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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 79 of 2015

- The Oriental Insurance Company Ltd.: Local Branch Office Raigarh, C.G. through its Authorized office Divisional Manager Oriental Insurance Company, Division Office Rama Trade Center, Near Old Bus Stand Bilaspur C.G.

------Appellant/Insurer

VERSUS

1. Munni Bai W/o Sukhram Naik aged about 40 years
2. Minor Ku. Sukinta D/o Sukhram Naik, aged 16 years
3. Minor Ku. Reeta D/o Sukhram Naik, aged about 13 years
4. Minor Sarika D/o Sukhram Naik, aged about 11 years

   Respondent no. 2 to 4 are Minor, through their Natural Guardian mother Smt. Munni Bai R/o Village Kondkela Khajri, P.O. Shekharpur, Tahsil-Pathalgaon, District Jashpur C.G.
5. Sukharam Naik S/o Laxman Ram aged 45 years R/o Village Kondkela Khajri, P.O. Shekharpur, Tahsil Pathalgaon, District Jashpur C.G.

-------Respondents

For Appellant	:	Mr. Abhishek Sinha, Advocate
For Respondent 1 to 4	:	Mr. A.K. Prasad, Advocate
For Respondent 5	:	None.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

13/01/2021

1. Appellant/ Non-applicant 2/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short " Act of 1988") challenging the impugned award dated 16.10.2014 passed by learned Motor Accident Claims Tribunal, Jashpur in claim case no. 06/2013 whereby learned Claims Tribunal allowed the application filed under Section 163-A of the Act of 1988 and awarded Rs. 4,43,700/- as compensation.

2. Facts relevant for disposal of this appeal are that, on 14.05.2012, at about 12:30 p.m., Ganesh Ram Nayak was travelling on motor cycle bearing

registration no. CG14MA1425 (hereinafter referred to as “offending vehicle”) and going towards village Kansabel from his village Kondkel. When he reached near village Pongro, one unknown heavy vehicle dashed him and caused accident. In the said accident, Ganesh Ram suffered grievous injuries over his person and died on spot.

3. Claimants who are mother and siblings of the deceased filed an application under Section 163-A of the Act of 1988 seeking compensation of Rs. 17,25,000/- on different heads, pleading therein that on the date of accident, deceased was aged about 20 years, working as labourer and earning Rs. 120/- per day.

4. Non-applicant 1/ owner of offending vehicle submitted reply to the claim application and admitted the facts pleaded therein. It was further pleaded that the offending vehicle was insured with non-applicant 2 during the time of accident.

5. Non-applicant 2/ Insurance Company submitted reply to the claim application and denied the pleadings made therein. It was further pleaded that there was breach of policy conditions. Accident was not informed to the insurer, deceased was riding the vehicle as borrower and not possessed with valid and effective driving licence to drive the said vehicle but even then the owner of the offending vehicle had permitted the deceased to drive motor cycle (offending vehicle). Deceased himself was driving the motor cycle when alleged another unknown vehicle dashed him, hence the application under Section 163-A of the Act is not maintainable.

6. Learned Claims Tribunal, upon appreciation of pleadings and evidence brought on record by the respective parties held that late Ganesh Ram Naik died while driving the motor cycle. Breach of policy conditions was not found to be proved and awarded Rs. 4,43,700/- as compensation.

7. Mr. Abhishek Sinha, learned counsel for the appellant submits that

application filed under Section 163-A of the Act in its form, is not maintainable. Income as pleased in the claim application as Rs.120/- per day is more than the maximum income as provided under Section 163-A for maintaining the application, hence, the Claims Tribunal ought not to have considered the application under Section 163-A of the Act of 1988 to be maintainable. He further contended that the motor cycle was owned by father of deceased who is Respondent 5 herein. Deceased borrowed the vehicle from his father and while driving the same he met with an accident and died. It is a case of self-accident/ self-negligence and for this reason also, application under Section 163-A of the Act is not maintainable. Deceased was not possessing any valid and effective driving licence to drive offending vehicle. Claims Tribunal has not considered all the aforementioned legal aspects of the case and allowed the application filed under Section 163-A of the Act of 1988 and awarded compensation of Rs. 4,43,700/-. Award passed by Claims Tribunal is contrary to law. He places his reliance in case of ***Deepal Girishbhai Soni and others* v. *United Insurance Co. Ltd. Baroda*** reported in **(2004) 5 SCC 385**, ***Ningamma and another vs. United India Insurance Company Limited*** reported in **(2009) 13 SCC 710,** and ***Ramkhiladi v. United India Insurance Com. Limited*** reported in **(2020) 2 SCC 550** in support of his contention.

