GAHC010108002011

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./170/2011

NATIONAL INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE and HEAD OFFICE AT 3, MIDDLETON STREET KOLKATA AND ITS REGIONAL OFFICE AT G.S. ROAD, BHAGAGARH, GUWAHATI. REPRESENTED BY THE CHIEF REGIONAL MANAGER, GUWAHATI REGIONAL OFFICE G.S. ROAD, BHANGAGARH, GUWAHATI.

VERSUS

JOYA DAS AND ORS
W/O SRI AKSHAY DAS

2:AKSHAY DAS

S/O LATE BHANDA RAM DAS
BOTH ARE RESIDENT OF VILL. SARU CHAKADAL
P.S. and DIST. BARPETA
ASSAM.

3:GAUTAM ROY CHOUDHURY

S/O SRI BABLU ROY CHOUDHURY
R/O A.G.OFFICE
BELTOLA
P.S. BASISTHA
DIST.KAMRUP
ASSAM.OWNER OF VEHICLE O.AS-01/Y-357

Advocate for the Petitioner : MR.D K DAS, MR.R GOSWAMI,MR.A ALAM

Advocate for the Respondent : MRD MONDALR-1and2, MR.P SARMA(R-1&2),

::: PRESENT:::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. R. Goswami, Advocate.

For the Respondents: Mr. D. Mondal, Advocate.

Date of Hearing : 21.05.2024.

Date of Judgment : 01.08.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. R. Goswami, learned counsel representing the appellant as well as Mr. D. Mondal, learned counsel appearing for the Respondent Nos.1 & 2.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 21.06.2011 passed by the learned Member, Motor Accident Claims Tribunal, Kamrup, Guwahati in MAC Case No.94/2008.

3. On 12.08.2006, a 22 year old Uzzal Das was driving the motorcycle bearing Registration No.AS-01-Y-3572. It met with an accident. As a result of which, the rider Uzzal Das died. The said motorcycle was owned by Gautam Roy Choudhury.

4. A claim application under Section 163-A of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") was filed before the Tribunal seeking compensation on account of the death of the deceased.

5. The appellant Insurance Company contested the claim petition by stating that the deceased was not a third party as because he had stepped into the shoes of the actual owner of the motorcycle.

6. The Tribunal did not accept the plea of the Insurance company and awarded compensation of ₹2,54,000/- along with interest at the rate of 6% per annum from the date of filing of the claim petition.

7. Aggrieved by the aforesaid decision of the Tribunal, the present appeal has been filed.

8. Mr. Goswami has submitted that the deceased was not a third party and he had already stepped into the shows of the real owner. In order to buttress his point, Mr. Goswami has relied upon a decision of the Hon'ble Supreme Court that was delivered in *Ningamma v. United India Insurance Co. Ltd.*,

(2009) 13 SCC 710. The facts of the said case read as under:

> "On 9-9-2000, the deceased was travelling on Hero Honda Motorcycle, which he borrowed from its real owner for going from Ilkal to his native place Gudur. When the said motorcycle was proceeding on Ilkal-Kustagl National Highway, a bullock cart proceeding ahead of the said motorcycle carrying iron sheet suddenly stopped and consequently deceased Ramappa who was proceeding on the said motorcycle dashed against it. Consequent to the aforesaid incident, he sustained fatal injuries over his vital part of body and on the way to Government Hospital, Ilkal, he died."

9. In *Ningamma* (supra), the Supreme Court has held as under:

> "19. In *Oriental Insurance Co. Ltd.* v. *Rajni Devi* [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] wherein one of us, namely, Hon'ble S.B. Sinha, J. was a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof.
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> 20. It was held in *Oriental Insurance Co. Ltd. case* [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under Section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA.
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> 21. In our considered opinion, the ratio of the decision in *Oriental Insurance Co. Ltd. case* [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be an employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner and, therefore, he would step into the shoes of the owner of the motorbike. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle.
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> 22. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability

> to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA."

10. *Per contra*, Mr. Mondal has relied upon another decision of the Supreme Court that was delivered in *Fahim Ahmad v. United India Insurance Co. Ltd.*, *(2014) 14 SCC 148*. Paragraph 6 of the said judgment is quoted as under:

> "**6.** Although the plea of breach of the conditions of policy was raised before the Tribunal, yet neither any issue was framed nor was any evidence led to prove the same. In our opinion, it was mandatory for Respondent 1 Insurance Company not only to plead the said breach, but also substantiate the same by adducing positive evidence in respect of the same. In the absence of any such evidence, it cannot be presumed that there was breach of the conditions of policy. Thus, there was no reason to fasten the said liability of payment of the amount of compensation awarded by the Tribunal on the appellants herein."

11. I have considered the submissions made by the learned counsel of both sides.

12. The liability to pay compensation under Section 163-A of the Act of 1988, is on the principle of no fault. Therefore, the question, who is at fault, is immaterial in an inquiry under Section 163-A of the Act of 1988.

13. In a case under Section 163-A of the Act of 1988, the owner of the motor vehicle is liable to pay compensation if he causes injury or death of another person. That is why, the owner of the vehicle purchases Insurance Policy. In that case, the owner becomes the first party and the insurer becomes the second party. Now, the question is whether the deceased was a third party. In *Ningamma* (supra), it has been held that wherever a person, other than a paid driver, uses a vehicle owned by somebody else, steps into the shoes of the real owner. In that case, the user of the borrowed vehicle becomes the first party, not the third party. When a borrower of a vehicle i.e. the first party gets injured or dies in an accident while using a vehicle owned by somebody else, his legal heirs cannot claim compensation under Section 163-A of the Act of 1988.

14. In the case in hand, the relevant insurance policy is an Act policy and this policy indemnifies the actual owner of the vehicle from paying compensation to a third party. If it was a package policy, then the owner of the vehicle would have been covered by the policy.

15. For the aforesaid reasons, this Court is of the opinion that the impugned judgment is not sustainable in law. Therefore, the appeal is allowed. The impugned judgment dated 21.06.2011 passed

by the learned Member, Motor Accident Claims Tribunal, Kamrup, Guwahati in MAC Case No.94/2008, is set aside.

The appeal is disposed of. Send back the LCR.

JUDGE

Comparing Assistant