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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No.890 of 2015

1. Gaind Ram Verma, S/o Dwarika Prasad Verma, aged about 55 years,

2. Smt. Kalyani Devi, W/o Gaind Ram Verma, aged about 53 years

3. Dwarika Prasad Verma, S/o Late Shri Dashrath Lal Verma, aged about 80 years.

   All R/o Bajrang Nagar, Raipur, H.No.4/374, Near the House of Mohan Painter, P.S. Saraswati Nagar, Raipur, Tah. & Distt. Raipur (C.G.)

(Claimants)
---- Appellants

Versus

1. Amar Nath Sonkar, S/o Chandrika Prasad Sonkar, R/o Ramkund Para, Near Binni Bai Sonkar Vidya Mandir, P.S. Saraswati Nagar, Raipur, Distt. Raipur.

   Owner of vehicle No.CG04-DZ-5676

2. The Oriental Insurance Co. Ltd., Through Divisional Manager, Kachehry Chowk, Jail Road, Raipur

   Insurer of vehicle No.CG04-DZ-5676

(Non-applicants)
---- Respondents

For Appellants:	Mr. Amiyakant Tiwari, Advocate.
For Respondent No.1:	Mr. J.K. Gupta, Advocate.
For Respondent No.2:	Mr. Nilkanth Malaviya, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/11/2021

1. This is the claimants' appeal filed under Section 173 of the Motor Vehicles Act, 1988 challenging legality, validity and correctness of the order passed by the Claims Tribunal, whereby the learned Claims Tribunal has dismissed the application filed under Section 163-A of the Motor Vehicles Act, 1988.

2. Learned counsel for the appellants / claimants would submit that the

application prematurely filed under Section 163-A of the Motor Vehicles Act, 1988 on behalf of the appellants / claimants has been dismissed without trying it and without there being any evidence on record that the deceased driver was not the third party and therefore the order impugned is liable to be set aside and the appeal deserves to be allowed.

3. Mr. Nilkanth Malaviya, learned counsel appearing for the Insurance Company / respondent No.2, would submit that the order impugned passed by the Claims Tribunal is in accordance with law and would rely upon the decision of the Supreme Court in the matter of **Ramkhiladi and another v. United India Insurance Company and another**[1].

4. Mr. J.K. Gupta, learned counsel appearing on behalf of respondent No.1 / owner of the offending vehicle, would oppose the appeal and support the impugned order.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

6. Deceased Nitish Kumar died while driving the offending vehicle on 2-3-2012. Upon appearance, the Insurance Company filed copy of the insurance policy and the learned Claims Tribunal relying upon the insurance policy holding that the deceased was driving the vehicle as a representative of respondent No.1 owner and therefore he would not be third party and therefore application under Section 163-A of the Motor Vehicles Act, 1988 would not be maintainable.

7. The Supreme Court in **Ramkhiladi** (supra) while dealing with a claim petition under Section 163-A of the Motor Vehicles Act, 1988, held as

1 (2020) 2 SCC 550

under: -

> "9.5. It is true that, in a claim under Section 163-A 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 163-A 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 163-A 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 163-A 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 *Dhanraj*[2], 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. 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.
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> 9.6. In view of the above and for the reasons stated above, in the present case, as the claim under Section 163-A 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 163-A 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."

2 Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553 : 2005 SCC (Cri) 363

Finally, in paragraph 9.9, their Lordships of the Supreme Court held as under: -

> "9.9. Now, so far as the submission made on behalf of the claimants that in a claim under Section 163-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 Section 163-A of the Act would be maintainable is concerned, in view of the decision of this Court in *Rajni Devi*[3], the aforesaid cannot be accepted. In *Rajni Devi*, it has been specifically observed and held that the provisions of Section 163-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 *Oriental Insurance Co. Ltd. v. Jhuma Saha*[4]; *Dhanraj* (supra); *National Insurance Co. Ltd. v. Laxmi Narain Dhut*[5] and *Premkumari v. Prahlad Dev*[6], it is ultimately concluded by this Court that the liability under Section 163-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 Section 163-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 *Ashalata Bhowmik*[7], 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 hereinabove."

8. In this case, it is the case of the claimants that the driver was third party and claim under Section 163-A of the Motor Vehicles Act, 1988 is maintainable. The learned Claims Tribunal could have made enquiry to find out whether the driver was third party or not and only after recording a finding in that respect, the application could have

3 Oriental Insurance Co. Ltd. v. Rajni Devi, (2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67
4 (2007) 9 SCC 263 : (2007) 3 SCC (Cri) 443
5 (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142
6 (2008) 3 SCC 193 : (2008) 1 SCC (Civ) 822 : (2008) 1 SCC (Cri) 694
7 National Insurance Co. Ltd. v. Ashalata Bhowmik, (2018) 9 SCC 801 : (2018) 4 SCC (Civ) 595 : (2019) 1 SCC (Cri) 399

been rejected. However, without recording evidence, only on the basis of insurance policy, the Claims Tribunal has proceeded to dismiss the application which is illegal and bad in law. Accordingly, the order impugned is set aside and the matter is remitted to the learned Claims Tribunal to decide the application under Section 163-A of the Motor Vehicles Act, 1988 afresh within 3 months from the date of receipt of a copy of this order, as the accident occurred on 2-3-2012. Parties shall appear before the Claims Tribunal on 20-12-2021. Record be sent back forthwith.

9. The appeal is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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