AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1253 of 2014

{Arising out of order dated 26.08.2014 passed by Additional Motor Accident Claims Tribunal Katghora, District Korba (C.G) in Claim Case No. 46 of 2008}

Oriental Insurance Company Ltd. Through Divisional Manager In Front of Bus Stand, Bilaspur, Distt. Bilaspur (C.G.)

---- Appellant

Versus

1. Smt. Sulochna Devi, W/o Late Gaya Prasad Jaiswal, aged about 27 years, R/o Village and Thana – Paali, District Korba, Chhattisgarh.
2. Ku. Neha Jaiswal, D/o Gaya Prasad Jaiswal, aged about 5 years, Minor, Through- Mother Smt. Sulochna Devi, R/o Village And Thana- Paali, Distt. Korba, Chhattisgarh
3. Shiv Charan Singh Raaj, S/o Hira Singh Raaj, R/o Chaurasi Muda, P.O. Lafa, Tah. And Thana- Paali, Distt. Korba, Chhattisgarh

---- Respondents

MAC No. 1254 of 2014

{Arising out of order dated 26.08.2014 passed by Additional Motor Accident Claims Tribunal Katghora, District Korba (C.G.) in Claim Case No. 47 of 2008}

The Oriental Insurance Company Ltd. Thru- Divisional Manager, In Front of Bus Stand, Bilaspur, Distt. Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Ramesh Kumar Jaiswal, S/o Late Sadashiv Jaiswal Aged About 50 Years R/o Village And Thana- Pali, Distt. Korba, Chhattisgarh
2. Manoj Kumar Jaiswal S/o Ramesh Kumar Jaiswal Aged About 25 Years R/o Village And Thana- Pali, Distt. Korba, Chhattisgarh
3. Renu Jaiswal D/o Ramesh Jaiswal Aged About 22 Years R/o Village And Thana- Pali, Distt. Korba, Chhattisgarh
4. Nisha Jaiswal D/o Ramesh Jaiswal Aged About 19 Years R/o Village And Thana- Pali, Distt. Korba, Chhattisgarh
5. Dolly Jaiswal D/o Ramesh Jaiswal Aged About 17 Years Minor, Thru- Guardian- Ramesh Kumar Jaiswal, R/o Village And Thana- Pali, Distt. Korba, Chhattisgarh
6. Nitin Kumar Jaiswal S/o Ramesh Jaiswal Aged About 16 Years Minor, Thru- Guardian- Ramesh Kumar Jaiswal, R/o Village And Thana- Pali,

Distt. Korba, Chhattisgarh

7. Shiv Charan Singh Raaj S/o Hira Singh Raaj R/o Chaurasi Muda, P.O. Lafa, Tah. And Thana- Paali, Distt. Korba, Chhattisgarh

---- Respondents

MAC No. 1255 of 2014

{Arising out of order dated 26.08.2014 passed by Additional Motor Accident Claims Tribunal Katghora, District Korba (C.G.) in Claim Case No. 48 of 2008}

The Oriental Insurance Company Ltd. Thru- Divisional Manager, In Front of Bus Stand, Bilaspur, Distt. Bilaspur C.G., Chhattisgarh

---- Appellant

Versus

1. Sanjay Kumar Jaiswal S/o Late Omprakash Jaiswal Aged About 28 Years R/o Village- Pali, Thana- Pali, Distt. Korba, Chhattisgarh
2. Smt. Santosh Jaiswal W/o Sanjay Jaiswal Aged About 26 Years R/o Village- Pali, Thana- Pali, Distt. Korba, Chhattisgarh
3. Shivcharn Singh Raaj S/o Hira Singh Raah R/o Chourasi Mudha, P.O. Lafa, Tah. And Thana- Pali, Distt. Korba, Chhattisgarh
4. Rukmani Devi Jaiswal W/o Late Ram Pratap Jaiswal Aged About 67 Years R/o Village- Pali, Thana- Pali, Distt. Korba, Chhattisgarh
5. Smt. Sulochana Devi W/o Late Gaya Prasad Jaiswal Aged About 27 Years R/o Village- Pali, Thana- Pali, Distt. Korba, Chhattisgarh
6. Ku. Neha Jaiswal D/o Late Gaya Prasad Jaiswal Aged About 5 Years Minor, Thru- Guardian- Smt. Sulochana Devi, R/o Village- Pali, Thana- Pali, Distt. Korba, Chhattisgarh
7. Smt. Sandhya Jaiswal W/o Sitaram Jaiswal Aged About 26 Years R/o Khongsara, Thana- Bailgahna, Distt. Bilaspur, Chhattisgarh

