2024:BHC-AUG:9695

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 3017 OF 2013

United India Insurance Co. Ltd.,
through it's Divisional Manager and authorized
representative and signatory,
Ahmednagar Divisional Office,
Kisan Kranti Building, Ahmednagar,
Dist. Ahmednagar.

.. Appellants

Versus

1. Smt. Suvarna Dadasaheb Pawar,
   Age 30 years, Occ. Nil.

2. Master Aditya Dadasaheb Pawar,
   Age 9 years, Occ. Education,
   through Natural Guardian Res. No.1 – mother.

3. Gopinath Dhondiba Pawar,
   Age 68 years, Occ. Labour,

4. Yamunabai Gopinath Pawar
   Age 60 years, Oc. Nil.

   Respondent Nos. 1 to 4 R/o. Murshatpur,
   Taluka Kopargaon, Dist. Ahmednagar.

.. Respondents.
(No. 1 to 4 : Ori. Claimants
No.5 Ori. Opponent No.1.)

Mr. A.B. Gatne, Advocate for the appellant
Mr. A.S. Gandhi, Adv. For respondent No.1.
Respondent No.2 under guardianship of respondent No.1
Respondent Nos. 3 and 4 served.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 18th APRIL, 2024.
PRONOUNCED ON : 6th MAY, 2024.

JUDGMENT :-

1. The appellant – original respondent No.2/insurer impugns the judgment and award dated 30.10.2012, passed by the Motor Accident Claims Tribunal, Kopargoan, in MACP No. 99 OF 2005. By consent of parties appeal is taken-up for final hearing.

2. **Brief facts giving rise to the present appeal are narrated as under :-**

Late Dadasaheb Pawar, borrowed motorcycle bearing registration No. MH-15/ V-947 from his brother i.e. respondent No.1. He went to Khultabad alongwith his friends on said motorcycle. In return journey, he was riding the motorcycle and his two friends were pillion riders. Whilst, they were in the vicinity of village Murshadpur, a jeep bearing registration No. MH-16-e-5287 collided against the motorcycle. Dadasaheb and one of the pillion riders, suffered fatal injuries. On the report given by Sachin i.e. Pawar-Brother of dadasaheb, FIR was registered against the jeep driver.

The respondent Nos. 1 to 4 (original claimants) instituted the claim under the provisions of Section 163-A of the Motor Vehicles Act 1988 against the owner and insurer of the motorcycle seeking compensation of Rs. 3 Lakhs. It is contended that late Dadasaheb was an electrical wireman and running a shop in the name and style of Gajanan Electricals at village Mohegaon. The claimants were dependent on his income. The accident occurred due to the involvement of the motorcycle in question, which was owned by respondent No.5 and insured with the appellant. The claim was contested by the appellant by filing the written statement contending that the liability of insurance company is based on the terms and conditions of the policy. The deceased himself was rider of the motorcycle. The owner and insurer of the offending vehicle i.e. jeep are not added as party, hence claim is bad for non joinder of necessary parties. They also alleged breach of conditions of policy for various reasons.

3. The Tribunal, after considering the submission and material on record, allowed the claim petition and passed an award dated 30.10.2012 for Rs. 4.21,650/- in favour of the claimants. holding respondents owner and insurer of motorcycle jointly and severally liable to pay compensation.

4. Herd Mr Gatne, learned advocate appearing for the appellant. Mr. Gandhi learned advocate for the respondent claimants.

5. Mr. Gatne learned advocate for the appellant insurer submits that late Dadasaheb was rider of the motorcycle at the time of accident. He is real brother of insured – owner of the motorcycle. The motorcycle is insured under "Third Party/liability only policy" that extends insurance cover in tune with statutory provisions contained under Section 147 of the Motor Vehicles Act . The risk of rider does not fall within the statutory cover. No premium is paid to cover the risk of the rider who is not owner of the vehicle. In this backdrop, the claim under Section 163A of the Motor Vehicles Act can not be maintained against the owner and insurer of the vehicle. He would submit that the claimants have chosen not to implead owner and insurer of jeep as party to the petition. Therefore, the claim could not have been entertained against the appellant. In support of his contentions, he relied upon the following judgments :-

[I] Ram Khiladi and another Vs. United India Insurance (2020)2 SCC 550

[ii] United India Insurance Company Vs. Tilak Singh (2006) 4 SCC 404

[iii] Dr. T.V. Jose Vs. Chako T.M. AIR 2001 SC 3939

{iv] New India Insurance Company Vs. Rama Gawas 2022 (1) All M.R. 608.

