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Chhattisgarh High Court

Case No: M.A (C) No. 1174 Of 2013

IFFCO Tokio General Insurance Co. Limited		APPELLANT
	Vs	
Kamin Bai And Ors		RESPONDENT

Date of Decision: July 10, 2020

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 163A, 166

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: K. Rohan, Anil Gulati, Azad Siddique

Final Decision: Allowed

Judgement

@JUDGMENT-JUDGMENT

1. The Insurer of a motor-cycle bearing Registration No. CG-04- DZ-3341 which met with an accident on 14.06.201 leading to the death of the rider,

is the Appellant before this Court. Challenge is against fixation of liability upon the Appellant ignoring the specific case put up that there cannot be any

liability for the Appellant/Insurer in respect of a self caused accident even in a claim under Section 163-A of the Motor Vehicles Act, 1988 (for short

'the Act, 1988').

2. Heard Shri K. Rohan, the learned counsel for the Appellant/Insurance Company as well as Shri Anil Gulati, the learned counsel appearing for the

Respondents No. 1 to 5 who are the claimants and Shri Azad Siddique, the learned counsel appearing for the Respondents No. 6 and 7.

3. Admittedly, on 14.06.2011, the deceased namely Yogeshwar @ Yogesh Sahu, aged about 22 years, was riding a motor-cycle owned by the 6th

Respondent and insured by the Appellant herein. When the motor-cycle reached the place of occurrence, the rider lost control over the motor-cycle

and overturned causing serious injuries leading to the death of the rider. This was sought to be compensated by filing a claim petition under Section

163-A of the Act, 1988 by the legal representatives who are the parents and the siblings.

4. The claim was resisted from the part of the Appellant/Insurance Company mainly contending that it was a self inflicted accident and that the

Insurer was not liable to satisfy the risk as it does not come within the purview of statutory insurance. Various other contentions were also raised. On

completion of the trial, the Tribunal repelled the contentions raised by the Appellant/Insurance Company and held that the Insurer of the motor-cycle

was liable to meet the risk. Reckoning Rs. 3000/- as the notional monthly income and adopting a multiplier of 17, the loss of dependency was worked

out as Rs. 4,08,000/-. Awarding a sum of Rs. 5000/- towards funeral expenses, the total compensation payable was fixed as Rs. 4,13,000/- and the

liability was mulcted upon the shoulders of the Appellant/Insurer, holding that the Insurer was not able to prove the breach of any of the conditions of

the insurance policy and the Appellant was directed to satisfy the said amount with interest at the rate of 6% per annum. This in turn is put to

challenge in this appeal.

5. The appeal was belated by 149 days, which was condoned as per the order dated 20.04.2015 and the matter was admitted on that date itself.

Considering the prayer for interim relief, an order was passed by a learned Judge of this Court on the said date, granting stay subject to the condition

that the Appellant deposited a sum of Rs.3,00,000/- within a period of six weeks. It was further ordered that the claimants would be entitled to receive

the amount so deposited, after furnishing security, in the ratio as fixed by the Tribunal. The matter has now been listed for final hearing and disposal.

6. The basic question to be considered in this appeal is whether the rider of the motor-cycle can be called as a 'third party' for claiming compensation

from the Insurer of the said vehicle, under a policy issued in terms of Section 147 of the Act, 1988. It is true that Section 163-A of the Act, 1988,

unlike a claim under Section 166 of the Act, 1988, does not require the claimant to plead or prove negligence. But whether the scheme of the statute

will tilt the balance in favour of such a person, to have the liability fixed upon the Insurer, who otherwise is not liable under Section 147 of the Act,

1988, is the question.

7. The issue had come up for consideration before the Apex Court and it was held in Ningamma & Another v. United India Insurance Company

Limited; {(2009) 13 SCC 710}, that the person concerned who rides/drives the vehicle and sustains injuries in an accident virtually steps into the shoes

of the owner and hence cannot raise a claim against the Insurer of the said vehicle, as the liability of the Insurer is only to meet the liability of the

insured, if any. The question came up for consideration before the Apex Court quite recently as well in Ram Khiladi & Another v. United India

Insurance Company & Another; {(2020) 2 SCC 550} .The observations of the Apex Court as contained in paragraphs 9.4 and 9.5 are extracted

below:

9.4 An identical question came to be considered by this Court in Ningamma {(2009 13 SCC 710}. 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, 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.

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 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 {(2004) 8 SCC 553}, 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.

In the above circumstances, it is quite clear that the claim preferred in respect of the death of the rider of the motor-cycle owned by the 6 th

Respondent was not maintainable and the Tribunal has gone wrong in fixing the liability upon the Appellant. It stands set aside.

8. As mentioned already, when the matter came up for consideration before this Court on 20.04.2015, a sum of Rs. 3,00,000/- was ordered to be

deposited while granting interim stay in respect of the balance amount. The said amount was ordered to be disbursed to the Claimants on furnishing

security. If the said amount is still lying in deposit before the Tribunal, it shall be caused to be released to the Appellant forthwith. If for any reason,

the said amount has been disbursed to the Claimants, we make it clear that the benefit given to the Appellant in this appeal will stand confined only to

the balance amount and no steps need to be taken for recovery of the amount already paid to the Claimants.

The appeal stands allowed to the said extent.