NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 947 of 2013

1. Sheetal Prasad Chauhan, S/o Ramnath Chauhan Aged About 47 Years
2. Smt. Shanti Chauhan W/o Sheetal Prasad Chauhan Aged About 36 Years
3. Kumari Mamta Chauhan D/o Sheetal Prasad Chauhan Aged About 17 Years
4. Amit Kumar Chauhan S/o Sheetal Prasad Chauhan Aged About 15 Years
5. Kumari Archana Chauhan D/o Sheetal Prasad Chauhan Aged About 13 Years
6. Ajay Chauhan S/o Sheetal Prasad Chauhan Aged About 11 Years

Appellants 3 to 6 are minors through their father Sheetal Prasad Chauhan

All are R/o Tilkeja, Tahsil, Civil And Revenue District : Korba, Chhattisgarh

---- Appellants

Versus

- The Bajaj Alliance Co. Ltd. Through- Branch Manager, Shiv Mohan Bhawan, Vidhansabha Marg, Pandari, Raipur, Distt. Raipur, Chhattisgarh

----Respondent

For Appellants	:	Shri Suresh Kumar Tandon, Advocate
For Respondent	:	Smt Chitra Shrivastava, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
09.07.2020

1. Appellants / claimants have challenged legality, propriety and validity of the impugned award dated 31.08.2013 passed in claim case No.159 of 2013 by the Additional Motor Accidents Tribunal (FTC), Korba CG (for short,'Claims Tribunal') wherein learned Claims Tribunal dismissed the claim application filed by the appellant under Section 163A of the Motor Vehicle Act, 1988 (for short, 'Act 1988').

2. Facts relevant for disposal of this appeal are that, on 01.01.2011 Roshanlal Chauhan was travelling on Motor Cycle bearing No. CG12AA-

7539 (for short,'offending vehicle') along with his friend Chandrasekhar and going to his house at village Tilkeja. On the way, on account of saving a bicycle rider, Roshanlall Chauhan lost control over offending vehicle and dashed one pole on the road side. In the aforementioned accident Roshanlal died on the spot. The claimants, who are parents and siblings of deceased Roshanlal filed claim application under Section 163A of the Act 1988, claiming Rs.19,97,400/- as compensation.

3. Respondent/ Insurance Company submitted reply to the claim application and denied all the adverse pleadings in the claim application except admitted portion of the application mentioning therein that the claim application has been filed on the false grounds; there was no valid and effective driving license with the rider of offending vehicle on the date of accident and even then, owner of offending vehicle handed over his vehicle to the person who was not possessing valid and effective driving license, there was breach of conditions of Insurance policy. Deceased does not come within the purview of third party and prayed for dismissal of the claim application.

4. Learned Claims Tribunal on appreciation of the pleadings and evidence recorded by the respective parties, held that deceased himself was driving the offending vehicle owned by his father, Appellant-1. The deceased does not come within the purview of the third party as he being borrower of the offending vehicle and stepped into shoes of the owner. Learned Claims Tribunal placing reliance upon the judgment passed by Hon’ble Supreme Court in the matter of **Ningamma & Another Vs United India Insurance Company Limited** reported in (2009) 13 SCC

710, dismissed the claim application. Learned Claims Tribunal also recorded a finding that under policy, no premium was paid towards PA covered to son and driver of the offending vehicle.

5. Shri Suresh Kumar Tandon, learned Counsel for the appellants submits that learned Claims Tribunal erred in not considering that the deceased was not owner and insured of the offending vehicle, therefore, he will come within the category of third party and the policy issued by the company covers the risk of third party as mentioned in Ex.D1 Insurance Policy. He also argued that the policy being a package policy, the insured is having liability towards the third party. Learned Counsel further submits that suitable amount of compensation be awarded in the facts and circumstances of the case.

6. Per contra, Smt. Chitra Shrivastava learned counsel appearing for the Insurance Company submits that deceased, who was son of Appellant-1 stepped in to the shoes of owner of offending vehicle, as soon as he borrowed the vehicle from the registered owner. She also submitted that under the policy, insurer is liable for payment of compensation by indemnifying the insured and the insured himself cannot be recipient as third party, but for the amount of compensation in terms of insurance policy itself, if any, premium is paid towards the PA coverage for owner / driver. She further submits that in this case, there is no additional premium paid covering the risk of owner/driver, as evident from Ex.D1 Insurance Policy under the head of package policy. She submitted that the impugned award does not call for any interference.

