

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No. 618 of 2013**

{Arising out of Award dated 15.04.2013 passed in Motor Accident Claim Case No. 39/ 2012 by the 6th Additional Motor Accident Claims Tribunal, Durg}

Oriental Insurance Company Ltd. through Divisional Manager, Parmanand Bhawan, Near Rajendra Park Square, GE Road, Durg, District Durg, Chhattisgarh.

---- Appellant

Versus

1. Kamta Prasad Sahu S/o Kejau Ram Sahu, aged about 32 years.
2. Sakharam S/o Kejau Ram Sahu, aged about 29 years.
3. Yomesh Kumar Sahu S/o Kejau Ram Sahu, aged about 26 years.
4. Kejau Ram Sahu S/o Late Gharu Ram Sahu, aged about 55 years.

All Resident of Plot No. 627, Awadhpuri, Risali, Thana Newai, Tahsil and District Durg, Chhattisgarh.

---- Respondents

For Appellant	: Shri Anumeh Shrivastava, Advocate.
For Respondents No. 1 and 2	: Shri Sukhdev Prasad Sahu, Advocate.
For Respondents No. 3 and 4	: None

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Smt. Vimla Singh Kapoor, Judge.

Judgment on Board**Per P.R. Ramachandra Menon, Chief Justice****06/05/2021**

1. Appeal is at the instance of the Insurer of the vehicle (motor cycle) on which the deceased was travelling as a pillion rider. Grievance is against the fixation of liability in a claim preferred by the children of the deceased arraying the other son and husband of the deceased as the rider and owner of the vehicle which was insured by the Appellant.
2. On 28.02.2011, the deceased namely Smt. Biso Bai, aged about 50 years was travelling on a motor-cycle bearing registration No. CG-07-LD-3608

ridden by her son/3rd Respondent and owned by her husband/4th Respondent, which admittedly was insured by the Appellant. While so, another unknown motor-cycle dashed against the former motor-cycle causing fatal head injuries to the pillion rider ultimately leading to her death. This led to the claim petition preferred before the Claims Tribunal under Section 163-A of the Motor Vehicles Act, 1988 (*for short, 'the Act'*) arraying the rider, owner and insurer of the motor-cycle on which the deceased was travelling as a pillion rider.

3. The Appellant-Insurer contended before the Tribunal that the deceased was not a 'third party' in respect of the vehicle insured by them, more so, since it was being owned by her own husband and ridden by her own son; while compensation was claimed by the other two sons. Such other incidental grounds were also raised to dispute the claim.
4. Based on the evidence adduced, the Tribunal held that, though the accident had happened because of the collision between two motor-cycles, there was no need or necessity for the Claimants to plead or prove the negligence in a claim petition under Section 163-A of the Act. The Tribunal observed that no evidence was adduced to prove the monthly income of Rs.3000/- but it was simultaneously observed that it was quite possible for the deceased to have earned Rs.100/- per day doing some or the other work and as such, Rs.3000/- was taken as the notional monthly income to work out the compensation. Considering the age of the deceased, the appropriate multiplier of 13 was applied and deducting 1/3rd income towards the personal expenses, the compensation in respect of loss of life was fixed as Rs. 3,12,000/-. Granting Rs.2000/- towards funeral expenses, Rs.5000/- towards loss of consortium and Rs.2,500/- towards loss of estate, the total compensation was fixed as Rs.3,21,500/-; which was directed to be satisfied with interest at the rate of 6% per annum from the date of claim petition till its satisfaction. The correctness of the said award is put to

challenge in this appeal.

5. The learned counsel for the Appellant submits that the challenge is mainly of two folds; firstly, that the deceased is not a 'third party' entitled to get any compensation as she was the wife of the owner of the vehicle and further it was being ridden by her own son; and more so when the claim was sought to be preferred by the other two sons against the negligent brother/rider and the father of the claimants (owner). The learned counsel sought to place reliance on the verdict passed by the Apex Court in ***Ram Khiladi & Another v. The United India Insurance Co. Ltd. & Another***; (2020) 2 SCC 550 holding that the claim petition preferred under Section 163-A, without impleading the rider/driver/owner and insurer of the offending vehicle is not maintainable. The second ground highlighted is that the Claimants, aged 32 and 29 years at the time of filing of the claim petition (who are the sons of the deceased) were never dependent on the income of the deceased in any manner and were having independent means of livelihood. As such, no compensation towards loss of dependency could have been mulcted upon the shoulders of the Appellant. We find it difficult to accept both the above contentions for the reasons noted below.

