

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3912 OF 2019

M/s Shriram General Insurance Company Ltd.,
10003 E-8, RIICO Industrial Area, Sitapura,
Jaipur 302 022 through its Manager (Legal)

.. Appellant
(Orig. Respondent)

VERSUS

- 1] Ushabai Vasant Kale,
Age 48 years, Occu. Labour
- 2] Vasant Ramchandra Kale
Aged 56 years, Occu : Labour

Both R/o Siddharthnagar, Municipal Colony,
Laltaki Dist. Ahmednagar

.. Respondents
(Orig. Claimants)

...
Mr. V.N. Upadhye, Advocate for the appellant
Mr. U.U. Wagh, Advocate for respondents
...

CORAM : ANIL S. KILOR, J.
DATE : 22-03-2021

ORDER :

1. This is an Appeal preferred by the Insurance Company challenging the Judgment and Order passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar in MACP no. 367 of 2013, partly allowing the claim in favour of the claimants and thereby holding the claimants entitled to get ₹1,00,000/- after the payment of deficit Court fees stamp, if any, with interest at the rate of 9% per annum from the date of institution of the Petition till its realization.

2. I have heard learned counsel for the respective parties.

3. Brief facts of the present case are that the claimants are the legal heirs of deceased Nilesh Vasant Kale, who on the date of incidence, was riding the motorcycle bearing no. MH-16-AX-4025 and his friend Santosh Adagale was the pillion rider which met with an accident and in the said accident, the deceased sustained serious injuries and he succumbed to the same. Thereupon, claim was filed by the claimants for ₹3,00,000/- under section 163-A of the Motor Vehicle Act, 1988. It is the case of the claimants that deceased - Nilesh was doing labour work and the motorcycle which he was riding at the time of accident, is owned by the claimant no. 1 - mother of the deceased. It is the further case of the claimants that the income of the deceased was ₹3000/- per month and his age was 21 years at the time of the accident and, accordingly, claim of ₹3,00,000/- was made before the Tribunal.

4. The Tribunal after considering the case of the claimants and also the case put up by the Insurance Company whereby the Insurance Company opposed the claim on the ground that because the motorcycle involved in the accident is owned by the mother of the deceased, the deceased entered into the shoes of the mother i.e. the owner and, as such, owner cannot claim any compensation under Section 163-A of the Motor Vehicles Act, 1988 and at the most, the claimant is entitled for ₹20,000/- as per the insurance policy.

5. Learned Tribunal after considering the oral as well as documentary evidence available on record, partly allowed the claim petition and thereby granted Rs.1,00,000/- towards compensation along with the interest vide Judgment and Order dated 28-11-2018. The said judgment and order is under challenge.

6. Shri Upadhye, learned counsel for the Insurance Company submits that the claim on behalf of the owner of the vehicle cannot be considered and it is not permissible under section 163-A. He submits that because the deceased entered into the shoes of the owner i.e. his mother, no claim is maintainable at the behest of the owner. In support of his contention, learned counsel for the appellant relied upon the following judgments :

i) Judgment of the Hon'ble Supreme Court of India in the case of Oriental Insurance Company Ltd. Vs. Rajnidevi¹

ii) Judgment of the Hon'ble Supreme Court of India in the case of Ningamma Vs. United India Insurance Co. Ltd.²

iii) Judgment of the High Court dated 13-07-2016 in the case of Iffco Tokio General Insurance Co. Ltd. Vs. Deepakbhai Bhikhabhai Patel³

iv) Judgment of the High Court dated 20-07-2016 in the case of United India Insurance Co. Ltd. Vs. Legal heirs of deceased Barot Bharatbhai Arvindbhai and another⁴

v) Unreported Judgment of the High Court dated 13-06-2017 passed in First Appeal No. 1329 of 2016 in the case of Bharti AxA General Insurance Co. Ltd. Vs. Shradha w/o. Govind Katruwar and others.

1 (2008) 5 SCC 736

2 LEX (SC) 2009 5 218

3 2017 AAC 155

4 2016 AAC 2162

7. Per contra, learned counsel for the claimants relied upon the recent judgment of the Hon'ble Supreme Court of India in the case of *Ramkhiladi and another Vs. United India Insurance Company and another*⁵ *reported in (2020) 2 Supreme Court Cases 550*, wherein the judgment cited by the learned counsel for the Insurance Company in the case of *Ningamma V. United India Insurance Co. Ltd.*⁶ was considered and held the claimants entitled for ₹1,00,000/- towards compensation.

8. To consider the rival contentions of the parties, I have perused the record and proceedings of the Tribunal and also the impugned judgment.

9. There is no dispute that the motorcycle involved in the accident is owned by the claimant no. 1 who is the mother of the deceased and on the date of the accident, the deceased was driving the said motorcycle. There is also no dispute that in the facts and circumstances of the present matter, the deceased entered into the shoes of the owner and, therefore, as per the well settled principles of law, the owner is not entitled to claim any compensation under section 163-A as held by the Hon'ble Supreme Court of India in the case of *Ningamma* (supra).

10. However, the Hon'ble Supreme Court of India in the case of *Ramkhiladi* (supra) wherein the Apex Court has held that in the case where the owner is not entitled to claim any compensation under section 163-A, in

⁵ (2020) 2 SCC 550

⁶ (2009) 13 SCC 710

view of the contract between the insured person and the Insurance Company, remedy before the Consumer forum is available. It is further held that as per the contract of insurance, the owner – driver is entitled to a sum of ₹1,00,000/-. The relevant paragraph in **Ramkhiladi** reads thus,

“9.8 However, at the same time, even as per the contract of the insurance, in case of personal accident, the owner – driver is entitled to a sum of Rs.1,00,000/-. Therefore, the deceased, as observed hereinabove, who would be in the shoes of owner shall be entitled to a sum of Rs.1,00,000/-, 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 second schedule and a fixed amount of Rs.5,00,000/- has been specified in case of death and, therefore, the claimants shall be entitled to Rs.5,00,000/-. 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 on 10-05-2018 i.e. much prior to the amendment in the second schedule. In the facts and circumstances of the present case, the claimant shall not be entitled to the benefit of the amendment to the second schedule. At the same time, as observed hereinabove, the claimant shall be entitled to Rs.1,00,000/- as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.”

11. In that view of the matter, I am of the considered view that because the judgments cited by the Insurance Company of the Hon'ble Supreme Court of India are considered in the case of **Ramkhiladi** (supra) and thereupon, the Apex Court has held the claimant entitled for ₹1,00,000/-, in the present matter, no error is committed by the learned Tribunal.

12. In that view of the matter, I do not find any fault committed by the Tribunal and accordingly, I am of the opinion that there is no merit in the present Appeal and the same needs to be rejected. Accordingly, I pass the following order :

ORDER

I] The Appeal is dismissed.

II] The amount deposited by the Insurance Company in this Court be permitted to be withdrawn by the claimants along with interest if any, accrued thereon.

13. The Appeal is disposed of. No order as to costs.

14. In view of disposal of present Appeal, Civil Application no. 8577 of 2019 stands disposed of.

[ANIL S. KILOR]
JUDGE

arp/