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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 589 of 2014

Miss Tarani Kange D/o Late Dev Singh Kange, aged about 5 years through Guardian Uncle G.S. Kange S/o Late Jarman Singh Kange aged about 40 years, R/o Village Damkass, Post Dokla, P.S. Charama, District North Bastar Kanker, Chhattisgarh**.**

-----Appellant

Versus

1. Tara Singh Kange, S/o Late Jarman Singh Kange, R/o village Damkasha, Post Dokla, District Kanker, Chhattisgarh.
2. The National Insurance Co. Ltd., Above Central Bank, Near R.M.S. Office, Main Road Jagdalpur, District Bastar, Chhattisgarh**.**

---- Respondents

For Appellant : Shri Arjun Lal Singroul, Advocate
For Respondent No.1 : None
For Respondent No. 2 : Shri Qamarul Aziz, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

20.10.2020

1. Challenge in this appeal is to the award dated 11.09.2013 passed by the Additional Motor Accident Claims Tribunal, North Bastar, Kanker, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.07 of 2013 whereby

learned Claims Tribunal dismissed the application filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act').

2. Facts of the case in nutshell, are that, on 11.06.2006 at about 8.30 AM, Dev Singh Kange was driving the Tractor bearing No.CG-05/9334 (hereinafter referred to as 'offending tractor'), which met with an accident and turned turtle. In the aforementioned accident, Dev Singh Kange came under the tractor and suffered grievous injuries on his head, chest, waist, hands and legs and died on the spot.

3. Claimant, who is minor daughter of Late Dev Singh Kange filed an application under Section 163-A of the M.V. Act seeking compensation of Rs.4,25,000/-.

4. Non-applicant No.1/owner of offending tractor did not appear before learned Claims Tribunal and was proceeded *ex parte*.

5. Non-applicant No.2/Insurance Company submitted reply to claim application denying the facts pleaded therein. It was further pleaded that offending tractor was being used for commercial purpose; driver of offending tractor was not possessed with valid and effective driving licence; offending tractor was purchased by mortgaging the agricultural land recorded in the name of Tara Singh Kange, Gend Singh Kange, Dev Singh Kange (deceased driver), Ku. Gendi

Kange and Smt. Jagbati Kange, hence, the deceased was co-owner of offending tractor.

6. Learned Claims Tribunal upon appreciation of the pleadings, evidence and material placed on record by the respective parties held that offending tractor was owned by non-applicant No.1 and insured with non-applicant No.2 met with an accident while in use. Dev Singh Kange died on account of motor accidental injuries suffered by him, breach of policy conditions was not found to be proved and Tribunal dismissed the claim application by recording a finding that deceased was not a paid driver, but, brother of registered owner of offending tractor, offending tractor was purchased by mortgaging joint ownership agricultural land, of which, deceased was also one of the recorded owner; deceased himself was driving the offending tractor and died in an accident as such, he stepped into the shoes of the owner, hence, application under Section 163-A of the M.V. Act is not maintainable.

7. Shri Arjun Lal Singroul, learned counsel for the appellant/claimant submits that learned Claims Tribunal has arrived at an erroneous finding that claimant is not entitled for any amount of compensation, erred in holding that deceased was owner of offending tractor overlooking the fact that offending tractor is registered in the name of Tara Singh

Kange and insurance policy has been issued in the name of Tara Singh Kange. It is contended that under the M.V. Act, owner of the vehicle is a person in whose name the vehicle is registered in Government records, but learned Claims Tribunal has not appreciated the evidence placed on record in its entirety and arrived at an erroneous finding that deceased stepped into the shoes of owner of the offending tractor.

8. Per contra, Shri Qamarul Aziz, learned counsel for respondent No.2/Insurance Company submits that pleadings in claim application itself shows that deceased was driving the offending tractor and doing agricultural work (paddy missai) at barn of one Ramnath Sinha where offending tractor met with an accident and Late Dev Singh Kange driver of offending tractor came under it and died on the spot. From the pleadings, it is apparent that offending tractor was being used for commercial purpose and deceased died on account of his own negligence. There is no involvement of any other motor vehicle nor there is any pleading with regard to accident due to any mechanical fault. Insurance Company has placed on record Ex.D/2C, which is an application for tractor loan, in which, in details of applicants, name of deceased Late Dev Singh Kange is also mentioned, which is sufficient to show that deceased was co-owner of offending tractor and not a paid driver. It is

contended that insurance policy (Ex.D/1) do not cover the risk of driver-cum-owner as the premium has been paid covering risk of "own damage and third party".

9. We have heard learned counsel for the respective parties and perused the record carefully.

10. To appreciate the submission made by learned counsel for the appellant/claimant, we have minutely perused the pleadings of claim application and evidence placed on record by the respective parties. In claim application, appellant/claimant has very specifically pleaded that at the time of accident, deceased was driving the offending tractor. Claimant has examined one G.S. Kange as AW-1, who in his evidence has admitted that at the time of accident, deceased was doing the work of paddy missai with the offending tractor. While doing the aforementioned work, offending tractor met with an accident. In paragraph-6 of cross-examination, he admitted that they are having agricultural land in their joint name i.e. Tara Singh Kange (owner of offending tractor) and Dev Singh Kange, both were managing the agricultural property. Offending tractor was purchased after mortgaging agricultural property recorded in the joint name of all three brothers from Bank of Baroda. Though he stated that Late Dev Singh Kange was paid Rs.3,200/- per month as wages for driving the offending

tractor, but no admissible piece of evidence has been placed on record in this regard.

