AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 706 of 2014

1. Smt. Sunita Gupta wife of late Vijay @ Balaji Gupta, aged about 24 years, resident of Guptapara, Kawardha, at present C/o Rajendra Prasad Gupta, gole bazar, Pipariya, Police Station, Pipariya Tahsil kawardha, district Kabirdham C.G.
2. Minor Prateek Gupta, aged about 1 year, late Vijay @ Balaji Gupta, through mother Smt. Sunita Gupta, wife of late Vijay @ Balaji Gupta, (appellant 1).

------Appellants

VERSUS

1. Gurusharan @ Dauwa Gupta son of Jagannath Gupta, aged about 38 years, Occupation-Vehicle Owner, Toyota Kwalis, Registration no. CG 15 4758, resident of Guptapara Ward No. 10 Tahsil Kawardha, District Kabirdham C.G.
2. The Oriental insurance Company Limited, through the Branch Manager, Branch Office, Near Railway Station, Rajnandgaon, District Rajnandgaon, C.G.
3. Smt. Uma Devi wife of Shri Gourishankar Gupta, aged about 53 years, Occupation-Nil, resident of Guptapara Ward No. 10, Tahsil Kawardha, District Kabirdham C.G.
4. Smt. Manju Gupta D/o late Gourishankar Gupta, aged about 40 years, resident of Guptapara Ward No. 10, Tahsil Kawardha, District Kabirdham C.G.
5. Smt. Anju Gupta D/o late Shri Gourishankar Gupta, wife of Hirawan Goswami, aged about 35 years, resident of Village Parpodi, near Bus Stand, District Durg C.G.
6. Smt. Vishakha Gupta D/o Shri Gourishankar Gupta, wife of Jayprakash Gupta, aged about 32 years, resident of Guptapara Ward No. 10, Tahsil Kawardha, District Kabirdham C.G.
7. Smt. Mamta Gupta D/o Shri Gourishankar Gupta, aged about 30 years, wife of Manish Gupta resident of Guptapara Ward No. 10, Tahsil Kawardha, District Kabirdham C.G.
8. Smt. Santoshi Gupta D/o Shri Gourishankar Gupta, aged about 27 years, wife of Rajendra Gupta, resident of Guptapara Ward No. 10, Tahsil-Kawardha, District Kabirdham C.G.
9. Shrikant Gupta Son of Shri Gourishankar Gupta, aged about 25 years, resident of Guptapara Ward No. 10, Tahsil Kawardha, District Kabirdham C.G.

----Respondents

For Appellants	:	Mr. Devesh Chandra Verma, Advocate.
For Respondent 2	:	Mr. T.K. Tiwari, Advocate.
For Respondent 3 to 9	:	Mr. Dharmesh Shrivastava, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, J.

24/09/2020

1. The appellant-claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth “Act of 1988”) challenging the impugned award dated 09-04-2014 passed in claim case no. 19/2011 by learned Motor Accident Claims Tribunal, Kabirdham (Kawardha) C.G. whereby learned Claims Tribunal dismissed the claim application.

2. Fact relevant for disposal of this appeal are that on 18-10-2009, Vijay Gupta alias Balaji Gupta (for short “Vijay Gupta”) was traveling on Tata quails bearing registration no. CG15 4758 (hereinafter referred to as “offending vehicle”) along with his friends and relatives and was returning from Bhoramdev Temple after visiting philosophical sites. When the vehicle reached near Chapri village, it met with an accident near Katgo turn and turned turtle. In the aforementioned accident, Vijay Gupta and other passengers suffered injuries. They were taken to Government hospital where doctor declared Vijay Gupta to be dead. The accident was reported to concerned police station based upon which crime was registered against the driver of the offending vehicle. But as the driver died on account of accidental injuries suffered by him, closure report was filed.

3. Claimants who are widow and minor son filed an application under Section 163A of the Act of 1988 pleading therein that late Vijay Gupta was doing the business of grains and *Kirana* trading and earning Rs. 2,50,000/- per annum. Claimants were dependents upon the income of the deceased.

