HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 2858/2019
CNR: RJHC020371782019 | URN: CMA / 4517U / 2019

1. Laxma Devi W/o Late Shri Kapurchand Meena, Aged About 40 Years, R/o Naya Ghar, Meenao Ka Mohalla, Village Shivdaspura, Tehsil Chaksu, District- Jaipur (Raj.)
2. Sonu Kumari D/o Late Shri Kapurchand Meena, Aged About 22 Years, R/o Naya Ghar, Meenao Ka Mohalla, Village Shivdaspura, Tehsil Chaksu, District- Jaipur (Raj.)
3. Aman Meena S/o Late Shri Kapurchand Meena, Aged About 19 Years, R/o Naya Ghar, Meenao Ka Mohalla, Village Shivdaspura, Tehsil Chaksu, District- Jaipur (Raj.)
4. Ajay Meena S/o Late Shri Kapurchand Meena, Aged About 17 Years, (Minor Through His Natural Guardian And Mother Laxma Devi), R/o Naya Ghar, Meenao Ka Mohalla, Village Shivdaspura, Tehsil Chaksu, District- Jaipur (Raj.)
5. Manphool Meena S/o Late Shri Bhoorilal Meena, Aged About 62 Years, R/o Naya Ghar, Meenao Ka Mohalla, Village Shivdaspura, Tehsil Chaksu, District- Jaipur (Raj.)
6. Shrimati Kamla Devi W/o Shri Maanphool, Aged About 60 Years, R/o Naya Ghar, Meenao Ka Mohalla, Village Shivdaspura, Tehsil Chaksu, District- Jaipur (Raj.)

----Appellants

Versus

1. Dhannaram Meena S/o Nandram Meena, By Caste Meena, Resident Of Pallabali Dhani, Gram - Bada, Padampura, Tehsil - Chaksu, District - Jaipur (Raj.) (Registered Owner Of The Motor Cycle No. Rj-14-Ss-0637)
2. The New India Insurance Company Limited, Through Regional Manager, Office At Nehru Palace, Opposite To Nehru Baludhyan, Tonk Road, Jaipur (Raj.) (Cover Note No. Jro No. 674794) (Insurance Valid From 11.04.2008 The 10.04.2009) (Insurance Company Of The Motor Cycle No. Rj-14-Ss-0637)

----Respondents

For Appellant(s) : Mr. Nitesh Rawat
For Respondent(s) : Mr. Vinod Tyagi

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

27/10/2026

1. This appeal has been filed by the appellants/claimants, being the legal heirs of the deceased, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988') against the impugned award dated 19.09.2018 passed by the learned Motor Accidents Claims Tribunal and Additional District and Sessions Judge No. 4, Jaipur (for short, ‘the learned Tribunal’), whereby the claim petition filed by the appellants/claimants was dismissed.

2. The brief facts of the case are that on 14.02.2009, the deceased, aged 33 years, working as a driver and earning Rs. 3,300 per month, had gone on motorcycle No. RJ 14-SS-0637 to attend the wedding of a relative at Tonk Road, Jaipur. While returning at about midnight, near Shivdaspura Railway Crossing, the motorcycle met with an accident, allegedly with a vehicle driven rashly and negligently, and the deceased died on the spot due to the fatal injuries sustained. An FIR was registered at Police Station Shivdaspura. The motorcycle was registered in the name of respondent No. 1 and was insured with respondent No. 2, the insurance company, for the period from 11.04.2008 to 10.04.2009.

3. The learned Tribunal after registering the claim petition framed five issues. Thereafter, both the parties adduced their oral as well as documentary evidence in support of their pleadings.

4. The Learned Tribunal vide impugned award dated 19.09.2018, dismissed the claim petition filed by the appellants/claimants stating their failure to prove their case.

5. Learned counsel for the appellants submits that Section 163A of the Act envisages liability without fault, and the claimant is not required to plead or establish any wrongful act, neglect or default on the part of the owner or any other person. It is submitted that the learned Tribunal therefore erred in examining the negligence of the deceased, and that the insurer cannot raise the defence of negligence of the victim in proceedings under Section 163A.

He further submits that the learned Tribunal failed to appreciate the notification dated 22.05.2018 issued by the Ministry of Road Transport and Highways amending the Second Schedule, whereby compensation of Rs. 5,00,000 is payable in cases of death. It is also submitted that the finding that the deceased, as a borrower, stepped into the shoes of the owner is erroneous, and that in any event a borrower so treated as the owner would be entitled to be compensated in accordance with the premium deposited by the owner.

6. Considered the submissions made by the learned counsel for the appellants and also perused the material made available on record.

7. In light of the submissions made by the learned counsel for the appellants, it falls upon the Court to assess whether the learned Tribunal was justified in dismissing the claim petition under Section 163A of the Act on the ground that the accident was

caused by the negligence of the deceased and that he, having borrowed the motorcycle from its registered owner, had stepped into the shoes of the owner, and whether the appellants are entitled to compensation, and if so, in what amount, in terms of the Second Schedule as amended.

8. From the facts of this case it is revealed that the deceased, after borrowing the motorcycle bearing registration No. RJ 14-SS-0637 from its registered owner, was driving the same when he met with an accident.

