

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 976 of 2014

Sanjay Kumar Gupta S/o Mahesh Kumar Gupta Aged About 44 Years,
 Occupation Grocery Shop, R/o Khamhar, Tah. Dharamjaigarh, Distt.
 Raigarh C.G.

----Appellant/Non-applicant No.1.

Versus

1. Akshay Kumar Tandon S/o Dalbeer Tandan Aged About 42 Years.
 2. Smt. Nanki Bai W/o Akshay Kumar Aged About 42 Years, Occupation-
House wife.
 3. Dev Kumar Tandon S/o Akshay Kumar Aged About 21 Years, Occupation
– Student.
- All are R/o Manjhapara, Kapu, P.S. Kapu, Tah. Dharamjaigarh, Distt.
 Raigarh C.G.

--- Respondents

For Appellants	:	Mr. Satish Gupta, Advocate.
For Respondent No.1, 2 & 3	:	Mr. Manoj Kumar Jaiswal, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Judgment on Board

Per Parth Prateem Sahu, J

16/09/2020

1. Appellant/Owner of Bajaj Platina motorcycle bearing registration No.CG13/F/7546 has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 20.01.2012 passed by learned Motor Accident Claims Tribunal, Raigarh, Distt. Raigarh, (CG) (for short, 'the Tribunal') in Claim Case No.18/2010 thereby claim application was allowed in part and a sum of Rs.2,10,500/- was awarded as compensation in a death case.
2. Facts relevant for disposal of this appeal are that on 27.01.2010 at about 10-11 pm, Jageshwar Tandon (deceased) along with Sushil Tiwari was going towards Bakola from Khamhar on Bajaj Platina motorcycle bearing registration No.CG13/F/7546 for short, 'motorcycle'). Sushil Tiwari was traveling as 'pillion rider', whereas Jageshwar Tandon was driving the

motorcycle. When they reached near Kendai Nala Bridge, motorcycle met with an accident and Jogeshwar Tondon died. Accident was reported to concerned police station.

3. Claimants, who are parents and brother of deceased, filed an application under Section 163 (A) of the Act of 1988 before the Tribunal seeking total compensation of Rs.8,80,000/- on the ground that on the date of accident, deceased-Jogeshwar Tandon was aged about 24 years, he was working as 'motorcycle mechanic' and earning Rs.3,000/- per month.
4. Non-applicant No.1/appellant submitted reply to claim application, while denying the pleadings made therein, pleaded that deceased met with an accident on account of his own negligence. It was further pleaded that deceased has not taken any permission from appellant to drive motorcycle. On the date of accident, deceased was not having valid and effective driving license to drive motorcycle. It was also pleaded that appellant left his motorcycle in the garage for the purpose of its repairing and his motorcycle was used in night without his consent or permission.
5. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal allowed application in part and awarded a sum of Rs.2,10,500/- as compensation to claimants by holding that owner of motorcycle left his motorcycle in garage of deceased for its repairing, deceased took the motorcycle for drive in night unauthorisely. Deceased himself was responsible for the accident, as he drove the motorcycle in rash and negligent manner and met with an accident. The claimants have filed an application under Section 163(A) of the Act of 1988, in which negligence is not to be seen.

6. Learned counsel for the appellant submits that the Tribunal erred in awarding compensation to claimants in a self-accident case, even after arriving at a finding that deceased met with an accident on account of his own negligence. Deceased misused the motorcycle, which he left in the garage of deceased for the purpose of its repairing. He further submits that deceased drove the motorcycle in night without any permission or consent of appellant. Lastly he submits that no amount of compensation can be awarded to claimants for negligent act of deceased himself, particularly when there is no involvement of any other vehicle.
7. Per contra, learned counsel for respondent Nos.1 to 3 supported the impugned award and argued that deceased met with an accident while driving the motorcycle owned by the appellant, therefore, the Tribunal was justified in awarding amount of compensation in view of the proviso to Section 163 (A) of the Act of 1988, where negligence on the part of the driver or deceased is not to be taken into consideration.
8. We have heard learned counsel for the parties and also perused the record of claim case.
9. Perusal of paragraph No.6 of impugned award would show that the Tribunal has taken into consideration the fact and circumstances pleaded and stated in the evidence, opined that the appellant left his motorcycle in the garage of deceased for its repairing, deceased used motorcycle without his consent or permission and met with an accident. The Tribunal considering that since claimants have filed an application under Section 163(A) of the Act of 1988, negligence is not required to be looked into, proceeded to pass the impugned award.

10. In the instant case, father of deceased -Akshay Kumar Tandon, was examined as AW-1, who has stated in his evidence that deceased a motorcycle mechanic, was owner of a garage. This witness has also admitted in his cross-examination that his deceased son while driving motorcycle of the appellant met with an accident and died.
11. From the pleadings and evidence placed on record by the claimants themselves, it is clear that status of deceased while driving motorcycle, is of unauthorised rider who met with an accident while driving motorcycle in rash and negligent manner without involvement of any other vehicle. The issue with respect to maintainability of an application under Section 163(A) of the Act of 1988 on the death of deceased (borrower) has been considered by Hon'ble Supreme Court in the matter of **Ningamma and Another v. United India Insurance Company Limited**¹, and it was as under :-

“21. In our considered opinion, the ratio of the decision in *Oriental Insurance Co. Ltd. v. Rajni Devi*, [(2008) 5SCC 736] is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be an employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner and, therefore, he would step into the shoes of the owner of the motorbike. We have already extracted Section 163-A of the MVA herein before. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle.

¹ 2009) 13 SCC 710

22. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.

12. Recently said issue has been considered by Hon'ble Supreme Court in the matter of **Ramkhiladi & Anr v. United India Insurance Company & Anr**² in which, the Hon'ble Supreme Court held as under :-

“5.4.....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.

5.9.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

² AIR (2020) SC 527

have maintained the claim in terms of Section 163A of the
Act.....”

13. In case at hand, there is evidence available on record that appellant left his motorcycle in garage for repairing. Deceased owner of garage rided the motorcycle unauthorisedly ie without any permission of its owner and met with an accident, while driving the same in night, therefore, case of deceased cannot be on a better footing than that of a borrower.
14. In the opinion of this Court, instant case is squarely covered by the law laid down by Hon'ble Supreme Court in the matter of **Ningamma** (supra) & **Ram Khiladi** (supra) and application under Section 163(A) of the Act of 1988 filed by legal representatives of deceased would not be maintainable.
15. We are of the considered view that the Tribunal erred in allowing application, which is not sustainable being contrary to law, the impugned award is hereby set aside.
16. At this stage, learned counsel for the appellant submits that in compliance of order passed by this Court on 27.10.2018, appellant has deposited the mandatory deposit under Section 173 of the Act of 1988 and further amount was deposited as per Court order dated 27.10.2018. The learned counsel prays for a direction of refund/recovery of said amount deposited by the appellant.
17. So for as prayer made with regard to the recovery of aforesaid amount is concerned, in the fact and circumstances of this case, where deceased was working as “motorcycle mechanic” and claimants are his poor parents, it will be harsh upon claimants, if a direction for recovery of the

amount is issued by this court. However, appellant will be entitled to get refund of the amount deposited by him, if it is still lying in deposit with Tribunal.

18. In the result, appeal is allowed.

Sd/-

(P.R. Ramamchandra Menon)
Chief Justice

Jamal/-

Sd/-

(Parth Prateem Sahu)
Judge