Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2015 OF 2024

Kotak Mahindra General Ins. Co. Ltd.
Registered Office at 27, BKC, C-27,
G Block, Bandra Kurla Complex, Bandra,
Mumbai 400051. …Appellant

Versus

1. Meena Mahendra Singh
   Age: 48 years, Occu: Housewife
   (Mother of the deceased)
   R/o. 304, Om Sai Apartment, Digha Naka,
   Old Belapur Road, Behind Digha Bus Stop,
   Digha, Airoli, Navi Mumbai -400708.

2. Pooja Anil Agarwal
   R/at. Flat No. 201, Bldg. No. 18,
   NG Suncity Phase-8, Thakur Village,
   Kandiwali (E), Mumbai 400 101 …Respondents

Mr. Sarthak S. Diwan, for the Appellant.
Mr. T. J. Mendon with Mrs. Rina Kundu, for the Respondents.

CORAM : R. M. JOSHI, J.

RESERVED ON : 20th JANUARY 2026
PRONOUNCED ON : 09th FEBRUARY, 2026

JUDGMENT :

1. In this Appeal, the appellant/insurer has raised an issue with regard to the maintainability of the proceeding against a dead person and as to whether without the owner of the offending vehicle being made as a party-respondent to the proceeding under Section 166 of the Motor Vehicles Act ("M.V. Act"), the insurer of such vehicle can be held solely liable for payment of compensation to the claimants.

2. The facts in this case are not in dispute i.e. the mother of the deceased Sagar, who died in an accident occurred on 10th March, 2020, involving motor car bearing No. MH-47-W-4479 wherein he sustained injuries and succumbed thereto, filed claim under Section 166 of M.V. Act. In the said petition, Pooja Anil Agarwal i.e. owner of the vehicle and Kotak Mahindra General Insurance Company Limited i.e. insurer of the vehicle were joined as respondent Nos. 1 and 2, respectively. Admittedly, the proceedings before the Tribunal were conducted *ex-parte* against the respondent No.1 in view of the order dated 27th September, 2023. An Application filed thereafter by the claimants for joining legal representatives of respondent No.1 on record came to be rejected. This order was not challenged by the claimants or insurer at the relevant time. The claim, therefore, proceeded against the respondent No.2 insurer and finally culminated into passing of the impugned Judgment and Award.

3. Learned Counsel for the appellant/insurer submits that the insurer led evidence before the Tribunal in order to show that respondent No.1 died on 2nd July, 2019 i.e. prior to issuance of insurance policy on 17th August, 2019 and also occurrence of accident on 10th March, 2020. It is his contention that the claim petition was filed on 25th November, 2020, which is against a dead person and hence, not maintainable.

4. It is his further submission that the contract of insurance is void *ab initio,* being with dead person as such, the insurer is not liable to pay compensation to the claimants. It is his submission that in any case since the legal representatives representing the estate of the deceased were not joined as party-respondent, the Judgment impugned is not maintainable and hence, the Appeal deserves to be allowed by relegating back the matter to the Tribunal for joining legal representatives of the deceased respondent No.1 on record and for decision of the claim petition afresh.

5. Learned Counsel for the claimants opposed the said contention, firstly on the ground that the appellant/insurer did not challenge the order passed by the Tribunal for refusing to join legal representatives of deceased respondent No.1 on record and the same is exempted under Sub Rule 4 of Rule 4 of Order XXII of the Code of Civil Procedure ("CPC"). It is his contention that even in this Appeal no specific ground has been raised by the appellant/insurer taking exception to the said order. On the point of the liability of the insurer to pay the compensation, he placed reliance on the following judgments.

i) United India Insurance Company Limited vs. Santro Devi and Ors. (2009) 1 Supreme Court Cases 558.

ii) A. Robert vs. United Insurance Co. Ltd. (1999) 8 Supreme Court Cases 226.

iii) Oriental Insurance Co. Ltd. vs. Nanjamma and Ors. 2005 ACJ 1534 (High Court of Karnataka at Bangalore).

iv) Pushpa Bajirao Thorat and Ors. vs. Dnyaneshwar Kondaji Auti and Anr. 2019 ACJ 1658 (High Court of Bombay -Aurangabad Bench).

6. It is his submission that in view of the provisions of Section 155 of the M.V. Act, the cause of action would survive against estate of the deceased or against the insurer. Thus, it is contended that in such case it was open for the claimants to claim compensation only from the insurer and therefore, no error has been committed by the Tribunal in passing impugned Judgment and Award.

7. The appellant has not specifically challenged the order passed by the Tribunal refusing to bring legal representatives of respondent No.1 on record, taking help of provision of Order XXII Rule 4 sub Rule 4 of the CPC, learned Counsel for the appellant, however, sought leave of the Court to challenge the said order. Since the facts of the present case on the face of it indicate that this is the case wherein proceeding is filed against a dead person and the said fact is ignored by the Tribunal, while passing order on application to implead legal representatives of deceased respondent No.1 on record by placing reliance on Order XXII Rule 4 Sub Rule 4 of the CPC, this Court found it appropriate to grant such leave to the appellant. No prejudice has been caused to respondents /original claimants as the Counsel was given an opportunity of hearing on the said ground.

