IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1658 OF 2012

1] M/S. National Insurance Co. Ltd.,
having its registered and Head Office at
3, Medieton Street, Kolkata – 700 079
Branch at Opp. S.T. Stand Ahmednagar
and Divisional Office at Hazari Chambers,
Station Road, Aurangabad – 431 005
through its Divisional Manager Mr. Ramnarayan
s/o. Ramprasad Bang, 55 years. .. APPELLANT
[ORI. RESPONDENT]

VERSUS

1. Sow Lujabai s/o. Subhash Punna,
Age 40 years, Occ. : Household

2. Subhash s/o. Manikrao Punna
age 50 years Occ. Bil because of his
unsoundness he has claim under his
guardian of wife i.e. claimant No.1
Both r/o. Udgir Tq. Udgir, Dist. Latur

3. Trimbak s/o. Sahebrao Lad,
Age major, Occupation Business
R/o. Chikhali, Tq. Patoda,
Dist. Beed {owner of truck bearing
No. MWR 3625]

Mr. V.N. Upadhye, Advocate for the appellant,
Mr. R.S. Shinde – Borolkar, Advocate for respondent Nos. 1 and 2
Mr. T.M. Tandale, Advocate for respondent No.3.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 14th July, 2023
PRONOUNCED ON : 28th July, 2023.

JUDGMENT :-

The appellant/original respondent No.2 Insurance Company has approached this court under Section 173 of the Motor Vehicles Act, impugning the judgment and award dated 10.4.2012 passed by the Motor Accidents Claim Tribunal, Udgir, Dist. Latur, by which the claim filed by the respondents (claimant Nos. 1 and 2) under Section 163A of the Motor vehicles Act, has been allowed and liability to pay the compensation of Rs. 4,12,500/- alongwith interest @ 9 % p.a. has been fixed against the appellant.

2. The claimants had approached the tribunal with contention that deceased Basavraj was owner of the motor cycle No.MH-12/CW 6810. On 2.11.2005 he was riding the said motorcycle alongwith a pillion rider Maktum. While the motorcycle reached within the vicinity of village Palsadeo on Pune – Solapur Highway, a truck was parked on the road without any signal. Resultantly, the motor cycle collided with the truck. The motor cycle rider suffered fatal injuries in the said accident. The accident was reported to police station. Crime No. 153 of 2005 was registered against deceased Basavraj although the accident resulted due to negligence on the part of the truck driver.

3. According to the claimants, they are parents of deceased and were dependent on him. The motor cycle was insured with the appellant – insurance company. As such, they claimed compensation invoking the provisions of Section 163A of the Motor Vehicle Act from the insurer of the motor cycle and owner of the un-insured truck.

4. The claim was contested on behalf of the appellant insurer. The issue regarding maintainability of the claim was asserted since the deceased himself was owner of the insured motor cycle. The owner of the truck/original respondent No.1 contended that a false claim is filed against him and his vehicle is not involved in the accident.

5. The Tribunal, considering the rival pleadings framed the issues at Exh.21. The claimant No.1 recorded his evidence at Exh.25 and relied upon the deposition of Santosh Shirsath-an eye witness, recorded in connected claim i.e. MACP No. 136 of 2007. The reliance was placed on police papers to prove the accident. The insurance company relied upon the copy of the insurance certificate and documents filed at Exh. 26 to 44. The Tribunal, after hearing the parties, allowed the claim vide judgment and award dated 10.4.2012, holding both the respondents jointly and severally liable to pay the compensation of Rs. 4,12,500/- alongwith interst @ 9% p.a. from the date of presentation of the claim petition till its realization.

6. The appellant/insurer of motor cycle assails the aforesaid award in this appeal.

7. Heard learned advocates appearing for the respective parties. perused record and proceeding with their able assistance. Mr. Upadhye, learned advocate appearing for the appellant submits that admittedly, deceased Basavraj was owner of the motorcycle bearing registration No. MH-12/CW 6820 and he was riding the same at the time of accident. Although claim is filed under Section 163A of the Motor Vehicle Act, the owner of the vehicle himself cannot be treated as a third

party and claim for his own death would be not be maintainable against the insurer. The claimants are parents of the deceased. The deceased died in the accident involving motorcycle owned by himself. Hence, they have no right to invoke the provisions of Section 163A of the Motor Vehicles Act, as against insurer of the motor cycle. Mr. Upadhye would further contend that the legal position is no more res-integra and relies upon the judgments of the Supreme Court in the matter of

I) **Ram Khiladi Vs. United India (2020)2 SCC 550**.

II) **New India Assurance vs. Sadanand (2009) 2 SCC 417,**

III) **Oriental Insurance vs. Jhuma Saha (2007) 9 SCC 263**.

Mr. Upadhye would further submit that since the deceased himself was owner-rider of the motor cycle and died on account of his own negligence, the claimants are not entitled to raise the claim in terms of Section 163A of the Motor Vehicles Act, against the insurer.

8. Per contra, Mr. R.S. Shinde, learned advocate appearing for the respondent Nos. 1 and 2/original claimants would submit that the claim under Section 163A of the Motor Vehicles Act can be entertained without pleading and proof of negligence. He would submit that appellant insurer has issued a package policy that covers risk of owner of the vehicle. Having entered into a comprehensive contract of insurance, thereby extending specific insurance cover to the insured i.e. owner of the vehicle, the insurer cannot turn back and defend the claim raising the plea of maintainability. He would submit that once there is an insurance contract with wider terms, the insurer will have to abide by the same and release compensation as agreed. He would submit that there is no

statutory impediment to raise the claim against the insurer, who has undertaken wider risk in terms of the contract. He would further urge that the claim is also raised against the respondent No.2 i.e the owner of truck along with appellant. The Tribunal has rightly appreciated the aforesaid aspects and passed the award in favour of the claimants holding both the respondents jointly and severally liable to pay the compensation in terms of the Second Schedule under the Motor Vehicles Act.

