NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1151 of 2013

{Arising out of order dated 01.10.2013 passed by learned Additional Motor Accident Claims Tribunal, Koriya (Baikunthpu), Chhattisgarh in Motor Accident Claim Case No.81 of 2011}

1. Amir Sai S/o Mahadeo Aged About 50 Years
2. Smt. Fool Kunwar W/o Amir Sai Aged About 40 Years

Both are R/o village Parcha Basti, Police Station and Tahsil Baikunthpur, District Korea, Civil and Revenue District Raipur Chhattisgarh

---- Appellants

Versus

1. Smt. Anita Shivhare W/o Late Rajesh Shivhare R/o Dabripara Mahalpara Road, Baikunthpur, District Korea Chhattisgarh
2. The Branch Manager United India Insurance Company Limited, Ambikapur, Bramha Road, Surguja, District Surguja Chhattisgarh

---- Respondents

For Appellants	:	Shri Anil Gulati, Advocate.
For Respondent No.1	:	None.
For Respondent No.2	:	Shri Dashrath Gupta, 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, who was driving the Jeep involved in the accident, is the subject matter of challenge in this appeal.

2. The sequence of events shows that the deceased, by name, Sharda Prasad aged about 22 years, was driving a Jeep bearing No.CG16/A/0053, owned by Respondent No.1 and insured by Respondent No.2 on 11.03.2011. When the vehicle reached the place of occurrence, the driver lost the control and the vehicle met with an accident, causing fatal injuries to the driver of the

Jeep, who succumbed to the same. This led to a claim petition preferred before the Tribunal by the parents under Section 163-A of the Motor Vehicles Act, 1988, claiming compensation against the owner and insurer of the vehicle. It was contended that the deceased was actually working as a driver and used to earn a sum of Rs.3,000/- per month. The claim was opposed from the part of the Respondents, particularly by the Insurance Company, to the effect that no liability could be fastened upon them; as it does not come within the purview of the policy. On conclusion of the trial, the Tribunal passed the award holding that the incident was self-invited/inflicted accident and that the deceased was driving the vehicle after consuming liquor as disclosed from Ex.P/1 (postmortem report). It was accordingly, that the claim petition was dismissed, which is now the subject matter of consideration in this appeal.

3. The learned counsel for the Appellant submits that the Tribunal was not correct in dismissing the claim petition, merely finding fault with the deceased driver, merely on the basis of postmortem report that the deceased had consumed liquor. It is contended that no doctor was examined and as such, the course pursued by the Tribunal is not in conformity with the relevant provisions of law or facts and requires to be interdicted by this Court.

4. The learned counsel representing the Insurance Company submits that, it is a case of 'self accident' and nobody else can be blamed, which does not come within the purview of the policy issued by the 2nd Respondent.

5. The point to be considered is whether the death caused to the driver of the Jeep does come within the purview of Section 147 of the Motor Vehicles Act, 1988 or whether it is covered under any specific terms of agreement/contract arising out of the policy issued in favour of the 1st

Respondent.

6. The question whether a person, who meets an accident while driving a vehicle after borrowing the same from the owner is entitled to claim compensation against the owner and insurer had come up for consideration before the Apex Court in **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 such a claim will never be maintainable even under Section 163-A of the Motor Vehicles Act, 1988.

7. In the above circumstance, we do not require any second thought to hold that the legal position stands settled and answered against the Appellant. The Appellant does not have a case that there was any wider coverage or personal accident claim under the policy and in the absence of any such coverage, the course pursued by the Tribunal dismissing the claim is not liable to be interdicted by this Court. Whether the deceased had consumed alcohol or not (as reflected from Ex. P/1 postmortem report does not require to be gone into by this Court, since the claim is not legally maintainable. Interference is declined and the appeal stands dismissed.

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

Anu