9. In view of the fact that since the deceased himself stepped into the shoes of the owner of the vehicle, the question arises as to whether the claim petition under Section 163A is maintainable qua the vehicle which was being driven by the deceased himself after borrowing the same from the owner.

10. Learned counsel for the Tribunal after having examined the facts of the case and taking into consideration the observations of the Hon'ble Apex Court in case of ***Nigamma & Ors. Vs. United India Insurance Co. Ltd. reported in AIR 2009 Supreme Court 3056,*** the Court dismissed the claim petition holding that since the deceased stepped into the shoes of owner of vehicle, his legal heirs could not claim compensation under Section 163A.

11. Learned Motor Accident Claim Tribunal has framed Issue no. 2 which is quoted as under:-

"2- उक्त वाहन चालक तब उक्त वाहन स्वामी विपक्षी संख्या 1 के नियोजन में होकर उसी के हितार्थ एवं लाभार्थ कार्य रहा था ?"

12. In another case of ***Ramkhiladi & Anr. Vs. The United India Insurance Company & Anr. reported in 2020 Supreme Court (SC) 7***. The Hon'ble Apex Court observed as under:-

> *"5. Heard learned Counsel appearing on behalf of the respective parties at length. We have also perused and considered the judgment and Award passed by the learned Tribunal as well as the impugned judgment and Order passed by the High Court and the evidence on record. 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 owner of the said vehicle?*
>
> *5.1. The learned Tribunal held that even in absence of the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was solely negligent, the application Under Section 163A of the Act would be maintainable against the owner and the insurance company of the vehicle which was driven by the deceased himself, firstly on the ground that the deceased was in employment of the owner of the vehicle which was driven by him and secondly, in an application Under Section 163A of the Act, the negligence is not required to be established and proved and it is enough to establish and prove that the deceased has died in a vehicular accident and while driving a vehicle. The High Court has not agreed with the same and by the impugned judgment and Order has held that as the claimants have not filed the claim*

petition against the owner of another vehicle whose driver was in fact negligent, even as per the claimants and the claim petition should have been filed by the claimants against the owner of another vehicle to seek the compensation, the application Under Section 163A of the Act against the insurance company of the vehicle driven by the deceased himself is liable to be dismissed.

5.2. While answering the aforesaid question involved in the present case, first of all, the findings recorded by the learned Tribunal on Issue No. 2 is required to be dealt with and considered. The learned Tribunal framed Issue No. 2 to the effect whether the deceased-driver was driving the vehicle-motor cycle bearing registration No. RJ 02 SA 7811 being in employment of the vehicle owner-opposite party-Bhagwan Sahay in his interest or with his permission/knowledge?

5.3. While answering the finding recorded by the learned Tribunal on Issue No. 2, it appears that, as such, the learned Tribunal has not at all answered the aforesaid issue. While answering Issue No. 2, there is no specific finding whether the deceased-driver was in employment of the opponent-owner Bhagwan Sahay or not. Even otherwise, no evidence is led by the claimants to prove that the deceased-driver was in employment of the opponent-owner Bhagwan Sahay. Despite the above, while answering Issue No. 4 there is some observation made by the learned Tribunal that the deceased-driver was in employment of the opponent-owner Bhagwan Sahay, which is not supported by any evidence on record. Under the circumstances, the deceased-driver cannot be said to be in employment of the opponent-owner Bhagwan Sahay and, therefore, he can be said to be permissible user and/or borrower of motor vehicle owned by the opponent-owner Bhagwan Sahay. With these findings, the main question posed for consideration of this Court referred to hereinabove is required to be considered.

5.4. An identical question came to be considered by this Court in the case of Ningamma (supra). In that case, the deceased was driving a motorcycle which

was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed Under Section 163A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation Under Section 163A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition Under Section 163A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing registration No. RJ 29 2M 9223, being a third party with respect to the offending vehicle. However, no claim Under Section 163A was filed against the driver, owner and/or insurance company of the motorcycle bearing registration No. RJ 29 2M 9223. It is an admitted position that the claim Under Section 163A of the Act was only against the owner and the insurance company of the motorcycle bearing registration No. RJ 02 SA 7811 which was borrowed by the deceased from the opponent-owner Bhagwan Sahay. Therefore, applying the law laid down by this Court in the case of Ningamma (supra), and as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No. RJ 02 SA 7811, as rightly held by the High Court, the claim petition Under Section 163A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable.

5.5. 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 163A of 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.

5.6. In view of the above and for the reasons stated above, in the present case, as the claim Under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim Under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle."

13. Taking into consideration the facts of the case and the observations of the Hon'ble Apex Court in case of ***Ramkhiladi (Supra)***, this Court is of the opinion that the claim under Section 163A is not maintainable on behalf of the legal heirs of the deceased, who, after borrowing the vehicle from the registered owner, was himself driving the same and met with an accident without involvement of any other vehicle.

14. In view of the above, the Court finds no ground to interfere in the findings and observations given by the learned Motor Accident Claim Tribunal and thus, this appeal deserves to be dismissed.

15. Accordingly, the present civil miscellaneous appeal is dismissed.

16. Pending application, if any, also stand disposed of.

(GANESH RAM MEENA),J

66/SHRUTI SHARMA