6. The factual position considered by the Supreme Court in ***Ramkhiladi*** (supra) was that the deceased rider was travelling on the vehicle which was borrowed by him; who met with an accident when another motor-cycle (offending vehicle) collided against the former vehicle leading to death of the rider as mentioned above. A claim petition was filed claiming compensation only from the owner and insurer of the 'borrowed vehicle' without impleading the driver/owner/insurer of the 'offending vehicle'. The Apex Court referred to the various judgments on the point including ***Ningamma & Another v. United India Insurance Company Ltd.*** (2009) 13 SCC 710, holding that the person who borrows the vehicle and rides the same will virtually step into the shoes of the owner and hence, no

compensation can be claimed by him, because of his own deeds and misdeeds. The Apex Court observed that the Appellants/Claimants could have claimed compensation and/or filed a claim petition under Section 163-A of the Act against the driver, owner and insurer of the 'offending vehicle', the deceased being a third party in respect of the offending vehicle. But no claim under Section 163-A was in fact filed against the driver/owner/insurer of the offending vehicle but for filing a claim petition under Section 163-A of the Act only against the owner and insurer of the borrowed vehicle. It was held accordingly, that the deceased driver cannot be held to be a 'third party' with respect to the insured vehicle (borrowed vehicle); in turn restricting the compensation payable to the extent under 'personal accident coverage' having an extent of Rs. 1,00,000/-. The Apex Court also observed in crystal clear terms that the fact that Section 163-A claim is based on 'no fault liability' principle, it only means that the fault or negligence or the wrongful act, neglect or default of the owner/driver of the offending vehicle does not or need not be pleaded or established for getting compensation in terms of the Second Schedule to Section 163-A. The Apex Court held that this does not mean that, it is unnecessary to even file Section 163-A petition against the driver/owner or insurer of the 'offending vehicle' which caused the accident, thus declaring that the owner/borrower/ permissible user cannot maintain Section 163-A petition in relation to use of their own vehicle.

7. Coming to the instant case, it is true that the vehicle was owned by the 4th Respondent and ridden by the 3rd respondent who are the husband and son of the deceased; whereas the claim petition was filed by the other two sons of the deceased. It does not mean that the deceased was the 'owner' of the vehicle or can be treated as a 'borrower' or 'permissible user'. Her status was only that she was the wife of the owner, which by itself cannot make her the owner. It was also being ridden by one of the sons of the deceased and she was only travelling as a pillion rider. This being the position, the

dictum laid down by the Apex Court in **Ramkhiladi** (supra) does not come to the rescue of the Appellant/Insurer and the only question to be considered is whether there is 'coverage under the policy' to meet the claim in respect of the deceased pillion rider.

8. The law is well settled that the pillion rider travelling on a two-wheeler is not entitled to get any compensation or coverage under the 'Act only policy' i.e. policy issued strictly to meet the requirements under Section 147 of the Act. It is also settled law that, by virtue of the relevant Circulars/Notifications issued by the IRDA in the year 2009, the scope of which has already been discussed and explained by the Apex Court on many a time, that the position is different if the policy is a 'Comprehensive or Package policy', not being an 'Act only policy'. We have gone through the 'Certificate of Insurance-cum-Policy Schedule', which forms part of the evidence adduced before the Tribunal. The policy shows that it was issued as a 'Package Policy' and not an 'Act only policy', for the period from 02.09.2010 to 01.09.2011 (very much in existence on the date of accident). The Appellant/Insurer has fixed the 'Basic Own Damage Premium' in respect of the motor-cycle as Rs. 419/- and after giving 'Discount/No Claim Bonus', the actual premium payable under the Head (A) own damage was shown as Rs.207/-. In respect of the third party liability (Head B), the premium was fixed as Rs.300/- and the personal accident coverage premium for Owner/Driver was fixed as Rs.50/-. The total premium was fixed as Rs. 557/- and adding the service tax of Rs.57 and stamp duty of Rs.0.50, the grand total premium was fixed as Rs. 614/-. Thus, the above policy was issued collecting appropriate extent of premium to cover the risk as a 'Package Policy'; which very much takes in the liability in respect of the pillion rider travelling on the above vehicle. In the above circumstances, the appeal is not maintainable on this ground.

9. With regard to the second limb of the submissions made by the learned counsel for the Appellant, that the Claimants aged 32 and 39 years respectively (on the date of filing of the claim petition) were not dependent on the deceased, and hence, no dependency compensation can be ordered to be paid, the legal position has been made clear by the Apex Court in a quite recent decision reported in ***National Insurance Company Limited v. Birender & Others***; (2020) 11 SCC 356. It has been made clear by the Apex Court that even the "married sons" are entitled to be compensated in respect of a motor vehicle accident and that the amount payable will naturally go to the 'estate' of the deceased which can be claimed by the eligible persons. This being the law laid down by the Apex Court, there is absolutely no merit in the said contention.
10. In the above circumstances, we reject both the contentions raised by the Appellant. We hold that there is absolutely no merit in the appeal. It stands dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Vimla Singh Kapoor)
JUDGE