4. Non-applicant 1/ Respondent 1 owner of the offending vehicle denied the pleadings made in the claim application and pleaded that on the date of accident, Vijay Gupta met with an accident of his own negligence. Non-

applicant 1/ Respondent 1 is not liable to pay any amount of compensation. Offending vehicle was insured with Non-applicant 2/ Respondent 2-Insurance Company under the comprehensive policy. Non-applicant 1 has complied with all the conditions of the insurance policy and the insurance Company is liable to satisfy the amount of compensation.

5. Non-applicant No. 2-Insurance Company submitted reply denying the pleadings made in the claim application. There was breach of policy conditions. It is not proved that deceased was driving the vehicle under the employment of Non-applicant 1 with valid permit and licence. Deceased was only having learner's licence. Deceased was not a third party hence the legal heir cannot file application for grant of compensation. The income of the deceased was pleaded as Rs. 2,50,000/- per annum, hence the application filed under Section 163A of the Act is not maintainable. Liability is upon the claimants to prove that deceased Vijay Gupta was under the employment of Respondent 1/ Non-applicant 1 and the vehicle was being driven according to the terms and conditions of the insurance policy and permit. Offending vehicle was registered as private vehicle, but on the date of accident, it was plied as Taxi.

6. Learned Claims Tribunal, on appreciation of pleading and evidence placed on record by the respective parties, held that the accident of the motor vehicle was on account of negligence of the deceased driver himself. Deceased was not under employment of non-applicant 1. No relationship between employee-employer established. The accident is on account of self-negligence, therefore, application under Section 163A of the Act of 1988 by legal heirs of the deceased, is not maintainable. The income of the deceased was pleaded more than 40,000/- per annum, therefore, also application under Section 163A of the said Act is not maintainable. Claimants are not entitled for any amount of compensation and dismissed the claim.

7. Mr. Devesh Chandra Verma, learned counsel for the appellants submits that in an application filed under Section 163A of the Act 1988, negligence on the part of deceased driver is not to be taken into consideration. Tribunal erred in recording a finding that the accident took place on account of negligence of the deceased driver of the offending vehicle himself and dismissed the application. Further, placing reliance on in the case of ***Ramkhiladi v. United India Insurance Com. Limited*** reported in **AIR 2020 SC 527**, learned counsel submits that the Hon'ble Supreme Court has held that the liability of Insurance Company would be as per the terms and conditions of contract of insurance policy and under the policy, the risk of owner-driver is covered and, therefore, the Claims Tribunal ought to have awarded the compensation to the extent of coverage of the risk under PA to owner-driver.

8. Per contra, Mr. T.K. Tiwari, learned counsel appearing for Insurance Company submits that the deceased was driver of the offending vehicle and due to his own negligence and rash driving, he met with an accident and succumbed to injuries. There was no involvement of any other vehicle in the accident. Deceased was not the paid driver engaged by Respondent 1/ Non-applicant 1, but was a borrower of the offending vehicle and he stepped into the shoes of owner of the offending vehicle. In these circumstances, the claim under Section 163A of the Act of 1988 is not maintainable as held by the Supreme Court in the case of **Ramkhiladi (supra)**. He also submits that income of the deceased was pleaded as Rs. 2,50,000/- per annum, hence, also the application under Section 163A of the Act of 1988 was not maintainable.

9. Mr. Dharmesh Shrivastava, learned counsel representing Respondent No. 9 submits that he has filed a cross-objection under Order 41 Rule 22 of CPC seeking relief that the impugned award be set aside and cross objector be given liberty to file fresh petition under Section 166 of the Act

1988.

10. We have heard learned counsel for the respective parties and perused the record of claim case.

11. It is not in dispute that the vehicle was registered as a private vehicle and the policy issued by the Respondent-Insurance Company for a period from 12.01.2009 to 11.01.2010 is a Private Car Package Policy -Zone B. Perusal of the application filed under Section 163A of the Act of 1988 would show that the claimants have pleaded that on the date of accident, husband of appellant-1 had gone to Bhoramdev Temple along with his friends and relatives. There is no pleading with regard to the engagement of the deceased as driver of the offending vehicle.