11. From the aforementioned facts and circumstances of the case, particularly, the evidence available on record that application for grant of loan has been submitted by all the co-owners of land including the deceased vide Ex.D/2C, Late Dev Singh Kange and Tara Singh Kange (non-applicant No.1) were managing the agricultural property, jointly recorded in the name of three brothers i.e. deceased Dev Singh Kange, Tara Singh Kange (non-applicant No.1) and G.S. Kange (AW-1).

12. In view of above specific material and evidence available on record, submission of learned counsel for the appellant that the deceased was being paid Rs.3,200/- per month towards salary for driving the offending tractor, in absence of clinching evidence in this regard, is not acceptable. Hence, the submission of learned counsel for the appellant that the deceased was a paid driver is not sustainable and is hereby repelled.

13. In view of aforementioned discussions, there is no doubt that the deceased was driving offending tractor not in the capacity of a paid driver. Deceased was not a registered owner but from the facts and evidence, it can safely be concluded that deceased stepped into shoes of owner.

14. The issue with regard to filing of an application under Section 163-A of the M.V. Act in cases where the person driving the vehicle met with an accident who was not a paid driver has been considered by Hon'ble Supreme Court in case of **Ningamma and Another v. United India Insurance Company Limited** reported in **(2009) 13 SCC 710** and recently in case of **Ramkhiladi and Another v. United India Insurance Company and Another** reported in **AIR 2020 SC 527**, in which, Hon'ble Supreme Court held thus :

> “5.3 While answering the finding recorded by the learned Tribunal on Issue No. 2, it appears that, as such, the learned Tribunal has not at all answered the aforesaid issue. While answering Issue No. 2, there is no specific finding whether the deceased/ driver was in employment of the opponent-owner Bhagwan Sahay or not. Even otherwise, no evidence is led by the claimants to prove that the deceased-driver was in employment of the opponent-owner Bhagwan Sahay. Despite the above, while answering Issue No. 4 there is some observation made by the learned Tribunal that the deceased-driver was in employment of the opponent-owner Bhagwan Sahay, which is not supported by any evidence on record. Under the circumstances, the deceased-driver cannot be said to be in employment of the opponent-owner Bhagwan Sahay and,

therefore, he can be said to be permissible user and/or borrower of motor vehicle owned by the opponent owner Bhagwan Sahay. With these findings, the main question posed for consideration of this Court referred to herein above is required to be considered.

5.4 An identical question came to be considered by this Court in the case of Ningamma *(AIR 2009 SC 3056)* (supra). In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation under Section 163A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing registration No. RJ 29 2M 9223, being a third party with respect to the offending vehicle. However, no claim under Section 163A was filed against the driver, owner and/or insurance company of the motorcycle bearing registration No. RJ 29 2M 9223. It is an admitted position that the claim under Section 163A of the Act was only against the owner and the insurance company of the motorcycle bearing registration No. RJ 02 SA 7811 which was borrowed by the deceased from the opponentowner Bhagwan Sahay. Therefore, applying the law laid down by this Court in the case of Ningamma (supra), and as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No. RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 163A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable.

5.5 It is true that, in a claim under Section 163A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163A of the

Act is based on the principle of no fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in the case of Dhanraj *(AIR 2004 SC 4767)* (supra), an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of <u>a third party</u> caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

5.9 Now, so far as the submission made on behalf of the claimants that in a claim under Section 163A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163A of the Act would be maintainable is concerned, in view of the decision of this Court in *Rajni Devi (AIROnline 2008 SC 33) (supra)*, the aforesaid cannot be accepted. In *Rajni Devi* (supra), it has been specifically observed and held that the provisions of Section 163A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in the cases of Oriental Insurance Co. Ltd. v. Jhuma Saha (2007) 9 SCC 263: *(AIR 2007 SC 1054); Dhanraj (AIR 2004 SC 4767) (supra);* National Insurance Co. Ltd. v. Laxmi Narain Dhut (2007) 3 SCC 700 *: (AIR 2007 SC 1563) and Premkumari v. Prahlad Dev* (2008) 3 SCC 193 : *(AIR 2008 SC 1073),* 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. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of Ashalata Bhowmik *(AIR 2018 SC 4133)* (supra), it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed hereinabove."

15. In the case at hand, there is no evidence that the deceased was under employment of the non-applicant No.1 and a paid driver. Offending tractor was registered in the name of his brother i.e. Tara Singh Kange (non-applicant No.1), which was purchased in the name of non-applicant No.1 upon mortgaging the agricultural property recorded in the name of all the three brother including the deceased. The offending tractor though was not registered in the name of deceased, but even then, in view of aforementioned facts and circumstances of the case, he stepped into the shoes of owner. The owner cannot claim any compensation from himself, hence, in view of aforementioned rulings of Hon'ble

Supreme Court and facts of the present case, we are of considered view that learned Claims Tribunal is perfectly justified in dismissing the claim application filed under Section 163-A of the M.V. Act.

16. From perusal of insurance policy (Ex.D/1) would show that no premium is paid towards owner-driver. In the above facts, claimant will not be entitled for any amount of compensation as there is no coverage of risk of owner-cum-driver of the vehicle.

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

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

Yogesh