---- Respondents

MAC No. 1256 of 2014

{Arising out of order dated 26.08.2014 passed by Additional Motor Accident Claims Tribunal Katghora, District Korba (C.G.) in Claim Case No. 49 of 2008}

The Oriental Insurance Company Ltd. Thru- Divisional Manager, In Front of Bus Stand, Bilaspur, Distt. Bilaspur C.G., Chhattisgarh

---- Appellant

Versus

1. Sanjay Kumar Jaiswal S/o Late Omprakash Jaiswal Aged About 28 Years R/o Village- Pali, Thana- Pali, Distt. Korba, Chhattisgarh

2. Smt. Santosh Jaiswal W/o Sanjay Jaiswal Aged About 26 Years R/o Village- Pali, Thana- Pali, Distt. Korba, Chhattisgarh
3. Shivcharan Singh Raj S/o Hira Singh Raaj R/o Chourasi Mudha, P.O. Lafa, Tah. And Thana- Pali, Distt. Korba, Chhattisgarh
4. Rukmani Devi Jaiswal W/o Late Ram Pratap Jaiswal Aged About 67 Years R/o Village And Thana- Pali, Distt. Korba, Chhattisgarh
5. Smt. Sulochana Devi W/o Late Gaya Prasad Jaiswal Aged About 27 Years R/o Village And Thana- Pali, Distt. Korba, Chhattisgarh
6. Ku. Neha Jaiswal D/o Late Gaya Prasad Jaiswal Aged About 5 Years Minor, Thru- Mother Smt. Sulochana Devi, R/o Village And Thana- Pali, Distt. Korba, Chhattisgarh
7. Smt. Sandhya Jaiswal W/o Sitaram Jaiswal Aged About 26 Years R/o Village- Khongsara, Thana- Bailgahna, Distt. Bilaspur, Chhattisgarh

---- Respondents

MAC No. 1257 of 2014

{Arising out of order dated 26.08.2014 passed by Additional Motor Accident Claims Tribunal Katghora, District Korba (C.G.) in Claim Case No. 79 of 2008}

The Oriental Insurance Company Ltd. Thru- Divisional Manager, In Front of Bus Stand, Bilaspur, Distt. Bilaspur C.G., Chhattisgarh

---- Appellant

Versus

1. Smt. Savita Devi W/o Late Ramsankar Jaiswal Aged About 34 Years R/o Village- Pali, Thana- Pali, Distt. Korba, Chhattisgarh
2. Ku. Rubi Jaiswal D/o Late Ramsankar Jaiswal Aged About 11 Years Minor, Thru- Mother Smt. Savita Devi, R/o Village- Pali, Thana- Pali, Distt. Korba, Chhattisgarh
3. Ku. Ritu Jaiswal D/o Late Ramsankar Jaiswal Aged About 7 Years Minor, Thru- Mother Smt. Savita Devi, R/o Village- Pali, Thana- Pali, Distt. Korba, Chhattisgarh
4. Harsh Jaiswal S/o Late Ramsankar Jaiswal Aged About 6 Years Minor, Thru- Mother Smt. Savita Devi, R/o Village- Pali, Thana- Pali, Distt. Korba, Chhattisgarh
5. Shiv Charan Singh Raaj S/o Hira Singh Raaj R/o Chaurasi Muda, P.O. Lafa, Tah. and Thana- Paali, Distt. Korba, Chhattisgarh

---- Respondents

For Appellant	:	Shri Anumeh Shrivastava, Advocate.
For Respondents/Claimants	:	Smt. Bhagwati Kashyap, 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

27.08.2020

1. These appeals have been preferred by the insurer of the Jeep bearing No.CG-12/D/0424, which was involved in a road traffic accident on 07.02.2005. On that day, the Jeep collided with the Truck bearing No.04 R/D-2689 and in the said accident, the driver and four passengers in the Jeep lost their lives. Pursuant to the claim petitions filed in terms of Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') by the legal representatives of the deceased, the Tribunal awarded compensation to the extent as payable and directed the same to be satisfied with interest as specified, mulcting the liability upon the insurer of the Jeep, which is put to challenge in these appeals.

2. Heard Shri Anumeh Shrivastava, the learned counsel appearing for the Appellant-insurer and Smt. Bhagwati Kashyap, the learned counsel representing the Respondent-Claimants.

3. There is no much dispute with regard to the occurrence of the accident on 07.02.2005. On the ill-fated day, the Jeep was being driven by a person, by name, Gaya Prasad (in respect of whom Claim Case No.46 of 2008 was preferred, forming part of the subject matter of appeal i.e. MAC No.1253 of 2014) along with the other passengers. While so, the Jeep collided with the Truck as mentioned above and because of the serious impact of collision, fatal injuries were caused to the driver and four other

passengers in the Jeep, who succumbed to the injuries. The death of the persons concerned was sought to be compensated by filing claim petitions before the Tribunal; originally under Section 166 of the M.V. Act showing the parties of the Truck as well in the party array. However, on second thought, the Claimants opted to have the claim pursued only under Section 163-A of the M.V. Act and accordingly, filed necessary proceedings before the Tribunal; also conceding that the deceased were having only an annual income of less than Rs.40,000/- and seeking the compensation to be satisfied by the owner and insurer of the Jeep, jointly and severally, sparing the parties of the Truck.

4. After evaluation of the facts and figures, with reference to the pleadings and evidence brought on record, the Tribunal held that the Claimants were entitled to get compensation with interest as specified therein in the following manner :

Sl.No.	**MAC NUMBER**	**CLAIM CASE NUMBER**	**AMOUNT AWARDED**
1.	MAC No. 1253 of 2014	Claim Case No. 46 of 2008	Rs. 4,65,500/-
2.	MAC No. 1254 of 2014	Claim Case No. 47 of 2008	Rs. 3,45,500/-
3.	MAC No. 1255 of 2014	Claim Case No. 48 of 2008	Rs. 50,000/-
4.	MAC No. 1256 of 2014	Claim Case No. 49 of 2008	Rs. 50,000/-
5.	MAC No. 1257 of 2014	Claim Case No. 79 of 2008	Rs. 4,56,000/-

Correctness of the above common award is put to challenge in these appeals, at the instance of the Insurer of the Jeep on various grounds.

5. Shri Anumeh Shrivastava, the learned counsel appearing for the Appellant-insurer submits that the course pursued by the Tribunal is *per se* wrong and unsustainable in all respects, as the law does not envisage consideration of the claim both under Section 166 and 163-A of the M.V. Act. Reference is made to statutory provisions in this regard, including Section 163-B, which stipulates that if a person is entitled to claim compensation under Section 140 and 163-A of the M.V. Act, he shall file a claim petition either of the said sections and not under both. Reference is also made to the verdict passed by Hon'ble Supreme Court in **United India Insurance Company Limited v. Sunil Kumar and Another** reported in **2018 ACJ 1 (SC)** *(paragraphs-8 and 9)*. It is asserted by the learned counsel that the Tribunal went wrong in causing the matter to be considered in terms of Section 163-A of the M.V. Act, after having filed the same under Section 166 of the M.V. Act where it was obligatory on the part of the Claimants to have proved the negligence. In the instant cases, the Appellant being the Insurer of the Jeep, virtually lost the chance to contend and establish the negligence on the part of the other vehicle i.e. the Truck, which dashed against the Jeep, causing fatal injuries leading to the death of five persons. The learned counsel further submits that, insofar as the Claimants related to the deceased driver are concerned, it being an accident caused while the deceased himself was driving the vehicle, he virtually had stepped into the shoes of the owner, under which circumstance, no liability can be mulcted on the Insurer of the said vehicle, in view of the law declared by the Apex Court in **Ningamma and Another v. United India Insurance Company Limited** reported in **(2009) 13 SCC 710**. The Claimants had contended initially, that the

deceased was having an income of more than Rs.40,000/- per annum; by virtue of which the claims were not liable to be entertained under Section 163-A of the M.V. Act. The subsequent conduct by filing proceedings to get it converted to be under Section 163-A of the M.V. Act, virtually reducing the income (to bring it within the purview of Section 163-A of the M.V. Act) is an abuse of the process of the Court/Tribunal. In the said circumstance, the Appellant-insurer seeks to be absolved from the liability.