6. Mr. Gandhi, learned advocate appearing for the respondents claimants submit that no specific defence has been raised in the written statement as regards to the maintainability of claim and scope of insurance cover. By inviting attention of this Court to the copy of the insurance policy, he contends that the compulsory PA. Cover for Owner – Driver for amount of Rs. 1 Lakh has been provided under the policy and for that purpose premium of Rs. 50/- is charged. He would, therefore, submit that the insurer would be liable to pay compensation in terms of extended insurance contract. Mr. Gandhi would further submit that in a claim filed under Section 163-A of the Motor Vehicles Act the claimants are neither required to plead negligence, nor can such defence be entertained. He would, therefore, urge to maintain the award passed by the Tribunal.

7. Having considered the submissions advanced by learned advocates appearing for respective parties and after going through the record and proceedings, apparently, there is no dispute that late Dadasaheb lost his life owning to accidental injuries suffered by him. The claimants have specifically pleaded that the motorcycle was owned by the

brother of the Dadasaheb-deceased, who had been to Khultabad alongwith his friends on said motorcycle. While he was riding the motorcycle in return journey, the offending jeep collided against the motorcycle. The claimants have further contended that deceased had his own business in the name of Gajanan Electricals. The claimants have further relied upon the copy of the FIR (Exh.29). It depicts that on a complaint given by Sachin Gopinath Pawar (i.e. real brother of late Dadasaheb, so also, owner of the motorcycle) offence has been registered against the jeep driver. The contents of the FIR depicts in clear terms that Dadasaheb had borrowed the vehicle of his brother for visiting the temple at Khultabad and in return journey, the accident in question took place. Apparently, the vehicle was borrowed by late Dadasaheb for his own use and pleasure from his brother. Unfortunately, he lost his life because of the accident that occurred in return journey. The Insurance policy is placed at Exh.30. It is titled as motorcycle/scooter Liability Only Policy. The schedule of premium depicts that the basic third party premium of Rs. 160 has been charged. The compulsory PA for owner – driver for Rs. 1 Lakh is extended against premium of Rs. 50/-. There is no dispute as regards to the contents of the insurance policy.

8. Turning to the written statement filed on behalf of the insurer – appellant, no specific defence is raised barring contentions that there is breach of conditions of the policy and deceased himself was responsible for accident as he was riding the motorcycle. Another defence of non-joinder of necessary party is put in service. In this background, the issue that requires consideration in this appeal is :-

"As to whether the claim under Section 163-A of the Motor Vehicles Act could have been maintained against the owner and insurer of

> ***the motorcycle that was borrowed by deceased Dadasaheb for his own use, particularly, in reference to the terms and conditions of insurance policy – statutory provisions contained under Section 147 of the Motor Vehicles Act ?"***

9. The issue is no more res-integra. The Supreme Court of India, in case of **Ramkhiladi (Supra)** in very identical facts and circumstances of the case had framed a question for determination, which states thus :-

> "The short question which is posed for consideration of this Court is whether, in the facts and circumstances of the case and in a case where the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was negligent are not joined as parties to the claim petition, meaning thereby that no claim petition is filed against them and the claim petition is filed only against the owner and the insurance company of another vehicle which was driven by the deceased himself and the deceased being in the shoes of the owner of the vehicle driven by himself, whether the insurance company of the vehicle driven by the deceased himself would be liable to pay the compensation under Section 163A of the Act?; Whether the deceased not being a third party to the vehicle No. RJ 02 SA 7811 being in the shoes of the owner can maintain the claim under Section 163A of the Act from the owner of the said vehicle?

