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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1162 of 2013

{*Arising out of Award dated 18.09.2013 passed by the Additional Motor Accident Claims Tribunal, Sarangarh, District-Raigarh in Claim Case No. 74/2006*}

1. Dev Prasad Nirala S/o Vishwanath Nirala, Caste-Satnami, Aged About 55 Years
2. Ganga Bai Nirala W/o Dev Prasad Nirala, Caste-Satnami, Aged About 48 Years

   Both R/o Village Hardi, Post Hardi, Police Station And Tahsil Sarangarh, Distt. Raigarh (C.G.)

---- Appellants

Versus

1. The Oriental Insurance Company Limited Branch Itwari Bazar, Raigarh, Tahsil And Distt. Raigarh, (C.G.)
2. Krishna Kumar Nirala S/o Dev Prasad Nirala, Caste-Satnami, Aged About 26 Years R/o Village And Post Hardi, Police Station And Tahsil Sarangarh, Distt. Raigarh, (C.G.)

---- Respondents

For Appellants : Shri Shivendu Pande, Advocate.
For Respondent No.1 : Shri H. P. Agrawal, 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

13.07.2020

1. Dismissal of the claim petition preferred by the parents of the deceased rider of the motor cycle, is put to challenge in this appeal filed by the Claimants.

2. The sequence of events reveals that the deceased by name Ram Kumar Nirala, aged about 30 years, was riding a motor cycle bearing registration No. CG-13-f1994 owned by the 2nd Respondent and insured by the 1st

Respondent, with the pillion rider by name Mohan Satnami, on 27.04.2006. At about 12:30 pm (afternoon); when they reached the place of occurrence, an unknown Truck dashed against the motor cycle driven by the deceased and both the riders were knocked down to death. This led to separate claim petitions preferred before the Tribunal. The claim petition preferred by the Appellants herein was dismissed as per award dated 26.11.2008 which was sought to be challenged by filing an appeal before this Court as MAC No. 1330 of 2009. There was a similar appeal preferred by the legal representatives of the pillion rider as MAC No. 1329 of 2009. Both the said cases were considered together and as per Annexure-A/2 common judgment dated 02.02.2011, the impugned awards were set aside and the matter was remitted to the Tribunal to decide the claim petitions afresh, in the light of the observations made in the judgment after recording the evidence independently, as specified. The parties were also set at liberty to amend the pleadings and adduce evidence before the Tribunal.

3. The case of the Appellants is that, inspite of the remand ordered by this Court, the matter was not properly considered by the Tribunal and the claim petitions came to be dismissed again, which is led to the present appeal.

4. We heard the learned counsel for the Appellants as well as the learned counsel for the Respondent-Insurance Company.

5. According to the Respondent-Insurance Company, their specific case raised before the Tribunal was that, the rider was knocked down to death by an unknown Truck, parties of which, have not been impleaded in the party array. The Respondents in the claim petition were only the owner of the motor cycle (which was driven by the deceased) and its insurer. The claim was not maintainable against the Insurance Company, as it was not coming within the purview of the policy issued in terms of the relevant provisions of the Motor Vehicle Act, 1988.

6. The basic question is to be considered is weather a claim in respect of the rider of the motor cycle is maintainable against the owner of the motor cycle and its insurer, treating the rider as a 3rd party. This was answered by the Apex Court in the 'negative' in ***Ningamma And Another vs. United India Insurance Company Limited*** reported in ***(2009) 13 SCC 710,*** holding that such person will be deemed as having stepped into the shoes of the owner and as such, he cannot be permitted to prefer any claim against the owner or the insurer.

7. The position came to be considered again by the Apex Court quite recently as well in ***Ramkhiladi And Another vs. United India Insurance Company And Another*** reported in ***(2020) 2 SCC 550,*** where it has been categorically made clear by the Apex Court that no such claim is maintainable even under Section 163-A (where there is no burden upon the Claimants to plead or proved negligence on the part of the driver or owner in any manner). It is a matter of 'absence of coverage under the policy' and as such, the claim itself is not maintainable. In view of crystal-clear declaration of law by the Apex Court as above, the dismissal of the claim petition by the Tribunal does not warrant any interference.

8. The learned counsel for the Appellants, however, submits that the connected matter i.e. the other claim preferred by the legal representatives of the deceased pillion rider of the motor cycle (which also came to be dismissed by the Tribunal and was put to challenge in MAC No. 1161 of 2013) was allowed and the impugned award was set-aside as per judgment dated 18.09.2019 (by one of us “Shri Justice Parth Prateen Sahu”) holding that the claim was maintainable and has awarded a compensation of Rs. 6,74,800/- with interest at the rate of 6% per annum from the date of filing of claim application till its realization. A copy of the said verdict is also placed for perusal of this Court. We have gone through the said judgment. It is quite

evident that the said claim was preferred by the legal representatives of the deceased 'pillion rider'; which stands on a different footing. So far as the pillion rider is concerned, his claim is covered under the 'comprehensive/package policy', whereby the insurer will be liable to satisfy the same, treating the pillion rider as a '3rd party'. The above verdict was passed, taking note of the law declared by the Apex Court as to the scope of 'comprehensive/package policy' as decided in ***National Insurance Company Limited Vs. Balakrishnan And Another*** reported in ***(2013) 1 SCC 731***. It was further observed in the said verdict that, the claim petition dismissed by the Tribunal was only on the ground that the Claimants had failed to prove the rash and negligent act on the part of the rider of the motor cycle and further that the owner, driver and Insurance Company of the Truck were also necessary parties.

9. Referring to the law declared by the Apex Court in ***T. O. Anthony vs. Karvarnan And Others*** reported ***in (2008) 3 SCC 748,*** explaining the term 'composite negligence', it was held that as far as the pillion rider was concerned, the accident occurred because the collision between the motor cycle and an unknown Truck and hence it was a case of 'composite negligence' and not of contributory negligence. Since it was a case of composite negligence, it was quite open for Claimants to proceed against either or both parties of the vehicle concerned and in the said circumstance, the Claimants were justified in the proceeding against the owner and insurer of the motor cycle, on which the deceased was riding as a pillion rider. It was accordingly held that the claim was maintainable and hence the award was set-aside, compensation was worked out reckoning a notional monthly income of Rs.3,000/- and fixing an appropriate multiplier, also granting amounts payable under the relevant heads in conformity with the ruling rendered by the Constitution Bench of the Apex Court in ***National***

Insurance Company Limited v. Pranay Sethi & Another, reported in **(2017) 16 SCC 680.**

10. From the above, it is quite clear that the judgment rendered in MAC No. 1161 of 2013 stands on a different footing, it being a case of pillion rider covered under the 'comprehensive/package policy'. Coming to the instant case, it is in respect of the death of the rider of the motor cycle, against the owner and insurer of the said motor cycle. This stands covered against the Appellants as per ruling rendered by the Supreme Court in ***Ramkhiladi (supra)***. In the above circumstance, we do not find any merit to entertain the appeal. Appeal fails, it is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Hem