12. Respondent 1/ Non-applicant 1 has pleaded that the accident took place on account of self-negligence of the deceased and, therefore, the claimants are not entitled for any amount of compensation from Non-applicant 1-owner. In affidavit under Order 18 rule 4 of CPC filed by Appellant 1 in paragraph 2 it is stated that on 18.10.2009 her husband Vijay was traveling on the vehicle of Gurusharan Gupta along with his family friends and relative. In cross examination, she admits that Gurusharan has kept the vehicle for his personal use and in spare time he uses the vehicle as Taxi. On the date of accident, her husband was driving the vehicle, she was not known to any driver. At the time of accident, 10 persons were traveling on the vehicle and it was not hired.

13. From the aforementioned evidence and facts available on record, it is apparent that on the date of accident, deceased himself was driving the private vehicle. He was not a paid driver but a borrower and, therefore, he stepped into the shoes of owner of the offending vehicle. Hon'ble Supreme Court in the case of ***Ningamma v. United India Insurance Co. Ltd.***

reported in **(2009) 13 SCC 710** has held that the borrower of the vehicle stepped into the shoes of owner, therefore, borrower of the vehicle or his legal representatives are not entitled for compensation from the insured. In the case at hand, deceased was driving the vehicle as borrower of the vehicle, hence, he stepped into the shoes of the owner and not entitled for any amount of compensation as third party. Recently, Hon'ble Supreme Court in the case of **Ramkhiladi** (**supra**) has again considered the entitlement of the claimants under Section 163A of the Act of 1988 by legal representatives of the owner of the motor vehicle and held thus:

> "5.9 … It is ultimately concluded by this Court that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163A of the Act. ..."

14. In view of the aforementioned law declared by the Supreme Court that the legal representatives of the owner of the offending vehicle who met with an accident and succumbed to death cannot maintain an application under Section 163A of the Act of 1988. The application filed by the appellant-claimant under Section 163A of the Act of 1988 seeking compensation against the death of Vijay Gupta, driver who stepped into the shoes of owner is not maintainable.

15. The second submission made by the learned counsel for the appellants that as the premium was charged for cover risk of owner-driver under the personal accident coverage, therefore, the claimants would be entitled for such limited amount of compensation as the deceased driver of the offending vehicle stepped into the shoes of owner.

16. To appreciate the submission made by the learned counsel for the appellant, we have perused the copy of insurance policy. Copy of insurance policy, though, was not marked as exhibit but the certificate-

cum-policy schedule is available on record at page 8. Perusal of which shows that the policy was issued under the Private Car Package Policy, it was having the wide coverage. As the schedule of premium paid for the policy was not available on the earlier date of hearing, we have directed the learned counsel for the Insurance Company to place on record the complete insurance policy along with the schedule of premium charged towards the policy. In persuance of the direction issued by this Court, Mr. T.K. Tiwari, has placed on record the copy of policy along with schedule of premium which is extracted below for ready reference.

Attached to and forming part of policy number 152502/31/2009/12830

SCHEDULE OF PREMIUM

A. OWN DAMAGE		B. LIABILITY	
BASIC OD COVER	6,318.00	BASIC TP COVER	2,500.00
MOTOR OD BASIC-NEW	6,318.00	BASIC TP TOTAL	2,500.00
BASIC OD TOTAL	5,054.00	ADD :PA FOR OWNER DRIVER-GR36A	100.00
OD TOTAL	4,422.00	ADD :PA-UN-NAMED-GR36B2	225.00
MOTOR TOTAL OD	4,422.00	ADD :LL-PAID DRIVER	
		CONDUCTOR, CLEANER-IMT-28	25.00
		TP TOTAL	2,850.00
		TOTAL PREMIUM	7,272.00
		STAMP DUTY	0.50
		ADD :SERVICE TAX	899.00
		TOTAL AMOUINT	8,171.00