7. We have heard learned counsel for respective parties. It is not disputed by learned counsel for the appellants that vehicle is owned by Appellant-1 and deceased Roshanlal was his son who met with an accident while driving the offending vehicle. The said offending vehicle is owned by Appellant-1 and there is no involvement of any other motor vehicle but as per the pleadings in the claim application itself, it is specifically pleaded that deceased met with an accident and dashed a pole on the road side while riding the offending vehicle, in an attempt of saving a bicycle rider.

8. Deceased was not an employee of the owner of offending vehicle but he was son of owner of offending vehicle i.e. Appellant-1. Offending vehicle was borrowed from its owner and by doing so, deceased stepped into shoes of owner of the offending vehicle.

9. Hon'ble Supreme Court in the matter of **Ningamma & Another Vs United India Insurance Company Limited** reported in (2009) 13 SCC 710 while considering the claim filed under Section 163A of Motor Vehicle Act, 1988 filed by the claimants, held thus:

> "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.
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> 23. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case."

10. Recently, Hon’ble Supreme Court yet in another case considered the maintainability of claim application filed under Section 163A of Motor Vehicle Act, 1988 in case of **Ramkhiladi and another Vs United India Insurance Company and another** reported in AIR 2020 SC 527, considering its earlier decisions including **Ningamma** (supra), again considered claim filed under Section 163A of Motor Vehicle Act,1988 by the legal representatives of deceased / driver of offending vehicle (two wheeler) held thus:

> “5.3 xxxxxxx 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.
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> 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 herein above, 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 (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 a third party 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 (supra), the aforesaid cannot be accepted. In Rajni Devi (AIR Online 2008 SC 33) (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 herein above."

11. In light of above decisions, if the facts of present case are considered, deceased who was son of owner of offending vehicle, was borrower of the offending vehicle and thus, he stepped into the shoes of owner, and being so, application filed under Section 163A of the Act, 1988 by the claimants is not maintainable.

12. In view of above, in our considered view, while dismissing the claim filed by the claimants, learned Claims Tribunal has not committed any error in arriving at a conclusion that deceased does not come within the category of third party, rather he stepped into shoes of owner of offending vehicle.

13. We have also perused copy of policy Ex.D1 placed on record, which shows that premium has been paid towards OD basic and TP basic. No premium paid by the insurer towards the PA coverage to owner/driver. Therefore there is no contractual liability even of the respondent Insurance Company towards covering the risk of owner/ driver.

14. In the above circumstances, we do not find any infirmity in the order passed by learned claims tribunal. Appeal being devoid of any substance which is liable to be and it is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 387 of 2020

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3. Kumari Mamta Chauhan D/o Sheetal Prasad Chauhan, Aged About 17 Years Minor, Through Their Father Sheetal Prasad Chauhan, R/o Village Tilkeja, Tahsil Korba, District Korba, Civil and Revenue District Korba Chhattisgarh.
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---- Petitioners

Versus

United India Insurance Company Limited, Branch Office Stadium Road, T.P. Nagar, Distt. Korba Chhattisgarh.

-----Respondents

Officer reference :

Hon'ble Shri PR Ramachandra Menon, Chief Justice &

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

Per PR Ramachandra Menon, CJ

10.08.2020

1. By virtue of the office note dated 07.08.2020, it is brought to our notice that there is inadvertent mistake in showing the particulars of the respondent in the cause title of the judgment and accordingly, it is sought to be corrected after getting appropriate orders.

2. We have gone through the proceeding with reference to the particulars of the respondent mentioned in MCC No. 387/2020.

3. It is pointed out that, by virtue of the said mistake, instead of showing the name of the respondent as "United India Insurance Company Limited" in the judgment passed in MAC No.947/2013, it has been wrongly shown as the "Bajaj Alliance Company Limited".

4. We are convinced that the name of the respondent has to be corrected as pointed out by the Registry. Correction is ordered as above. Corrected copy of the judgment shall be issue by the Registry, free of cost to both the sides. Copy of this order be made part of the original MAC (ie MAC No.947/2013).

5. MCC stands disposed of accordingly.

Sd/- **Sd/-**

(P. R. Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

Jamal