8. Mr. A.K. Prasad, learned counsel for Respondent 1 to 4/ claimants opposes the submissions made by learned counsel for appellant. He submits that it is not a self-accident case but it is a case where some unknown vehicle knocked down the deceased and caused accident. In that accident, son of Respondent 5 died. Income of deceased though pleaded in the claim application at one place as Rs. 120/- per day but the monthly income of deceased has been pleaded in the claim application as Rs. 3,300/- making annual income as Rs. 39,600/- which is under maximum income as provided under 2nd Schedule formulated under

Section 163-A of the Act of 1988. Deceased was possessed with driving licence in his name which is also placed on record as Ext. C-2, hence the submission made by the learned counsel for the appellant is not sustainable that on the date of accident deceased was not possessed with valid and effective driving licence. In view of aforementioned submission he supported the award passed by Claims Tribunal.

9. We have heard learned counsel for the respective parties and also perused the record.

10. Sofar as the first submission made by learned counsel for the appellant that income of deceased is more than Rs. 40,000/- p.a., application under Section 163-A is not maintainable. Perusal of the claim application would show that claimants in paragraph 21 of claim application have pleaded that on the date of accident deceased was 20 years of age and earning Rs. 120/- per day. In paragraph 6 of the claim application, they have very categorically pleaded that the monthly income of the deceased was Rs. 3,300/-, where monthly income is very specifically pleaded than the monthly income as pleaded is to be taken into consideration instead of calculating the monthly income based on the daily wages pleaded in the application. Another aspect is that though the deceased was a man of working for Rs. 120/- per day, the occupation was shown as labourer which is not a permanent occupation, he may not be working in all 30 days a month but looking to very specific pleading in the claim application, total monthly income as Rs. 3,300/- ie. Rs. 39,600/- a year. Income pleaded in the claim application is less than 40,000/- which is maximum income as prescribed under 2nd Schedule formulated under the Act in maintaining the application under Section 163-A of the Act of 1988. In view of the above, first submission made by learned counsel for the appellant is not sustainable and it is hereby repelled.

11. Second ground as raised by learned counsel for appellant with regard to

the fact that deceased himself was driving motor vehicle. Deceased borrowed the vehicle from his father who is owner of the vehicle, not an employee nor an engaged driver to drive the motor cycle. In view of the aforementioned facts, it will be presumed that deceased was driving the vehicle in the capacity of owner of vehicle. Being such position, owner cannot maintain claim application against himself. Insurance Company by issuing insurance policy takes the liability upon it to indemnify the risk of owner. Hon'ble Supreme Court in case of **Ningamma (supra)** has considered the claim under Section 163-A of the Act by a person who met an accident while driving the vehicle and held thus:

> "21. In our considered opinion, the ratio of the decision in *Oriental Insurance Co. Ltd. case, (2008) 5 SCC 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 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 hereinbefore. 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 shows of the owner of the vehicle.
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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 compensated 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 the 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."

Recently, Hon'ble Supreme Court in case of **Ramkhiladi (supra)** has again considered the issue with regard to maintainability of application under Section 163-A of the Act where the deceased met with an accident while driving the motor cycle borrowed from other person and has held thus:

> "5.5 That in *Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710* and *New India Assurance Co. Ltd. v. Sadanand Mukhi, (2009) 2 SCC 417*, this Court has held that the owner of the vehicle or his legal representatives or the borrower of the vehicle cannot raise a claim for an accident in which there was no negligence on the part of the insured vehicle. It is submitted that in the aforesaid decisions, this Court has held that the borrower of the vehicle steps into the shoes of the owner and, therefore, the borrower of the vehicle or his legal representatives are not entitled to compensation from the insurer under the Act. It is submitted that the deceased in the present case has stepped into the shoes of the owner and therefore not entitled to any third party compensation from the insured vehicle.
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> 5.6 That in *Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553* it is held by this Court that 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 authorised 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. It is further held that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle."

12. Hon'ble Supreme Court in the aforementioned cases has discussed the earlier rulings on the issue. If the facts of the present case are taking into consideration in the light of ruling in case of **Ramkhiladi (supra),** it would reveal that the deceased borrowed the vehicle owned by his father (Respondent 5), hence, the instant case is squarely covered with the case of law of **Ramkhiladi (supra)**. For the foregoing reasons, we hold that the application filed under Section 163-A of the Act, in the facts and circumstances of the case, is not maintainable. Claims Tribunal erred in holding the application under Section 163-A to be maintainable and awarding Rs. 4,43,700/- as compensation to Claimants/ Respondent 1 to 4. Award of compensation under Section 163-A of the Act of 1988, in view of the aforementioned facts and circumstances of the case, is set aside.

13. At this stage, learned counsel for Respondent 1 to 4 submits that the claimants shall be entitled for compensation under the head of personal accidental coverage to owner driver in terms of the policy issued by appellant/ Insurance Company taking into consideration premium of Rs. 50/- charged under the policy for covering risk of personal accident, we find it appropriate to direct Respondent 1 to 4/ Claimants to approach the appellant-Insurance Company by filing claim application which shall be considered by appellant-Insurance Company in accordance with law.

14. To appreciate the submission made by learned counsel for the appellant, we have gone through the documents available on record and marked as Ext. C-2 which is a photocopy of the licence in the name of Ganesh Ram Nayak issued for a period of six-months from 27.01.2012 to 26.07.2012. The said licence is a learner's licence issued in prescribed form Form-3 under Rule 3 of Central Motor Vehicles Rules, 1989. The said Rule 3 reads as under:

"LICENSING OF DRIVERS OF MOTOR VEHICLES

General

3. General.—The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and

(c) there is painted, in the front and the rear or the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under:—

$\boxed{\mathbf{L}}$

Note.- The painting on the vehicle or on the plate or card shall not be less than 18 centimeters squares and the letter "L" shall not be less than 10 centimeters high, 2 centimeters thick and 9

> centimeters wide at the bottom:
>
> Provided that a person, while receiving instructions or gaining experience in driving a motor cycle (with or without a side-car attached), shall not carry any other person on the motor cycle except for the purpose and in the manner referred to in clause (b)."

15. From sub-clause (b) of above Rule 3, it is very specifically envisaged that a person holding learner's licence be accompanied by an instructor holding an effective driving licence to drive the vehicle and the said instructor to be in a position to control or stop the vehicle. In the pleadings, there is no mention that there was any other person travelling on the motor cycle at the time of accident and having valid and effective driving licence. Copy of Insurance policy is available on record as Ext. C-1 and under the heading "Driver", following has been made condition precedents.-

> "DRIVER: Any person including insured: Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from Holding or obtaining such a licence. Provided also that the person holding an effective Learner's Licence may also driver the vehicle and that such a person satisfied the requirements of Rule 3 of the Central Motor Vehicle Rules, 1989."

16. From perusal of the copy of insurance policy, it is apparent that there is specific condition mentioned that who is the person authorised to drive the vehicle insured by appellant-Insurance Company. As undisputedly, the deceased was possessed with valid learner's licence, he was not accompanied by any instructor having valid and effective driving licence at the time of accident, we are of the considered view that there was breach of policy conditions.

17. In view of the aforementioned facts and specific provision under the Act of 1988 and Rules framed thereunder, the submission of learned counsel for Respondent-claimants that the claimants will be entitled for the amount of compensation atleast under the head of PA coverage is also not

sustainable and it is hereby repelled.

18. For the foregoing reasons, appeal is allowed and the impugned award is set aside. Appellant-Insurance Company will be at liberty to file appropriate proceedings to recover the amount so deposited by it from claimants in accordance with law. If the amount deposited by Insurance Company is not disbursed and lying within the Tribunal, said amount shall be returned to Insurance Company.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Pawan