

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.479 of 2015**

{Arising out of order dated 21.11.2014 passed by the Second Additional Motor Accident Claims Tribunal, Baloda Bazar, Chhattisgarh in Claim Case No.22 of 2013}

1. Pekram S/o Jagannathiya Kurre, Aged About 40 Years
2. Smt. Rammati W/o Pekram Kurre, Aged About 39 Years
3. Both R/o Village Sardhabhatha, Tahsil and Police Station Bilaigarh, District (Revenue and Civil) Balodabazar Bhatapara Chhattisgarh

---- Appellants

Versus

1. Bishesar Ratre S/o Ramgopal Ratre, Aged About 24 Years, Caste Satnami, R/o Village Hirri, Tahsil Sarangarh, District (Revenue and Civil) Raigarh, Chhattisgarh
2. IFFCO TOKYA GENERAL INSURANCE COMPANY LIMITED, R/o 3rd Floor, Shop No. 345-347, Lalganga Shopping Mal, G.I. Road, Raipur District (Revenue and Civil) Raipur Chhattisgarh

---- Respondents

For Appellants	:	Shri Vineet Kumar Pandey, Advocate
For Respondents	:	None

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

01.02.2021

1. Rejection of the claim petition preferred by the Appellants in terms of Section 163-A of the Motor Vehicles Act, 1973 (henceforth 'M.V. Act') made the Claimants to approach this Court by way of this appeal.
2. The matter pertains to the accident occurred on 30.04.2008. The deceased by name, Basant Kumar Kurre, was travelling as a pillion rider on the motorcycle bearing No.CG-13/H/1322 ridden by one Shailesh Kumar Ratre, owned by the 1st Respondent and insured by the 2nd Respondent. On their way back home, when they reached the place of occurrence, allegedly because of the glare of the head lights of some

vehicle coming from the opposite side, the rider Shailesh Kumar Ratre lost his sight on the road and both the rider and pillion rider fell down, sustaining fatal injuries, leading to their death. This was sought to be compensated by filing claim petitions by the legal heirs of the rider being Claim Case No.23 of 2013 (*Smt. Rajinbai v. IFFCO Tokyo General Insurance Company Limited*) and the Claimants/legal heirs of the deceased pillion rider being Claim Case No.22 of 2013 (*Pekram and Another v. Bishesar Ratre and Another*) under Section 163-A of the M.V. Act. The claim was resisted from the part of the insurer on various grounds including that the rider of the motorcycle was not having valid driving licence, but for a learner's licence. It was also contended that the claim was not maintainable in view of the higher income of the deceased as admitted and pleaded from the part of the Claimants. Both the claim petitions were tried together and evidence was led accordingly. On conclusion of the trial, the Tribunal held that as per the pleadings and evidence brought on record, the deceased was having an income of Rs.4,500/- per month as a 'motorcycle mechanic'. Observing the settled position of law, that such a claim (where the annual income exceeds Rs.40,000/-) could not be entertained under Section 163-A of the M.V. Act, the claim petitions were dismissed, which forms the subject matter of challenge in this appeal, in respect of the death of the pillion rider.

3. Shri Vineet Kumar Pandey, the learned counsel for the Appellants/Claimants submits that the monthly income was not proved properly to sustain the rejection ordered by the Tribunal. But on going through the materials on record, it is seen that there were specific pleadings raised by the Claimants themselves as to the engagement and the monthly income obtained by the deceased pillion rider. The admission

is obviously to the extent that the deceased was having an annual income of much more than Rs.40,000/- stated as obtained from his engagement as a motorcycle mechanic. Evidence was adduced before the Tribunal in this regard as well. It is on the basis of the said pleading and evidence, that the matter was finalized by the Tribunal holding that the claim was not maintainable under Section 163-A of the M.V. Act; thus leading to its dismissal.

4. Unlike a claim petition under Section 166 of the M.V. Act (where it is a burden on the Claimants to plead and prove the negligence), in a claim under Section 163-A of the M.V. Act, the Claimants cannot be required to plead or establish negligence. The compensation is payable strictly in terms of the second schedule and the amount payable as compensation under second schedule cannot be reduced because of the negligence, if any. The Apex Court has made it clear that, the benefit of Section 163-A of the M.V. Act is only in respect of a “specified category of persons having an annual income of less than Rs.40,000/-”. In all other cases, the matter has to be considered in terms of Section 166 of the M.V. Act with reference to the factum of negligence to get the compensation (except the no-fault liability under Section 140 of the M.V. Act).
5. The only question to be considered is whether the Tribunal was justified in dismissing the claim petition holding it as not maintainable under Section 163-A of the M.V. Act because of the higher income factor brought on record and whether it was necessary to have had the matter considered under Section 166 of the M.V. Act ? A ground has been raised by the Claimants in the present memorandum of appeal in this regard as well. But, here the question to be considered is whether any fruitful purpose will be served even if the matter is caused to be considered under

Section 166 of the M.V. Act where compensation is payable only on the basis of negligence. It has been held by the Apex Court that in a claim petition under Section 166 of the M.V. Act, the burden of proof is on the Claimants to plead and establish that the accident has occurred because of the negligence in driving the offending vehicle.

6. Coming to the instant case, admittedly the deceased was proceeding as a pillion rider on the motorcycle ridden by one Shailesh Kumar Ratre, who also lost his life in the accident. Both the cases were tried together, the pleadings and evidence adduced were similar and it was to the effect that the rider of the motorcycle lost his sight on the road due to the glaring head lights of some vehicle which was coming from the opposite side; whereby they fell down from the motorcycle and sustained fatal injuries. It has to be ascertained whether any pleading was raised from the part of the Claimants in the claim petition filed before the Tribunal that the accident was because of the negligence on the part of the deceased rider. Similarly, it has to be ascertained whether the motorcycle on which the deceased Basant Kumar Kurre was travelling as a pillion rider was covered under any 'package/comprehensive policy' to have shifted the liability, if any, to the shoulders of the Insurance Company.
7. Ongoing through the records obtained from the Tribunal, it is seen that the records pertain to Claim Case No.23 of 2013, which was filed by the legal heirs of the deceased rider. The instant case involving in the pillion rider being Claim Case No.22 of 2013, the records in respect of the said case have not been obtained from the Tribunal. In the said circumstance, we find it appropriate to remit the case and cause the matter to be considered by the Tribunal with reference to the pleadings and evidence, after granting liberty to the Claimants to have the matter converted as

claim petition filed under Section 166 of the M.V. Act. It is ordered accordingly.

8. Since the matter is quite old enough, the Tribunal is required to have the matter considered and finalized the claim in accordance with law, as expeditiously as possible, at any rate within four months' from the date of receipt of a copy of this judgment.

The appeal stands disposed of as above.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge