IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.59 of 2015

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1. The ICICI Lombard General Insurance Company Limited, ICICI Lombard House, 414 Veer Savarkar Marg, Near Siddhi Vinayak Temple, Prabha Debvi, Mumbai-400025.
2. The ICICI Lombard General Insurance Company Limited, Branch Office at Nagpur, Maharshtra.
3. The Legal Manager, ICICI Lombard General Insurance Company Limited, Uma Complex Frazer Road, Patna-800001.
Appeal & Appellant through the Legal Manager/ Authorized Signatory, ICICI Lombard General Insurance Company Limited, Office at Uma Complex Frazer Road, Patna.

... ... Appellant/s

Versus

1. Indu Debi W/o Raghunandan Sharma.
2. Sharda Kumari @ Sharda Sharma W/o Manikant Sharma @ Manikant Raghunandan Sharma.
3. Hridayansh S/o Manikant Sharma @ Manikant Raghunandan Sharma
(Res. 3 is minor and is under the natural guardian mother, Res. No.2)
All the above are resident of c/o Sanjay Kumar , Red Cross Road, Adampur, P.S. Adampur, Dist. Bhagalpur.
4. Amar Kumar Singh S/o Ashok Ramswaroop Singh, Resident of Flat no. 107, Swagat Partn Apartment, Friends Colony, Katol Road, Nagpur, Maharashtra - 440013 (Regd. owner of motor cycle).

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Durgesh Kumar Singh, Advocate.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT
Date : 19-07-2024

The appeal is barred by limitation of 219 days. The delay is explained in a petition filed under Section 5 of Limitation Act vide I.A. No.9290 of 2015. Hence, the delay is condoned. I.A. No.9290 of 2015 is, accordingly, allowed.

2. Heard learned counsel for the appellants and perused the LCR. Despite given sufficient opportunity, after service of notice no one appeared on behalf of respondents.

3. This Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act of 1988") on behalf of the appellants against the order dated 21.03.2014 passed by the learned District Judge-cum-Motor Accident Claims Tribunal, Bhagalpur (hereinafter referred to as "Learned Tribunal") in Claim Case No.6 of 2013.

4. The claimants are mother, widow and minor child of the deceased Late Manikant Sharma who died in the motor vehicle accident which takes place on 27.08.2012 at Kalmeshwar Nagpur Road while traveling on a motorcycle from Pardi to Nagpur bearing Registration No. MH-31-EC-8869 which was hit by an unknown vehicle causing his death on the spot. The claimants filed the claim petition being Claim Case No.06 of 2013 against owner and insurer (appellant) of the motorcycle on which the deceased was driving, in the Court of the District Judge-cum-Motor Accident Claims Tribunal, Bhagalpur under Section 166 of the M.V. Act claiming Rs.12,89,500/- as compensation and during the pendency of the claim petition they filed the petition under Section 140 of the M.V. Act, read with Rule 246 (1) of Bihar Motor Vehicle Rules, 1992 claiming Rs.50,000/- as interim compensation on the ground of no fault liability.

5. The appellants/Insurance Company in the objection stated that the claim petition as framed against the appellant is not maintainable in view of the fact that F.I.R. of Kalmeshwar P.S. Case No.163 of 2012 amply prove that unknown vehicle dashed the Motorcycle head to head and the Police authority charge-sheeted to the driver of unknown vehicle and the claimants have only right to file this case before the Solatium Fund Chairman. The claimants has never disclosed that in what capacity the deceased was plying the motorcycle of the owner in whose name (Amar Kumar Singh) the motorcycle bearing Registration No. MH-31-EC-8869 was insured with the appellant/Insurance Company. It is further stated that the owner of alleged motorcycle has never disclosed the relation between owner and motorcyclist who died in the accident. It is further submitted on behalf of Insurance Company that it is a case of hit and run and accordingly claimants are not entitled to get interim amount of compensation under Section 140 of the M.V. Act.

6. The contention on behalf of claimants before the Learned Tribunal is that this is not the case falling within the definition of hit and run as the motorcycle which met accident by unknown vehicle is identified one and the same was insured at the material time which is not in dispute.

7. The Learned Tribunal allowed the said petition and held that claimants are entitled to get the amount of interim compensation on the basis of no fault liability and the points raised by the Insurance Company may be considered in course of the trial of the case.

8. Learned counsel for the appellants/Insurance Company has submitted that the case of the claimants and the material on record, the deceased was driving the bike of the owner (respondent no.4) and was going alone at the time of accident. The deceased stepped into the shoes of owner as he took the bike from the owner and literally became owner, in control of the vehicle, therefore, neither the claim case is maintainable nor the claimants are entitled to compensation from the appellants.