6. Smt. Bhagwati Kashyap, the learned counsel representing the Claimants asserts before this Court that, even though the claims were originally preferred under Section 166 of the M.V. Act, they were sought to be pursued only under Section 163-A of the M.V. Act, where there was no necessity for the Claimants to have pleaded or proved negligence. The Tribunal has awarded amounts only in terms of Section 163-A of the M.V. Act, as per the 'Second Schedule' and as such, no interference is warranted under any circumstance. It is further submitted that, insofar as the deceased passengers in the Jeep are concerned, it is a matter of 'Composite Negligence' by virtue of the involvement of two vehicles (Jeep and Truck) and hence it was always open for the Claimants to have opted to proceed against either or both the vehicles. Hence, it is contended, there is nothing wrong on the part of the Tribunal in having finalized the claims in terms of Section 163-A of the M.V. Act. Some judicial precedents are also referred to, in order to buttress the submissions in respect of the legal aspects including on the question of 'Composite Negligence'.

7. There is no dispute with regard to the statutory provisions and also as to the law laid down by the Apex Court, that a party cannot pursue the claim under both the streams i.e. Section 166 (read with Section 140 of the M.V. Act) and under Section 163-A of the M.V. Act. It is also settled law, that under Section 166 of the M.V. Act, the negligence on the part of the driver of the offending vehicle has to be proved and the burden is on the Claimants (except with regard to the interim award, which can be passed under Section 140 of the M.V. Act towards the no fault liability). But coming to Section 163-A of the M.V. Act, the statute specifically stipulates that, it is not at all necessary for the Claimants to plead or prove negligence on the part of the driver or owner of the offending vehicle. The option to pursue the matter by way of 'appropriate channel' <u>is given to the Claimants</u> and not to the parties of the offending vehicle i.e. Driver, Owner/Insured or the Insurer.

8. It is true that the Claimants had approached the Tribunal initially by filing the claim petitions under Section 166 of the M.V. Act, with intent to prove negligence on the part of the driver concerned and to get appropriate extent of compensation payable under that stream. But later, they decided to exercise the option to have the matter pursued only to get the 'limited compensation' as payable under Section 163-A of the M.V. Act, which cannot be held as wrong or illegal; merely for the reason that, the Claimants had mentioned in the claim petitions filed earlier under Section 166 of the M.V. Act, that the deceased was having a much higher income. On ascertaining the actual facts and figures later, they conceded in the claim petitions filed under Section 163-A of the M.V. Act that the deceased was having only an income of lesser than Rs.40,000/- per

annum. When the parties admit that the deceased was not having income of more than Rs.40,000/-, it is not for the Tribunal or the Court to say that the deceased was having more income; unless it is proved to the contrary (which has not happened in the instant case). Since the option is always with the Claimants to choose the channel/stream for pursuing the matter, the Tribunal cannot be found fault with for causing the claim to be considered in terms of Section 163-A of the M.V. Act as sought for by the Claimants. The only question is whether it is within the parameters of Section 163-A of the M.V. Act.

9. There is no case for the Appellant/insurer of the Jeep that the amounts awarded by the Tribunal are excessive of the extent payable under the Second Schedule to the M.V. Act (under Section 163-A). As such, since negligence is not a matter for consideration, the quantum of compensation awarded in the claims in respect of the passengers (MAC Nos.1254 of 2014, 1255 of 2014, 1256 of 2014 and 1257 of 2014), is not liable to be interdicted.

10. With regard to the conversion of the claim petitions from Section 166 to Section 163-A of the M.V. Act, it is to be noted that the proceedings filed before the Tribunal under Section 166 of the M.V. Act were not finalized by the Tribunal at any point of time and it was caused to be pursued only under Section 163-A of the M.V. Act by the Claimants, based on the option exercised by them.

11. There is a contention for the Appellant-insurer that, if at all any such desire was there, the claim petitions originally filed under Section 166 of the M.V. Act should have been withdrawn and fresh claim petitions ought

to have been filed under Section 163-A of the M.V. Act; instead of filing incidental proceedings in the pending claim petitions. We do not find any merit in the said submission. Insofar as there is an option for the Claimants to pursue the claim either under Section 166 or Section 163-A of the M.V. Act, the procedure which should have been pursued by the Claimants as suggested/pointed out by the Appellant/insurer, will not tilt the balance in any manner. Even if the original claim petitions were withdrawn with liberty to file fresh one under Section 163-A of the M.V. Act, same would have been the result; with regard to which, no different course is stated as possible from the part of the Appellant. As such, the said contention stands repelled.