Deductibles under Section-I : Compulsory Deductible 1000

Subject to IMT Endorsement Printed herein/attached to :IMT-22, IMT-28, IMT-16, IMT-5

Details of IMT Endorsements are also available on the Company's Web Portal www.orientalinsurance.org.in

17. Perusal of coverage of risk as mentioned above, the schedule of premium in the policy is Subject to IMT endorsement printed herein/attached to IMT -22, IMT-28, IMT-16 and IMT -5. IMT-22 is compulsory deductible. Personal accident to unknown passenger other than the insured, paid driver and cleaner GR36A is compulsory personal accident covered to owner/ driver. GR 36A reads as under.

"GR 36A. Personal Accident (PA) Cover

under Motor Policy (not applicable to vehicles covered under Section E, F and G of Tariff for Commercial Vehicles)

A. *Compulsory Personal Accident Cover for Owner-Driver*

Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an “effective” driving licence is termed as Owner-Driver for the purposes of this section.

Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/ dismounting from or traveling in the insured vehicle as a co-driver.

NB. This provision deals with Personal Accident cover and only the registered owner in person is entitled to the compulsory cover where he/ she holds an effective driving licence. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving licence. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory P.A. cover for the owner-driver should not be charged and the compulsory P.A. cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her.

The scope of the cover, Capital Sum Insured (CSI) and the annual premium payable under this section are as under:-

TYPE OF VEHICLES	CAPITAL SUM INSURED (Rs.)	PREMIUM (Rs.)	COVER
Motorised Two Wheelers	x x x x	x x x x x	x x x x x
Private Cars	2 lakhs	100/-	i) 100% of CSI for Death, Loss of Two Limbs or sight of both eyes or one limb and sight of one eye. ii)50% of CSI for Loss of one Limb or sight of one eye. iii)100% for Permanent Total Disablement from injuries other than named above.
Commercial vehicles	x x x x x	x x x x x	x x x x x

18. Perusal of contents of GR 36A would show that the risk under the policy is for personal accident coverage for the owner of the insured vehicle holding effective driving licence. “Owner” is defined under Section 2(30) of the Act of 1988 which reads as under.

> **“Section 2. Definitions.-** (30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;

19. From perusal of definition of owner as provided under Section 2(30) of the said act is the person in whose name the motor vehicle stand registered. From reading of GR36 A and also the definition of ‘owner’ as above, makes it explicitly clear that the owner means a person on whose name the motor vehicle was registered.

20. In the case at hand, deceased, though, driving the vehicle, but was not the registered owner of the vehicle. Apart from the above, under the GR36-A specific note is appended in which, it is specifically mentioned that the risk under the personal accident coverage, only the registered owner in person is entitled for compulsory coverage where he or she holds an effective driving licence. The policy issued by the Insurance Company in favour of the insured is a contract and, therefore, any claim against the Insurance Company would depend upon the terms and conditions of insurance policy as held by the Supreme Court in the case of ***Oriental Insurance Co. Limited v. Rajni Devi*** reported in **(2008) 5 SCC 736**.

21. In view of the above discussion and as per the terms of insurance policy, deceased though driving the offending vehicle was not the owner of the vehicle for the purpose of claiming compensation under the insurance policy. The policy mentions the payment of premium for owner-driver and

covering the risk of personal accident only for the registered owner in person.

22. For the foregoing reasons, we do not find any force in the submission of the learned counsel for the appellant that the claimants are entitled, at least for the payment of amount of compensation under the personal accidental coverage. The provision of Section 163A of the Act of 1988 is a special provision for granting compensation without proving negligence, whose income is not more than Rs. 40,000 per annum. If the income of injured or deceased exceeds Rs. 40,000/- per annum, then application filed by he/she or their legal representatives/ heirs will not be maintainable under Section 163A of the Act of 1988. The Tribunal is fully justified in arriving at a finding that the application under Section 163A for compensation is not maintainable.

23. The appeal being devoid of any merit which is liable to be and is hereby dismissed accordingly.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

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