10. While answering the aforesaid issue, the Supreme Court of India observed in para. 9.5 thus :-

> "9.5. It is true that, in a claim under Section 163A 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 163A 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 163Aof 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 163A 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 the case of Dhanraj (supra), 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."

11. This court finds that observations of the Supreme court as indicated above, is a complete answer to the point under consideration in the present case. The deceased was rider of the motorcycle which was borrowed by him from his brother. He steps into the shoes of his brother while riding the motorcycle and assumes character of owner while using the motorcycle for his pleasure purpose. While riding the motorcycle, he met with the accident causing fatal injuries. Although, FIR alleges that the jeep collided against the motorcycle, claimants have not chosen to add owner and insurer of the jeep as party to the claim petition. They prosecuted the claim only against the owner and insurer of the motorcycle. The scheme of statutory insurance under Section 147 of the Motor Vehicles Act does not require owner of vehicle to insure the risk of the rider of the motorcycle, except where such rider is employee of the

owner and in pursuance of such employment, he rides the motorcycle. In that case, the owner would be required to cover risk of his employee to the extent of his liability prescribed under Employees compensation Act. However, in the present case, when the deceased had borrowed the vehicle for his own use from his brother, the statutory scheme does not require the owner to cover risk of such rider. Further, in case of death or injury while riding the motorcycle, it would not be open for motorcycle rider/dependents of the deceased to maintain a claim under Section 163A of the Motor Vehicles Act. The liability of the insurer would depend upon the terms of the contract. The parties to contract are at liberty to restrict the contract to meet the requirements of the statutory provisions under Section 147 of the Motor Vehicles Act or extend such contract on payment of additional premium.

Although Mr. Gandhi, learned advocate for respondents/claimants endeavors to point out inadequate pleadings in the written statement of the insurer, he could not persuade this court to assume liability of insurer in wake of crystallized legal position as discussed above. It is trite that law need not be pleaded. If the liability of the insurer is based on statutory provisions and such statutory provisions do not extend liability towards rider of the two-wheeler, mere lacuna in the pleadings cannot be dragged to extend insurance cover beyond statutory scheme and grant benefit in favour of the claimants. The liability of the insurer will have to be fixed within the parameters of the statutory provisions, mandating specified insurance cover in tune with Section 147 of M.V. Act 1988 or additional contract extending such cover.

In present case, there is no dispute as regards to the contents of the insurance policy which predominantly appears to be liability only (statutory) policy. However, one additional head is secured to cover the risk of "Owner – Driver" to the extent of Rs. 1 Lakh by way of personal accident benefit. Therefore, if it is assumed that late Dadasaheb stepped into the shoes of owner of the vehicle while riding the motorcycle, then to the extent of insurance cover to "Owner-Driver" provided under insurance policy of motorcycle, insurer would be under obligation to pay compensation and satisfy award.

12. This Court as well as the Supreme Court of India in the case of Ram khiladi (supra) based on very similar clauses of insurance policy, directed the insurer to release the amount of Rs. 1 Lakh commensurate to the insurance cover for owner – driver under the PA benefit. Therefore, to that extent, the award of the Tribunal needs to be maintained, while allowing the appeal filed by the insurer. Hence the following order :-

O R D E R

[I] First Appeal is partly allowed;

[ii] The impugned judgment and award passed by Motor Accident Claims Tribunal, Kopargaon, in MACP No. 99 of 2005 dated 30th October, 2012 is hereby modified as under :-

[a] Claim petition is partly allowed;

[b] Opponent – Insurance company shall pay compensation of Rs. 1 Lakh to the claimant along with interest @ 9 % p.a. from the date of filing the claim petition till realization of the whole amount ;

[c] Opponent – insurer shall bear costs of the petition as well as

this appeal. The amount, if any, deposited by the appellant insurer be refunded after releasing the amount in favour of the claimants in terms of the modified award.

[d] Appeal stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-