs.3,000/- per month and they were dependent on him. It has been pleaded that on account of death of their son, they suffered

loss of dependency and claimed a total sum of Rs. 16,08,000/- towards compensation.

4. Respondent No. 1, owner of motorcycle, submitted reply to the claim application and stated that on 25/02/2009, he went to his in-law's village where his motorcycle was standing on courtyard and he was sitting inside the house. It has further been stated that the motorcycle was taken by Puran Patel and Manesh Kumar Netam without his knowledge and the accident took place due to the negligence on the part of Manesh Kumar Netam, therefore, the claimants are not entitled for any amount of compensation. It has also been stated that the motorcycle bearing registration No. CG/19/B/5304 was insured with respondent No. 2/Insurance Company on the date of accident, therefore, the liability, if any, to pay the compensation is on the Insurance Company.
5. Respondent No. 2/Insurance Company submitted separate reply to the claim application and denied all the adverse pleadings made in the claim application against it. It has been pleaded that the claimants are not entitled for any amount of compensation on the ground that the vehicle was being driven contrary to the provisions of the Motor Vehicles Act, 1988.
6. Learned Claims Tribunal while appreciating the pleadings, evidence and other material available on record had arrived at a conclusion

that the motorcycle was taken by Manesh Kumar Netam who was driving the motorcycle at the time of accident, therefore, he steps into the shoes of the owner of the vehicle and cannot claim compensation himself being insured of the vehicle and dismissed the claim.

7. Learned counsel appearing for the appellant submits that on the date of accident Manesh Kumar Netam who has taken the motorcycle without knowledge of the owner of the vehicle, therefore, he cannot come into the category of the owner of vehicle and the learned Claims Tribunal committed an error in dismissing the claim application. He further submits that the motorcycle could not have been taken by the third person without knowledge and permission of the owner of the vehicle as the motorcycle could be taken only after obtaining keys of the motorcycle from the owner of the vehicle.
8. Per contra, learned counsel appearing for respondent No. 2 supports the award impugned and submits that at the time of accident, Manesh Kumar Netam was neither an employee of the owner of the vehicle and as per the claim of the appellants themselves, Manesh Kumar Netam took the vehicle without any authority and thereby being driver of the motorcycle, he steps into the shoes of the owner of the vehicle, therefore, the learned Claims Tribunal has rightly dismissed the claim application of the claimants.

9. I have heard learned counsel appearing for the parties and perused the record carefully.
10. The appellants in their claim application themselves have pleaded that the motorcycle bearing registration No. CG/19/B/5304 is owned by Anil Markam and the said motorcycle met with an accident when Manesh Kumar Netam was driving the said vehicle and Puran Patel is sitting as pillion rider.
11. The First Information Report annexed with the record shows that the motorcycle was taken by Manesh Kumar Netam. Sadhram Netam (AW-1) in his evidence has admitted that on the date of accident the motorcycle bearing registration No. CG/19/B/5304 was being driven by his son, deceased Manesh Kumar Netam. He further admitted that on account of death of driver of the motorcycle, the police has submitted closure report before the concerned Court with respect to crime registered under Sections 279 & 304 of IPC in the aforementioned accident.
12. The other witness Puran Patel was examined as AW-2, who was said to be a pillion rider of the offending vehicle at the time of accident. He has specifically stated that Manesh Kumar Netam took the motorcycle of Anil Markam without his knowledge and permission. He further stated that at the time of accident, Manesh Kumar Netam

himself was driving the vehicle and he also consumed liquor prior to the accident.

13. From the above evidence on record, it is clear that Manesh Kumar Netam took the motorcycle bearing registration No. CG/19/B/5304 without authorization of original owner of the motorcycle i.e. respondent No. 1 and as per the evidence of AW-2, he at the time of accident has consumed liquor, which clearly shows that the accident took place due to the fault of the driver of the motorcycle i.e. Manesh Kumar Netam himself.
14. The learned Claims Tribunal has rightly relied upon the judgment passed by Hon'ble Supreme Court 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 vehicle by its owner and, therefore, he would step into the shoes of the owner of the motorbike. We have already extracted

¹ (2009) 13 SCC 710

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.

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.

23. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case.”

15. In view of the discussions made herein-above, the instant case is squarely covered with the law laid down by Hon'ble Supreme Court in

the matter of **Ningamma** (supra) and in the opinion of this Court, the learned Claims Tribunal has not committed any error in dismissing the claim application filed by the appellants/claimants.

16. In the result, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

17. No order as to costs.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh