(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 962 of 2016

1. Smt. Yashoda Bai W/o Bharat Lal Kosle, aged about 26 years
2. Kuleshwar Kosle, S/o Bharat Lal Kosle, aged about 12 years
3. Ku. Geetanjali Kosle, D/o Bharat Lal Kosle, aged about 5 years
4. Phul Chand Kosle, S/o Bharat Lal Kosle, aged about 2 years

   No.2 to 4 are represented by legal guardian appellant No.1. All R/o- Umaria, Post- Rinwa, Thana- Mandir Hasod, District- Raipur (CG)

---- Appellants (Claimants)

Versus

1. Mohanlal S/o Sukhchand, R/o- Umaria, Post- Rinwa, Thana Mandir Hasod, District- Raipur (CG) [owner of the vehicle No. C.G.04-CT-4379] Non-applicant No. 1/owner
2. I.C.I.C.I Lombard General Insurance Co. Ltd., Through Officer In Charge, I.C.I.C.I Lombard General Insurance Co. Ltd. Vanijya Bhawan, Devendra Nagar, Raipur, Tahsil & District- Raipur (CG) [Insurer of vehicle No.CG04-CT-4379. NA No. 2/insurance Company.
3. Sukh Chand Kosle, aged about 52 years ,......Claimant No. 5,
4. Smt. Jamuna Bai, W/o Sukh Chand Kosle, aged about 50 years ......Claimant No. 6

   Respondent No.3 & 4 R/o- Umaria, Post- Rinwa, Thana- Mandir Hasod, District- Raipur (CG)

---- Respondents

For Appellants	:	Mr. Akash Shrivastava, Advocate on behalf of Mr. Anumeh Shrivastava, Advocate
For Respondent No.2	:	Mr. Shailesh Tiwari, Advocate on behalf of Mr. Saurabh Sharma, Advocate

Hon'ble Shri Parth Prateem Sahu, J

Order On Board

15/7/2021

1. Challenge in this appeal is to the award dated 30.7.2015 passed by the Chief Motor Accident Claims Tribunal, Raipur

(for brevity 'the Claims Tribunal') in Claim Case No.22/2013 by which the Claims Tribunal dismissed claim application filed by appellants/claimants under Section 163A of the Motor Vehicles Act, 1988 (for brevity 'the Act of 1988').

2. Facts of the case giving rise to this appeal may be summarized thus. Bharat Lal Koshley borrowed motorcycle bearing registration No. CG04-CT-4379 from non-applicant No.1, on the date of accident, he along with his mother was travelling from village Lokhandi to village Umariya. At about 2-3.00 p.m. when they reached near village Gujra, tyre & tube of front wheel of motorcycle got burst as a result Bharat Lal lost control over motorcycle, dashed it against road divider, suffered grievous injuries and succumbed thereto during the course of treatment. Appellants/Claimants have filed an application under Section 163-A of the Act of 1988 seeking compensation of Rs.6,76,000/- pleading therein that deceased was earning Rs.40,000/- p.a. from his occupation of Mason.

3. Non-applicant No.1, owner of offending vehicle, was proceeded ex-parte.

4. Non-applicant No.2-insurance company filed its reply to claim application and denied the pleadings made therein. It was further pleaded that on the date of accident, the deceased was under influence of liquor, he met with accident on account of his own negligence, on the date of accident he was not possessed with valid and effective driving license, three persons were travelling on motorcycle, as such there was

breach of policy condition of insurance policy.

5. The Claims Tribunal based upon the pleadings and evidence placed on record by respective parties, held that deceased Bharat Lal died on account of motor accidental injuries sustained by him while driving motorcycle owned by non-applicant No.1. The Claims Tribunal further held that the deceased does not come within the category of 'third party' and taking note of law laid down by Hon'ble Supreme Court in case of **Ningamma & another Vs. United India Insurance Company Ltd.** reported in **(2009) 13 SCC 710** dismissed the claim application.

6. Mr. Akash Shrivastava, learned counsel for appellants/ claimants would argue that findings recorded by the Claims Tribunal are erroneous. The Claims Tribunal erred in arriving at conclusion that deceased was not a 'third party', hence the insurance company is not liable to pay amount of compensation. It is further argued that as motorcycle was insured with non-applicant Insurance Company and deceased was not the insured, hence, he would fall within the category of third party.

7. Mr. Shailesh Tiwari, learned counsel appearing on behalf of Mr. Saurabh Sharma, Advocate for respondent Insurance Company would argue that there is no dispute of the fact that on the date of accident, deceased was driving borrowed motorcycle. He submits that the Claims Tribunal has rightly taken note of ruling of Hon'ble Supreme Court in case of

Ningamma (supra) and held that deceased stepped into shoes of owner. He submits that the impugned award passed by the Claims Tribunal is strictly in accordance with law, hence it does not call for any interference.

8. I have heard learned counsel for the parties and perused the records of claim case.

9. It is not in dispute that the deceased borrowed motorcycle from its registered owner i.e. non-applicant No.1/respondent No.1 herein, and while driving that motorcycle he met with an accident and died. There was no involvement of any other motor vehicle. In case of **Ningamma (supra)** the Hon'ble Supreme Court has considered status of borrower of a motor vehicle and held thus:-

> "20. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer *res integra*. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA.
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> 21. In our considered opinion, the ratio of the aforesaid decision 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 be 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 herein before. 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 shoes of the owner of the vehicle.

> 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."

In the aforementioned case law also the deceased was borrower of motorcycle, as in the present case. Hence, present case is squarely covered with the aforementioned ruling of Hon'ble Supreme Court.

10. Recently, in case of **Ramkhiladi & another Vs. United India Insurance Company & anr** reported in **(2020) 2 SCC 550** Hon'ble Supreme Court has considered the issue with regard to entitlement for compensation under Section 163A of the Act of 1988 for the injuries suffered by borrower of motorcycle and quoting its earlier decision in **Ningamma (supra)** with approval has held thus:-

> "9.8. However, at the same time, even as per the contract of insurance, in case of personal accident the owner driver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed herein above, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the

claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2^{nd} Schedule. At the same time, as observed herein above, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.

9.9. Now, so far as the submission made on behalf of the claimants that in a claim under Section163-A 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 Section163-A of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi[8], the aforesaid cannot be accepted. In Rajni Devi[8], it has been specifically observed and held that the provisions of Section163-A 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. Vs. Jhuma Saha[10]; Dhanraj[7]; National Insurance Co. Ltd. Vs. Laxmi Narain Dhut[11] and Premkumari vs. Prahlad Dev[12], it is ultimately concluded by this Court that the liability under Section163-A 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 Section163-A 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[9], 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."

In view of above ruling of Hon'ble Supreme Court, the submission made by learned counsel for appellants that deceased was a third party as he was not registered owner of motorcycle in question, is not sustainable and it is hereby repelled.

11. Claimants/appellants could have claimed compensation only under the 'Personal Accident Coverage' for owner and driver as per contractual terms of insurance policy. Photocopy of insurance policy is available on record which shows that payment of premium of Rs.50//- towards PA Cover (owner & driver) and further under the heading **'Driver'** it is mentioned that person should be a driver holding valid and effective driving license at the time of accident and not disqualified for holding or driving license. Claimants have not placed on record copy of driving license of deceased, hence in this appeal even the compensation for risk covered under the Personal Accident Coverage for owner and driver cannot be

granted to the appellants.

12. For the foregoing reasons, I do not find any error in the impugned award calling for interference of this Court. Appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-