IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

951 FIRST APPEAL NO.2418 OF 2020

The New India Assurance Company Ltd.,
Abbot Building, 1st floor, Near Ashoka Hotel,
Kings road, Ahmednagar,
through its Authorized Official and
Divisional Manager, Legal Hub,
Adalat Road, Aurangabad .. Appellant

Versus

1. Prafullakumar Rajiv Salve,
Age 21 years, Occu. Education,
R/o Yeshwant Niwas,
Jaybhim Housing Society,
Panchasheel Nagar,
Near Railway Station,
Ahmednagar

2. Rajiv Yeshwant Salve,
Age 50 years, Occu. Service,
R/o S.T.Colony, Sarjepura,
Ahmednagar ..Respondents

Mr A.S. Usmanpurkar, Advocate for appellant
Mr U.U. Wagh, Advocate for respondent no.1
Mr H.U. Dhage, Advocate for respondent no.2

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 9th DECEMBER, 2021

PER COURT :

1. Heard finally with the consent of learned Counsel for both the sides.

2. This appeal is directed against the impugned judgment and award passed in M.A.C.P. No.7/2013 by the Member, Motor Accident Claims Tribunal, Ahmednagar dated 5.1.2019.

3. On 8.2.2012 about 9.00 p.m., respondent no.1/original claimant was proceeding to his hostel through Ferguson College Road. When he reached near Tukaram Paduka Chowk, Pune, one Swift car was proceeding

ahead. One person came from left side of the said car and started crossing the road without noticing the traffic on the road. The said person abruptly came in front of the motorcycle of original claimant. Respondent no.1/original claimant fell down on the road due to the dash to the said pedestrian. The claimant sustained injuries. He was taken to Dindayal Hospital, Pune for medical treatment and subsequently, shifted to hospital at Ahmednagar due to fracture injuries. According to claimant, he sustained 22% permanent disability due to injury caused to him in motor accident. The claimant filed claim petition under Section 163-A of the Motor Vehicles Act, 1988 before the Tribunal.

4. The appellant/Insurance Company appeared and resisted the claim.

5. The claim went on trial. The Member, M.A.C.T., Ahmednagar, after considering rival pleadings of the parties and evidence on record was pleased to award compensation of Rs.63,460/- to the original claimant under Section 163-A of the Motor Vehicles Act, 1988 with interest at the rate of 7.5% p.a. from the date of institution of claim petition till its realisation.

6. Feeling aggrieved by the impugned judgment and award passed by the Member, M.A.C.T., Ahmedangar dated 5.1.2019 in M.A.C.P. No.7 of 2013, the appellant/original respondent no.2 (Insurance Company) has preferred this appeal on various grounds.

7. Heard Mr A.S. Usmanpurkar, learned Advocate for appellant, Mr U.U. Wagh, learned Advocate for respondent no.1 and Mr H.U. Dhage, learned Advocate for respondent no.2. Perused the impugned judgment and award passed by the Tribunal.

8. It is revealed during course of argument that motorcycle bearing No.MH-16-AG-9585 involved in the accident was owned by respondent no.2 and driven by his son/respondent no.1/original claimant. The claim petition was filed by invoking Section 163-A of the Motor Vehicles Act, 1988 on no fault liability principle.

9. Mr Usmanpurkar, learned Advocate for the appellant invited my attention to the recent decision of the Honourable Supreme Court in case of **Ramkhiladi and anr. Vs. United India Insurance Co. and anr.,** reported in **(2020) 2 SCC 550** and submitted that this issue is no more *res integra* in view of law settled down by the Honourable Supreme Court regarding liability to pay the compensation in respect of driver/owner. He submitted that it has been held by the Honourable Supreme Court that in such cases, the claim is not maintainable, however, in view of contract between the Insurance Company and the owner, the Insurance Company would be liable to pay compensation to a third party and not to the owner except to the extent of Rs.1 lakh as held by the Honourable Supreme Court.

10. Mr Usmanpurkar, learned Advocate for the appellant submitted that the Insurance Company has deposited the amount under the award with the Registry. He submitted that in view of decision of Honourable Supreme Court in **Ramkhiladi and anr. Vs. United India Insurance Co. and anr.** (supra), this appeal needs to be disposed of.

11. Mr U.U. Wagh, learned Advocate for respondent no.1 also invited my attention to the citation in case of **Smt. Mangala wd/o Vijay Khander & Ors. Vs. National Insurance Company Limited,** reported in **2020 (6) ALL**

MR 357 (Nagpur Bench). Mr Wagh submitted that in view of legal position settled down by Honourable Supreme Court in case of **Ramkhiladi and anr. Vs. United India Insurance Co. and anr.** (supra), necessary orders may be passed.

12. Mr H.U. Dhage, learned Advocate for respondent no.2 mixed his tone in the argument advanced by Mr Wagh, learned Advocate for respondent no.1.

13. Having regard to the submissions made by learned Counsel for respective sides, I have gone through the citation in case of **Ramkhiladi and anr. Vs. United India Insurance Co. and anr.** (supra). The issue is no more *res integra.* The legal position has been made clear by the Honourable Supreme Court in respect of compensation in the case of driver/owner stepping into the shoes of owner. Paragraph 9.5 and 9.9 of the said judgment are important, which are reproduced herein-below:

> "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, 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 authorized 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.

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, the aforesaid submission 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, Dhanraj, National Insurance Co. Ltd. V. Laxmi Narain Dhut and Premkumari v. Prahlad Dev, 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, 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.

14. Having regard to the legal position made clear by the Honourable Supreme Court in case of **Ramkhiladi and anr. Vs. United India Insurance Co. and anr.** (supra), the claim petition filed by the claimant/injured even though not maintainable, the claimant is entitled to get compensation in view of contract between the Insurance Company and the owner of the vehicle. Certainly, respondent no.1/original claimant is entitled to get amount of compensation deposited by the Insurance Company along with accrued interest thereon.

15. For the above reasons, appeal needs to be disposed of.

ORDER

(i) The amount of compensation of Rs.63,460/- along with interest accrued thereon deposited by the appellant be paid to respondent no.1/original claimant by account payee cheque.

(ii) The First Appeal is accordingly disposed of. No order as to costs.

(SHRIKANT D. KULKARNI, J.)

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