2024:BHC-AUG:3782

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 78 OF 2012

The New India Assurance Company Ltd.,
a Subsidiary of the General Insurance
Corporation of India and a company
incorporated under the Companies Act
having one of it's Divisional Office at
Adalat Road, Aurangabad
through its Manager (Legal Hub) &
Authorized Signatory. .. APPELLANT

VERSUS

1. Kaushallyabai W/o. Sahebrao Chavan,
   Age 45 years, Occ. Household,
   R/o. Mothiali, Khultabad,
   Tq. Khultabad, Dist. Aurangabad.

2. Trimbak S/o. Sahebrao Chavan,
   Age 33 years, Occ. Service,
   R/o. As above no.1.

3. Ganesh S/o. Sahebrao Chavan,
   Age 28 years, Occ. Service,
   R/o.. as above no.1.

4. Sitabai W/o. Dadarao Bahadure,
   Age major, Occ. Owner,
   R/o. Mothiali, Khultabad,
   Tq. Khultabad, Dist. Aurangabad.

.. RESPONDENTS.

Mr. A.B. Kadethankar, Advocate for the appellant,
Mr. S.R. Pande, Advocate for respondent Nos. 1 to 3.
Respondent No.4 served.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 13TH FEBRUARY, 2024
PRONOUNCED ON : 21st FEBRUARY, 2024.

JUDGMENT :-

The appellant/Original respondent No.2-Insurer approaches this Court under section 173 of the Motor Vehicles Act 1988, thereby impugning the judgment and award Dated 16.8.2011 passed by the Motor Accidents Claim Tribunal, Ahmednagar in MACP No. 420 of 2009 by which the claim for compensation filed by the respondent Nos.1 to 3 herein has been allowed holding the appellant jointly and severally liable to pay compensation of Rs.2,10,200/- along with interest at the rate of 9% p.a.

2. For the sake of convenience, the parties are hereinafter referred as per their original status.

3. The respondent Nos. 1 to 3/Claimants had approached the Tribunal invoking the provisions of section 163-A of the Motor Vehicles Act raising a claim for compensation of Rs. 4,00,000 from owner and insurer of the vehicle bearing No. MH-20/AW 3956 alleging that On 16th March 2008, Sahebrao was proceeding on motorcycle bearing registration No. MH-20/AW 3956 owned by respondent No.4 Sitabai. He reached near the village Mamnapur. An unknown motor vehicle dashed his motorcycle. Resultantly, Sahebrao suffered fatal injuries. According to the claimants, Sahebrao was aged about 48 years at the

time of his death and he use to earn ₹3000 per month.

4. The claimants were dependent upon his income. The respondents being owner and insurer of the motorcycle, liable to pay compensation to them. The claim was contested by the present appellant/insurer by filing written statement at Exhibit 13 on the ground that claim is not maintainable against the insurer of the motorcycle. If the unknown vehicle had given dash to the motorcycle of the deceased, claimants have no cause of action against the insurer of the Motorcycle.

5. The Tribunal, after framing the issues, recorded evidence of the parties. The claimant No.1 deposed at Exhibit 19 and relied upon Police papers, insurance policy and registration certificate of the motorcycle etc. The present appellant/insurer placed on record insurance policy at Exhibit 34. The Tribunal, after hearing the parties, allowed the claim petition and passed an award directing the owner and insurer to jointly and severally pay Rs. 2,10,200/- to the claimants, alongwith interest at the rate of 9% per annum.

6. Mr A.B. Kadethankar learned counsel for the appellant/ insurer submits that admittedly the deceased was rider of the motorcycle that was owned by Respondent No. 4 and insured with the appellant under the package policy. However, the risk of motorcycle rider is neither covered under the statutory scheme under the Motor vehicles Act nor any additional contract extends such cover. The deceased was a "Gratuitous Driver". He had borrowed the motorcycle for his own use from the insured/owner the vehicle. Resultantly, the appellant/Insurer could not have been held liable to pay the compensation.

7. Per Contra, Mr Pandey learned advocate appearing for the Claimants vehemently submits that there are no specific pleadings in the

written statement filed by the insurance company; nor they have recorded any evidence to depict that the risk of the motorcycle rider was not covered. He would submit that the policy being comprehensive/Package in nature would cover the risk of the rider of the motorcycle. Consequently Insurer cannot avoid its liability.