8. It is not in dispute that the policy of insurance in respect of offending vehicle insuring the owner thereof has been issued on 17th August, 2019. The accident occurred on 10th March, 2020, whereas the claim petition came to be filed on 25th November, 2020. However, on the basis of unimpeachable evidence on record, respondent No.1 died on 2nd July, 2019 i.e. prior to issuance of insurance policy, occurrence of accident, so also filing of the claim petition.

9. It would be appropriate at this stage to take note of Section 155 of the M.V. Act, on which heavy reliance was placed by the learned Counsel for the claimant, which reads thus,

> "**155. Effect of death on certain causes of action.** - Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of such event against his estate or against the insurer."

10. A bare perusal of the said provision indicates that the death of a person in whose favour certificate of insurance had been issued, if it occurs after happening of an event which has given rise to a claim under the provisions of this Chapter, there shall be no bar for the survival of any cause of action arising out of the said event against the estate or against the insurer. It is thus clear that in order to apply the said provision the insurance certificate must have been issued to a person who is alive and if he dies after happening of an event i.e. issuance of certificate of insurance, accident or filing of the claim petition against him and in such case there shall not be a bar to the survival of any cause of action against his estate or against the insurer. In the instant case, however, since the respondent No.1 i.e. owner of offending vehicle died on 2nd July 2019 i.e. prior to happening of an event which has given rise to the claim, the said provision has no application to the instant case.

11. Now coming to the order passed by the Tribunal refusing to join the legal representatives of deceased respondent No.1 to the claim petition is concerned, though the claim proceeded *ex-parte* against respondent No.1, however, the Tribunal has failed to take into consideration the proved fact that the respondent No.1 had already died even before filing of the claim petition. Thus, merely because an order came to be passed proceeding *ex-parte* against her the Tribunal ought not to have exempted the impleadment of the legal representatives of the respondent No.1 to the petition. The Tribunal ought not to have ignored the fact that the practically the claim petition came to be filed against a dead person, which is not maintainable.

12. Even otherwise, in the facts of the case there would be no justification for the Tribunal to rely upon provisions of Order XXII

Rule 4 Sub Rule 4 of the CPC in order to exempt bringing legal representatives of respondent No.1 on record. It would be relevant to take note the said provision which reads thus;

> **"ORDER XXII- DEATH, MARRIAGE AND INSOLVENCY OR PARTIES-**
>
> 4. **Procedure in case of death of one of several defendants or of sole defendant-**
>
> (4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant not withstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

13. The said provision does not contemplate the situation in which there is a proceeding filed against a dead person. It deals with a situation wherein any defendant/respondent is served and fails to appear before the Court or fails to contest the proceeding by filing Written Statement, in that case it is open for the Court/ Tribunal to exempt bringing legal representatives of such defendant/respondent if he dies during the continuation of the proceeding.

14. The Tribunal, therefore, in the instant case has erred in exempting the bringing of legal representatives of respondent No.1 on record by placing reliance on above provision. Even if any order was passed by the Tribunal to proceed *ex-parte* against respondent No.1, once it was brought on record that the said respondent was already dead before filing of proceeding itself, it was the duty of the Tribunal to recall the order of refusing to bring legal representatives of respondent No.1 to bring on record and ought to have brought them on record for appropriate decision of the proceeding.

15. It needs to be appreciated that the insurer is not principally liable for payment of any compensation under Section 147 of the M.V. Act is liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover. Needless to say that liability of payment of compensation is tortious liability of owner and driver of the offending vehicle. The liability of Insurer is to indemnify the same. As such, unless the case is covered by section 155 of M.V. Act, no order of payment of compensation could be passed only against insurer. In the instant case, since the claim is filed against the dead person, practically the claim is only against the insurer and hence, the claim was not tenable itself, in the from in which it was presented.

16. Having regard to the nature of proceeding and facts involved in the case, the Tribunal ought to have allowed the legal representatives of the deceased respondent No. 1 to be brought on record and thereafter could have proceeded and decided the claim. This exercise cannot be done in the present Appeal as an opportunity to defend the proceeding to such legal representatives of the deceased would be denied. This Court, therefore, finds it appropriate to set aside the impugned Judgment and Award and to relegate the matter back to the Tribunal for decision afresh after joining the legal representatives of deceased respondent No.1 as party-respondent to the proceeding and after hearing them.

17. It is clarified that this court has not set aside the judgment and award on merits of the case.

18. As a result of above discussion, following order is passed:

ORDER

a) The Appeal stands allowed.

b) The impugned Judgment and Award dated 7th October, 2024 passed by the Tribunal is set aside.

c) The proceeding in MACP No. 739 of 2020 be relegated back to the Tribunal for decision afresh after joining the legal representatives of deceased respondent No.1 as party-respondent to the said proceeding and after giving them an opportunity of being heard.

19. The Appeal stands disposed of accordingly.

(R. M. JOSHI, J.)

20. At this stage, learned counsel for the appellant drawn attention of this Court to the fact in this appeal that appellant has deposited entire amount of compensation as per the impugned judgment and award, out of which 50% is permitted to be withdrawn by the respondents/original claimants.

21. It is clarified that the amount deposited in the Tribunal, so also the 50% amount which is permitted to be withdrawn by the original claimants shall be subject to the outcome of the proceedings before the Tribunal.

(R. M. JOSHI, J.)