12. We are aware of a judgment passed by a Full Bench of the Madhya Pradesh High Court in **Ramlali Tiwari and Others v. Vrindavan Tiwari and Others** reported in **2009 (1) MPJR 329** holding that the Claimants cannot be permitted to unilaterally change their stand by causing the claim to be considered under Section 163-A of the M.V. Act, after losing the case under Section 166 of the M.V. Act. That was a case where the claim petitions were filed under Section 166 of the M.V. Act. Evidence was adduced and Award was passed to the effect that the negligence on the part of the driver of the offending vehicle was not proved and accordingly, the claim petitions were dismissed. After filing the appeal, the Appellants/Claimants sought to take a somersault and chose to get it converted under Section 163-A of the M.V. Act. The Court held that since the claim had already been finalized by the Tribunal under Section 166 of the M.V. Act, holding that the Claimants were not entitled to get compensation for having not proved negligence on the part of the driver

of the offending vehicle, they cannot thereafter get the claim amended to be under Section 163-A of the M.V. Act and get compensation accordingly. The said decision does not come to the rescue of the Appellant because, in the instant case, the proceedings originally filed before the Tribunal under Section 166 were sought to be pursued only under Section 163-A of the M.V. Act by filing necessary proceedings before the Tribunal itself, before the matter was got finalized. As it stands so, there is nothing wrong or illegal on the part of the Tribunal in this regard.

13. The last question to be considered is with regard to the nature of the Vehicle and the Policy issued by the Appellant i.e. whether the policy would cover the risk of the driver and the passengers.

14. It is revealed from the policy that the Jeep involved in the accident is a private vehicle. But the passengers in a private vehicle are covered, if it is a 'Comprehensive/Package Policy' and not an 'Act only Policy'. Similarly, if the vehicle is driven by the insured himself or if borrowed by a person from the insured who meets with an accident, it is to be held that the borrower has stepped into the shoes of the owner, who is not liable to be compensated by the Insurer, in view of the law declared by the Apex Court in **Ningamma** (supra). This aspect has been considered again by the Apex Court quite recently as well, in **Ramkhiladi and Another v. United India Institution Company Limited and Another** reported in **(2020) 2 SCC 550,** where it has been made clear that the position would be the same even in a claim preferred under Section 163-A of the M.V. Act (where negligence is neither to be pleaded nor proved). Since such a person <u>will not be a 'third party'</u>, no compensation will be payable in

respect of such a person, who sustained the injuries/death while driving the motor vehicle after borrowing the same from the insured - based on the policy for the said vehicle, to cover the third party risk (except to the extent of 'personal accident coverage' given, if any, on collecting additional premium in this regard).

15. In the instant case, the position is different. The deceased person who was driving the Jeep was the driver engaged by the Insured. Admittedly, he was driving the vehicle carrying passengers at the relevant time, who also lost their lives along with driver, because of the fatal injuries sustained by them. Such a driver cannot be treated as a person who has borrowed the vehicle from the Insured, to be ousted from the purview of coverage with reference to the law declared by the Apex Court mentioned above. The only question is whether the vehicle, being a private vehicle, was having any wider coverage under the policy or not.

16. A copy of the policy/cover-note produced before the Tribunal, forming part of the records reveals that the Appellant- Insurance Company has collected premium under several heads, in addition to the premium for third party risk/statutory coverage. The amounts collected towards premium are in the following terms :

PREMIUM CALCULATIONS	
Own Damage	13573 = 00
Act (Third Party)	700 = 00
PA (Owner)	100 = 00
Passengers	225 = 00
Driver	25 = 00
	14623 = 00
0.20%	1492 = 00
	16115 = 00

17. From the above, it is crystal-clear that the policy issued was a 'Comprehensive Policy' or 'Package Policy' and the claim, if at all any, in respect of the driver of the insured and the passengers carried in the private Jeep, was very much agreed to be covered. In the said circumstances, the compensation awarded by the Tribunal in the claim petitions filed under Section 163-A of the M.V. Act, being within the framework of the statutory parameters, is liable to be satisfied by the Appellant-Insurance Company and it has been rightly mulcted by the Tribunal upon the shoulders of the Appellant-Insurer.

18. In the above facts and circumstances, we do not find any tenable ground to interfere with the Award passed by the Tribunal. The appeals fail and they are dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Anu