8. Having considered the submissions advanced, apparently, the dispute in this appeal revolves around the scope of insurance cover under the insurance policy of the motorcycle in question. A copy of the insurance policy is placed on record at Exhibit 34 of the Tribunal which depict that it is a motorcycle/Scooter Policy (B) Package. The schedule of premium depict that the basic premium of ₹458 has been charged for own damage cover of the vehicle and ₹300 has been charged for third party cover. Apparently, the risk of the Owner-Driver or Rider of the motorcycle is not extended by accepting any premium on that count.

9. At this stage reference can be given to the law laid down by the Supreme Court of India in the matter of ***Ningamma Vs. United India Assurance Co. Ltd. (2009) 13 SCC 710 as well as New India Assurance Co. Ltd. vs. Sadanand Mukhi (2009)2 SCC 417.*** In both the aforesaid judgments, it is held that the owner of the vehicle or his legal representatives has no right to claim compensation from own insurer under scheme of Act. Further, borrower of the vehicle steps into the shoes of the owner therefore borrower or his legal representatives are not entitled to claim compensation from the insurer under the scheme of the Act. Applying the aforesaid ratio in the facts of the present case, when the deceased had borrowed the motorcycle owned by respondent No.4 for his own use, and while riding the said motorcycle the accident occurred, it will have to be presumed that the deceased had stepped into the shoes of the owner.

10. Apparently, in the present case, looking to the terms of the insurance policy at Exh.34, no premium is charged even in respect of the owner-driver. The Supreme Court of India in the case of ***Oriental Insurance Company Ltd. Vs. Rajani Devi (2008) 5 SCC 736*** observed that the contract of insurance being governed by the contract qua contract, the claim would be dependent upon the terms thereof. Therefore, in absence of any larger insurance coverage extending the benefit to the rider of the motorcycle, the insurer cannot be made liable. Similar view is reiterated in the case of ***National Insurance Company Vs. Ashalata Bhaumik reported (2018) 9 SCC 801.*** However, in that case, since there was wider contract to cover the risk of owner-driver to the extent of Rs. 1 Lakh and finding that deceased being in the shoes of the owner, limited compensation to the extent of Rs. 1 Lakh was awarded.

11. Pertinently, in the present case, the deceased had borrowed vehicle from respondent No.4 for his own use. While riding on the motorcycle he suffered injuries. Although, the present claim is filed under Section 163-A of the Motor Vehicles Act, since the deceased while riding the motor cycle, stepped into the shoes of the owner of the vehicle, his claim against owner and insurer of the motorcycle itself was not maintainable. Reference can be made to the law laid down by the Apex Court in the matter of ***Ram Khiladi and another Vs. The United India Insurance Company and another (2020) 1 SCR 19.*** Similarly, this Court in the case of ***New India Assurance Company Vs. Rama Vishwas Gavas (2022) ACJ 2723***, observed in para No. 9 as under :-

> "9. In the instant case, the tribunal, it seems, was not alive to the distinction between the contractual liability and the statutory liability of the insurer qua the third party. The tribunal was swayed by the fact that the application was made under Section 163-A of the MV Act, 1988.

> Undoubtedly, if an application is made under the special provisions contained in Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement was due to any wrongful act or default of the owner of the vehicle or any other person. This, however, does not imply that the insurer is liable to pay compensation in cases where, it is neither statutorily liable nor has contractually undertaken the risk."

11. Taking the overall survey of the legal position emerging from the aforesaid pronouncements of the Supreme Court of India as well as this Court, it is apparent that the claim filed by respondent Nos. 1 to 3 itself was not maintainable. Further, the appellant/insurer has no liability in law to pay compensation. In the result, the appeal succeeds : Hence, the following order :

: O R D E R :

[A] The first appeal is allowed.

[b] The judgment and award passed by the Motor Accidents Claim Tribunal, Aurangabad in MACP No. 420 of 2009 is hereby quashed and set aside to the extent of the appellant.

[c] Amount if any deposited by the appellant/Insurer be refunded.

No orders as to cost.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-