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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 78 of 2014

{Arising out of order dated 28.06.2013 passed by learned Second Additional Motor Accident Claims Tribunal, Balod, District Durg, Chhattisgarh in Claim Case No.73 of 2012}

1. Smt. Sarita Shrivastava W/o Late Santu @ Rajesh Shrivastava Aged About 28 Years
2. Adarsh Shrivastava S/o Late Santu @ Rajesh Shrivastava Aged About 11 Years
3. Ku. Gungun @ Yogita Shrivastava D/o Late Santu @ Rajesh Shrivastava Aged About 6 Years

   [Appellant No.2 to 3 being minor on behalf of through their legal guardian mother appellant No.1 Smt. Sarita Shrivastava]

   All R/o Ward No. 13, Jawaharpara, Balod, Post Office, Police Station and Tahsil Balod, District Durg (Now District : Balod), Chhattisgarh

---- Appellants

Versus

1. B.S. Dewangan S/o B.R. Dewangan Aged About 56 Years R/o Forest Campus, Rajendra Park, Post Office Durg, Police Station Mohan Nagar, District Durg, Chhattisgarh
2. The Divisional Manager, The New India Insurance Company Limited, Through Branch Manager, Branch Office, Power House, Bhilai, Post Office Bhilai, Police Station Kotwali, Power House, Bhilai, District Durg, Chhattisgarh

---- Respondents

For Appellants	:	Shri Dharmesh Shrivastava, Advocate.
For Respondent No.1	:	None.
For Respondent No.2	:	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

19.08.2020

1. Dismissal of the claim petition preferred by the Appellants seeking compensation in respect of the death of their sole bread earner in a road traffic accident is questioned at the instance of the Claimants.

2. The case put-forth by the Appellants is that on 13.05.2010, the deceased (husband of the 1st Appellant and father of the 2nd and 3rd Appellants) was driving a Maruti Car and when it reached the place of occurrence at night, the vehicle went out of control and hit against a tree standing on the side of the road, causing fatal injuries, leading to death of the person who was driving the Car. This led to filing of the claim petition before the Tribunal by the Appellants under Section 163-A of the Motor Vehicles Act, 1988, claiming compensation against the 1st Respondent/registered owner of the offending vehicle and the 2nd Respondent/insurer.

3. The 1st Respondent/registered owner contended that the deceased driver was having a valid and effective driving licence at the time of the accident and that the vehicle was covered by all the relevant documents and further that, it was having a valid insurance policy issued by the 2nd Respondent. The 2nd Respondent/Insurance Company contended that it was having no liability to satisfy the claim, since the deceased was 'not a third party'. Since it was a self-invited accident; nobody else was to be blamed in this regard and that the vehicle went out of control only because of the rash and negligent driving by the deceased, who was on the driver seat at the relevant time. It was also pointed out that there was clear infringement of the statutory/policy conditions under various heads and that the claim was only liable to be dismissed.

4. On conclusion of the trial, based on the pleadings and evidence adduced, the Tribunal held that the claim though preferred under Section 163A of the Motor Vehicles Act, 1988 (where the negligence need not be pleaded or proved), was not liable to be entertained. It was accordingly that the claim petition was dismissed, correctness of which is put to challenge in this appeal.

5. Shri Dharmesh Shrivastava, the learned counsel for the Appellant submits that the course pursued by the Tribunal in dealing with the claim preferred under Section 163A of the Motor Vehicles Act, 1988 is contrary to the scheme of the statute and the binding judicial precedents. The learned counsel submits that there is an ocean of difference between a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 and the claim petition preferred under Section 163A of the Motor Vehicles Act, 1988. In the case of former, it is obligatory for the Claimants to plead and establish the negligence on the part of the driver of the offending vehicle, without which, no compensation is payable. Unlike this, in a claim preferred under Section 163A of the Motor Vehicles Act, 1988, it is not at all necessary for the Claimants to plead or establish the negligence on the part of the driver or owner of the offending vehicle. By virtue of the unique nature of this provision, the compensation payable ought to have been worked out and awarded by the Tribunal, where it has gone wrong.

6. Smt. Chirta Shrivastava, the learned counsel appearing for the 2nd Respondent/Insurance Company submits that the award passed by the Tribunal dismissing the claim petition filed by the Claimants is perfectly within the four walls of law and does not warrant any interference. It is pointed out that the vehicle involved was a private Car, but the same was put to 'commercial use' at the relevant time, thus, violating the terms of the policy. It is submitted that the deceased himself was driving the vehicle, carrying passengers, which is a forbidden activity as per the nature of the vehicle involved. It is also the submission of the learned counsel that, the deceased, at the relevant time, was driving the Car after consuming alcohol and this is evident from the postmortem report (Ex.P/9), which was proved by examining the doctor concerned. The

policy issued by the 2nd Respondent to cover the statutory liability in terms of Section 147 of the Motor Vehicles Act, 1988 does not cover the risk of the deceased, who was 'not a third party'.

7. After hearing both the sides, we find that there is no dispute with regard to the factual aspects involved; that the vehicle is a 'private vehicle'; that the same was being driven by the deceased himself and further that the vehicle went out of control and hit against a tree standing on the side of the road, causing fatal injuries and leading to death of the deceased. Admittedly since, nobody else was liable or responsible for the accident, no claim would be maintainable under Section 166 of the Motor Vehicles Act, 1988. The question is whether the instant claim petition preferred under Section 163A of the Motor Vehicles Act, 1988 could be treated as maintainable to award compensation to the Claimants in respect of the death of the deceased driver.

8. Way back in the year 2009, a question had come up for consideration before the Apex Court as to whether a person who borrows the vehicle and drives the same, sustains an accident, could be called a 'third party' so as to get the benefit of compensation, which was answered in 'negative' as per **Ningamma and Another v. United India Insurance Company Limited** reported in **(2009) 13 SCC 710**. After meticulous analysis of the legal provisions, a finding was rendered to the effect that such person virtually “steps into the shoes of the owner” and as such, he cannot raise a valid claim against the owner or the insurer. The issue has been considered quite recently as well, by the Apex Court, in **Ramkhiladi and Another v. United India Institution Company Limited and Another** reported in **(2020) 2 SCC 550,** wherein it has been made clear by the Apex Court that even in a claim under Section 163A of the Motor

Vehicles Act, 1988 (where negligence is neither to be pleaded nor proved), no liability can be mulcted upon the Insurance Company in the case of self-accident.

9. In view of the undisputed facts as to the occurrence of the accident and since nobody else is involved, the deceased who was driving a Car had virtually steps into the shoes of the 1st Respondent/registered owner. As such, the claim petition filed by the Claimants under Section 163A of the Motor Vehicles Act, 1988 has been rightly dismissed by the Tribunal.

10. It is relevant to note that there is a case for the Appellants that the deceased was working as a driver of the 1st Respondent/registered owner. Requirements of policies and limits of liability under the Motor Vehicles Act, 1988 are stipulated under Section 147, which does not take in the case of a driver engaged to drive a 'Private Car'. No material is produced before this Court to hold that there was any wider coverage/ personal accident cover under the policy, by paying additional premium.

11. In the said circumstance, the award passed by the Tribunal, dismissing the claim petition as not maintainable, is quite in order and does not call for any interference. The appeal fails and it is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

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