9. Section 161 (1) (b) of the Motor Vehicle Act, 1988 states that hit and run motor accident means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose. Section 163 of the M.V. Act provides for scheme to be framed by Central Government for payment of compensation in case of hit and run motor accident. The Central

Government has framed scheme which is known as Solatium Scheme, 1989, and according to that, application for grant of compensation in case of hit and run motor accident has to be filed before Claims Enquiry Officer of Sub Division in which accident had taken place. Rule 20 of the Solatium Scheme, 1989, provides for procedure for making the claim application. Thus, under the scheme a particular forum has been provided for claiming compensation in case of hit and run motor accidents. The Tribunal ought to have decide the objection with respect to the jurisdiction of the Tribunal in the matter.

10. Section 140 of the M.V. Act is in Chapter X which provides for liability to pay compensation in certain cases on the principle of no fault.

11. The Hon'ble Supreme Court in case of **Smt. Yallwwa & Ors. vs. National Insurance Co. Ltd. & Ors.** reported in **(2007) 6 SCC 657** observed that irrespective of the fact whether a claim petition is required to be adjudicated under Chapter X or Chapter XII of the Act, it is permissible to raise a defence in terms of Sub-Section (2) of Section 149 of the Act. Even it is possible for the owner of vehicle to raise a contention that his vehicle being not involved in the accident, he is not liable to pay any amount in terms of Section 140 of the Act.

12. The deceased being a third party to the offending vehicle and the claim petition is maintainable against the driver, owner and/or insurer of the offending vehicle, however, the same is not traceable. No liability can be imposed under Section 140 of the M.V. Act (liability to pay the compensation in case of Motor-accident resulting death or permanent disability with no fault) where the offending vehicle is unindentified. An owner of vehicle can only claim provided a personal insurance covering risk for injury to the owner himself has been taken out.

13. It is to be noted that here that both Sections 140 and 163-A of M.V. Act are based on the concept of 'no fault liability' and have been enacted as measures of social security. Section 140 of the Act deals with cases of interim compensation leaving it open for claimants to agitate for final compensation by resort to the provisions of Section 166 of the Act. Section 163-A of the Act provides for award of final compensation on a structured formula following the provisions of Second Schedule appended to the Act. In a proceeding under Section 163-A of the Act, the Tribunal may be required to adjudicate upon various disputed questions like age, income, etc. unlike in a proceeding under Section 140 of the Act.

14. The Hon’ble Supreme Court in case of **Ningamma vs. United India Insurance Co. Ltd.** reported in **(2009) 13 SCC 710** held that the liability under Section 163A of the Act (based on ‘no fault liability’) is on the owner of vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. A person who borrowed motor vehicle from its real owner, who has authorized to drive the said vehicle by its owner, would step into the shoes of the owner of that vehicle. Accordingly, the legal representative/ heirs of the deceased who has stepped into the shoes of the owner of motor vehicle could not have claimed compensation under Section 163-A of the Act.

15. It is observed in the case of Smt. Yallwwa & Ors. **(supra)** in paragraph nos.11 and 16 as under:-

> *“11. One of the defence available to the insurer is breach of conditions specified in the policy. When such a defence is raised, the Tribunal is required to go into the said question. Section 140 of the Act does not contemplate that an insurance company shall also be liable to deposit the amount while it has no fault whatsoever in terms of sub-section (2) of Section 147 of the Act.”*

> *“16. The question which is required to be considered is what would be the meaning of the term 'award' when such a contention is raised. Although in a given situation having regard to the liability of the owner of the vehicle, a claim Tribunal need not go into the question as to whether the owner of the vehicle in question was at fault or not, but*

> *determination of the liability of the insurance company, in our opinion, stands on a different footing. When a statutory liability has been imposed upon the owner, in our opinion, the same cannot extend the liability of an insurer to indemnify the owner, although in terms of the insurance policy or under the Act, it would not be liable."*

16. It is now well settled that the deceased who borrowed the motorcycle from its owner, who was authorized to ride the said vehicle by its owner, stepped into the shoes of the owner of that vehicle. By taking statutory policy of owner only fulfilled his statutory obligation as contained in Section 147 of the Motor Vehicle Act, which does not require an insurer to assume risk of death or bodily injury to the owner of the vehicle. The parties are governed by the terms and conditions of the contract of insurance. The insurer is liable to cover risk of the third party and not others, who would not otherwise, come within purview thereof. The deceased cannot be said to the third party with respect to motorcycle he was driving. The application under Section 140 of the M.V. Act is not maintainable in the facts and circumstances of the case. The impugned order is liable to set-aside and hence, the order dated 21.03.2014 passed by the learned District Judge-cum-Motor Accident Claims Tribunal, Bhagalpur in Claim Case No.6 of 2013 stands set-aside.

17. Accordingly, this Misc. Appeal is allowed.

18. The LCR be returned to the concerned Tribunal.

19. The statutory amount, if any, deposited by the appellants/ Insurance Company be returned back to them in accordance with law.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	15.07.2024
Uploading Date	19.07.2024
Transmission Date	NA