9. Having considered the submissions advanced, the contentious issue that arises for consideration before this Court is, as to whether the claim at instance of the parents of the deceased, who himself was owner of the vehicle would be maintainable against its insurer in terms of the provisions of Section 163A of the M.V. Act.

10. It is not in dispute that deceased Basavraj was owner of the motor cycle insured with the appellant. He died while riding the same motor cycle. It is not in dispute that the appellant has issued package policy in respect of the motor cycle. The risk of owner-driver is covered by accepting the separate or additional premium apart from liability premium in terms of section 147 of MV Act. Although the insurer has raised a plea regarding the maintainability of the claim, no evidence is recorded to explain the wider terms of the contract. The insurance policy schedule shows that wider insurance cover was given on payment of additional premium. The Personal Accident cover is extended to owner-driver as per schedule II of the policy. The note below schedule stipulates that liability under schedule II is limited to Rs. 1,00,000/- per claim. Therefore, this court has no hesitation to hold that risk of owner-driver is

covered to the extent of Rs. 1,00,000/- only

11. Now, turning to the core issue as to whether the claim under Motor Vehicles Act could have been maintained in respect of death owner-rider of the insured vehicle. Pertinently, the claim is lodged under the provisions of Section 163A of the Motor Vehicles Act. The Larger Bench of the Supreme Court of India, in the matter of United India Insurance Company Vs. Sunil Kumar (2019) 12 SCC 398 has held that even the rider of the motorcycle or driver of the vehicle is entitled to raise the claim under Section 163A of the Motor Vehicles Act and the same cannot be defeated permitting the insurer to raise the defence of self-negligence. In that view of the matter, although it is claimed that deceased Basavraj was riding motor cycle, it would not be open to the insurer to raise the plea of self-negligence and defend the claim on that count. Secondly owner of Truck i.e. another vehicle involved in accident is a party, hence claim in present form would be maintainable under provisions of section 163-A of the M.V.Act. when two vehicles are involved in accident claim can be lodged against owner and insurer of either or both the vehicles.

12. The second contention of the insurer is that the deceased himself being the owner of the insured motor cycle, the claimants cannot maintain the claim against his insurer under the scheme of the motor vehicles Act. Although the aforesaid submission is lucrative at first blush, in the facts of the case in hand, it would not be open for the insurer to rely upon the proposition sought to be advanced, when the insurer has entered into a wider contract and extended insurance cover to the owner of the vehicle. In such circumstances, it would be difficult to entertain

such plea. However, liability of the insurer would be governed by special contract. In the present case, the insurer has accepted premium towards personal accident cover for the ‘owner-driver’ hence the liability would be dependent on terms of such contract.

13. Mr. Upadhye, learned counsel for the appellant/Insurance Company relying upon the judgment of the Supreme Court in the matter of **Ram Khiladi Vs. United India Insurance company**, urged that since the deceased himself was owner of the vehicle, the claim could not have been entertained even under Section 163A of the Motor Vehicles Act. He further relies upon the observations in the case of **Oriental Insurance Company Vs. Rajani Devi (2008) 5 SCC 736**, wherein, it is specifically held that the provisions of Section 163A of the Act cannot be said to have any application in accident claim, wherein, the owner of the insured vehicle himself is victim. In case of **Ram Khiladi (Supra)** Reference is given to judgment in the case of **Oriental Insurance Vs. Zuma Shah reported in (2007) 9 SCC 263** and **Dhanraj Vs. New India Assurance (2004) 8 SCC 553** where in it is observed that liability under Section 163A of the Act is on owner of the vehicle. As a person cannot be both; a claimant as also a recipient, therefore, the heirs of owner could not have maintained the claim in terms of Section 163A of the Act. Here, further reference can be given to the recent judgment of this Court in the matter of **New India Assurance Company vs. Rama Gavas** reported in **2022 (1) All M.R. 608**.

14. Thus Courts have consistently observed that the owner of the vehicle or anybody claiming through him, cannot maintain the claim against the insurer of his own vehicle under the statutory scheme of

Section 163A of the Motor Vehicles Act.

15. The exposition of law, as mentioned above, would make it imperative that the claimants, being legal representatives of the owner of the insured motorcycle could not have maintained the claim against its insurer under the provisions of the Motor Vehicles Act. However, considering the wider contractual liability arising out of the payment of personal accident premium, the insurance cover was made available to the owner/driver. The Appellant/insurer cannot avoid payment of compensation to the extent of Rs. 1 Lakh under said P.A. clause. Resultantly, award passed by tribunal will have to be modified in terms of order passed below.

: ORDER :

A The appeal is partly allowed.

B. The judgment and Judgment and award passed by the MACT, Aurangabad in MACP No. 135 of 2007 is modified

C. Appellant/Insurer shall pay to the claimant's compensation of Rs. 1,00,000/- (One Lakh only) (As Per Personal Accident benefit) alongwith interest @ 9 % p.a. from the date of presentation of the petition till realization of the amount.

D. Respondent No.2 shall be liable to pay compensation of Rs. 4,10,500/- alongwith interest @ 9% p.a. from the date of presentation of the claim petition to the claimants.

E. The compensation amount deposited by the appellant insurer be refunded with accrued interest after appropriating the compensation payable to the claimants in terms of this award. Since the claimants have already withdrawn the amount of Rs. 1,50,000/- under orders of this Court dated 14.12.2012, same be appropriate against the entitlement of the claimants.

F. The appeal alongwith the civil application stands disposed of. Award be drawn accordingly.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-