NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 559 of 2015

1. Smt. Dropadi Bai, W/o Uday Ram Yadaw Aged About 37 Years
2. Kumari Kiran Yadaw D/o Uday Ram Yadaw Aged About 16 Years
3. Rahul Yadaw S/o Uday Ram Yadaw Aged About 13 Years
4. Narsingh Yadaw S/o Uday Ram Yadaw Aged About 9 Years
5. Kumari Mithila Yasaw D/o Uday Ram Yadaw Aged About 7 Years

Appellants 2 to 5 minors through the mother (natural guardian) appellant-1 Smt Dropadi Bai

All R/o Village Kansari, Post- Ghanaghat, Police Station And Tahsil- Lormi, District (Revenue And Civil)- Bilaspur, Chhattisgarh

---- Appellants/Applicants

Versus

1. Branch Manager National Insurance Company Limited, Branch Office- Taha Complex, Vyapar Vihar Road, Near Gajibo Hotal Bilaspur, Tahsil And District Revenue And Civil- Bilaspur, Chhattisgarh
2. Uday Ram Yadaw S/o Late Tularam Yadaw Aged About 40 Years R/o Village Kansari Post - Ghanaghat, Police Station And Tahsil- Lormi Revenue And Civil District : Bilaspur, Chhattisgarh

---- Respondents/Non-Applicants

For Appellants : Shri Anand Kesharwani Advocate

For Respondent-1 : Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

04.11.2020

1. Appellants / Claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 12.11.2014 passed by the 4th Additional Motor Accident Claims Tribunal, Bilaspur (for short,"Claims Tribunal") in claim case-776 of 2014 dated 12.11.2014, whereby learned Claims Tribunal dismissed the application under section 163A of the Act of 1988.

2. Facts relevant for disposal of this appeal are that on 02.04.2012 Kishan Kumar Yadav was travelling to Bilaspur on Motorcycle bearing

No.CG10EN 9835 (for short, Motorcycle 9835) for purchase of articles. While returning from Bilaspur, when he reached Village Lankama, another Motorcycle bearing No. CG10EE0511 (hereafter, referred to as offending vehicle) dashed the Motorcycle of Kishan Kumar Yadav and caused accident. In the aforementioned accident, Kishan Kumar Yadav suffered grievous injuries and on the way to the Hospital, he died. Accident was reported to concerned Police Station, based upon which complaint was lodged and crime was registered against the driver of offending vehicle for offences punishable under Sections 279, 337 and 304A IPC.

3. Appellants / Claimants filed application under Section 163A of the Act of 1988 only against respondent-1 Insurance Company seeking compensation of Rs.7,70,240/-.

4. NA-1 Insurance Company submitted reply to the claim application, denying the facts and pleadings therein, it was further pleaded that Motorcycle 9835 is not involved in the accident as the claimants themselves have pleaded that the accident took place with the offending vehicle, ie CG-10EE-0511.

5. Owner, Driver and Insurance Company of offending vehicle and owner of Motorcycle 9835 have not been arrayed as party respondents.

6. Under personal accident coverage, only risk of owner of the offending vehicle is covered, he can claim along with all the relevant essential documents before the Insurance Company and if claim of the owner, for any reason is delayed or not considered, then the claimants can approach to the consumer forum.

7. Here in the present case, deceased was not owner of Motorcycle 9835 nor he is the 3rd party, hence claim is not maintainable. It was further pleaded that deceased on the date of accident was driving the Motorcycle insured with respondent insurance company without any valid and effective driving license. Motorcycle was owned by Udayram Yadav, one of the claimants and the deceased was using the Motorcycle being son.

8. Upon appreciation of pleadings and evidence brought on record by respective parties, learned Claims Tribunal held that deceased met with an accident while driving Motorcycle 9835 resulting into his death; breach of policy conditions was found to be proved and dismissed the claim application holding that the claimants are not entitled for any amount of compensation from the non-applicant/Insurance Company.

9. Shri Anand Kesharwani, learned counsel for the appellants submits that the Tribunal erred in dismissing the claim application in its entirety. He contended that even if claim application is filed against the Insurance Company of the vehicle driven by the driver himself, may be as borrower then also the Tribunal ought to have considered the claim with regard to premium charged by the company under the head of compulsory personal accident coverage for owner-driver under the coverage of risk of Rs.1,00,000/-.

10. First point he contended that the application is filed under Section 163A of the Act of 1988, hence there is no requirement for the claimants to prove or establish the death due to involvement of any other person or driver of the other vehicle involved in the accident. Hence, claim application is filed only against the insurer of the vehicle driven by

deceased. He also submits that the Tribunal erroneously dismissed the entire claim of the appellants / claimants which is not sustainable.

11. Per contra, Shri Dashrath Gupta, learned counsel for the Insurance Company submits that respondent-2, owner of Motorcycle 9835 was applicant-2 before the Tribunal in claim application under section 163A of the act of 1988. He submits that status of the deceased being son of applicant 2 / respondent 2 was a borrower of the motor vehicle against which claim is filed. The owner cannot file application claiming compensation against himself as per the case law of Hon'ble Supreme Court in the matter of **Ningamma & Another Vs United India Insurance Company Limited** reported in (2009) 13 SCC 710. He further contended that the Tribunal based upon the documents and material placed on record by the claimants / appellants have arrived at a finding that there was no license with the deceased authorizing him to drive the motor vehicle, ie Motorcycle which is involved in the accident. Claimants have not placed on record copy of license of the deceased. The Tribunal justified in arriving at a finding that there was breach of policy conditions as the motor cycle was being driven by the person who was not having a valid license and dismissed the claim application.

12. I have heard learned counsel for the respective parties and perused records of the claim case minutely.

13. Perusal of record would show that applicant 2 / respondent 2 is owner of Motorcycle 9835 and father of the deceased. Owner himself filed application under Section 163A of the Act of 1988 along with other family members as applicants against the insurer of motor cycle owned by him.

In pleadings and evidence, he admitted that on his instructions deceased took the motor cycle and went to Bilaspur for purchasing required articles / goods. While returning from Bilaspur, he met with an accident.

14. From the aforementioned pleadings and evidence of the claimants which is amply clear that the status of the deceased who met with the accident was of borrower of the motorcycle. The identical issue was considered by Hon'ble Supreme Court in the matter of **Ningamma** (supra) and held that the borrower who met with an accident driving the borrowed vehicle had stepped into the shoes of owner and held thus:

> "12. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative?
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> 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."

15. Recently, Hon'ble Supreme Court in case of **Ram Khiladi and another Vs Unitd India Insurance Company and another** reported in (2020) 2 SCC 550 had considered the application filed under Section 163A by borrower / permissive user of the vehicle considering its earlier judgments in case of **Ningamma** (supra) and held thus:

> "9.4 An identical question came to be considered by this Court in the case of Ningamma (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 opponent- owner 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.

9.5 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 (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.

9.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim

> was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle."

16. In the aforementioned case Hon'ble Supreme Court has held that the claim application filed under Section 163A of the Act of 1988 against the Insurance Company of the vehicle which was being driven by the deceased himself as a borrower to be not maintainable.

17. In view of aforementioned law laid down by Hon'ble Supreme Court, the claim application under 163A against the insurance Company of the claim application is not maintainable in its form.

18. So far as the submission made by learned counsel for the appellants that the Tribunal ought to have awarded Rs.1,00,000/- against the coverage risk of personal accident cover to owner/ driver; as the Tribunal has considered the deceased stepped into the shoes of the owner. Perusal of impugned award would show that the Tribunal has considered and decided that on the date of accident, deceased was not possessed with valid and effective driving license and recorded a finding that there was breach of policy conditions. Insurance policy, placed on record as Ex.D1 would show that the Insurance Company has charged premium of Rs.50/- for compulsory PA cover (owner driver). In the document Ex.D1, copy of policy there is specific clause mentioning the driver clause as under:

> "Driver: Any person including insured:Provided that a person driving holds an effective driving licence at the time of the accident and is no disqualified from Holding or obtaining such a licence. Provided

> also that the person holding an effective Learner's Licence may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicle Rules, 1989."

19. From bare perusal of the aforementioned clause mentioned in the policy, it is apparent that a person driving the vehicle to hold an effective driving license. The claimants could have claimed under personal accident coverage only if they would have placed on record copy of the driving licence of the deceased. Policy very specifically mentions that the risk of a person as a driver be covered only if he possess valid and effective driving license which is not there in this case. As the Tribunal based on record and evidence held that on the date of accident deceased was not possessing valid and effective driving license; before this court also claimants have not placed copy of driving license of the deceased, in the considered opinion of this court, the submission made by learned counsel for the appellants that the claimants / appellants are entitled for an amount of compensation under the head of personal accident cover (owner driver) is not sustainable.

20. For the foregoing reasons, I do not find any merit or tenable ground in this appeal calling interference with the impugned award passed by the Claims Tribunal.

21. In the result, the appeal being devoid of any substance is liable to be and it is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma