



1

MA-1345-2008

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 30th OF OCTOBER, 2025MISC. APPEAL No. 1345 of 2008*UNITED INDIA INSURANCE COMPANY LTD.**Versus**MALTI DEVI AND OTHERS*

.....
Appearance:

Shri Bal Krishna Agrawal - Advocate for the appellant/Insurance
Company.

Shri Kripal Singh Batham - Advocate for respondents No.1 to 3.
.....

ORDER

This misc. appeal by the appellant/Insurance Company u/S. 173 (1) of the Motor Vehicles Act, 1988 is arising out of the Award dated 07.05.2008 passed by Additional Motor Accident Claims Tribunal, Ambah, District Morena (M.P.) (in short "the Claims Tribunal") in Claim Case No.40/2007 whereby the Claims Tribunal awarded compensation in favour of the claimants on account of death of Naresh to the tune of Rs.1,89,500/- with interest from the date of filing of claim petition till its realization in the motor accident.

2. The brief facts, as emerging from the record, are that on 25.01.2007 at about 11:00 a.m., the deceased Naresh was travelling to his relative's house on a motorcycle bearing registration number



RJ-11 SA 4884, along with one Murarilal, who was riding pillion. When they reached the bridge over the Sindh River near Umari, District Bhind, the motorcycle was hit head-on by another vehicle coming from the opposite direction. As a result of the collision, Naresh sustained grievous injuries on his head, chest, and other parts of the body. During treatment, he succumbed to his injuries. The incident was reported at the concerned Police Station, whereupon an FIR was registered and, after due investigation, a charge-sheet was filed before the competent Court. On account of his death, the legal representatives of the deceased filed a claim petition seeking compensation before the Claims Tribunal.

3. Respondent No. 5 and the Insurance Company filed their written statements and denied the material averments of the claim petition.

4. After framing issues and recording evidence of both sides, the learned Claims Tribunal passed the impugned award, granting compensation as stated above.

5. Learned counsel appearing on behalf of the appellant/Insurance Company submitted that the impugned award passed by the Claims Tribunal is contrary to law, facts, and the material available on record. It was argued that the Claims Tribunal failed to appreciate that the deceased himself was negligent and solely responsible for the accident; therefore, the claimants were not entitled to get any compensation arising out of his own negligence. It was further contended that the Tribunal erred in fastening liability upon the



Insurance Company. The driver of the vehicle does not fall within the definition of third party and no premium was paid under the policy to cover the risk of the Driver. Hence, it was submitted that the award deserves to be set aside and the Insurance Company exonerated from its liability.

6. On the other hand, learned counsel appearing for the claimants supported the award passed by the Claims Tribunal and prayed for dismissal of the appeal, submitting that the award was just and proper, and the findings recorded therein do not call for any interference.

7. Heard learned counsel for the parties and perused the record of the Claims Tribunal.

8. The contention of the learned counsel for the Insurance Company is that the deceased was not in the position of the owner of the offending vehicle and, therefore, the claimants were not entitled to claim compensation under Section 163-A of the Motor Vehicles Act.

9. The High Court of Kerala in the case of **Vijayarajan (supra)** in para 5 has held as under:-

"5. Per contra, learned counsel for the appellant would contend that the deceased cannot be treated as a driver within the meaning of the personal accident cover. According to him, the insurance policy provides for compensation as contained in the policy of insurance, if the accident occurs when it is driven by the owner who is also the driver. In order to resolve this controversy, it is necessary to refer to the terms of the policy. It is true that in the premium an amount of Rs.50/- has been paid for the compulsory PA to owner-driver and it may at first blush appear to support the case of respondents 1 to 4. However, on a further scrutiny of the elaborate clauses contained in the policy, we feel that the question



is to be answered against respondents 1 to 4. The policy speaks about it being a liability only policy and thereafter it provides for dealing with liability with the parties. Thereafter, it provides personal accident cover for owner-driver. "

10. However, in the present case, it is undisputed that the deceased was driving the motorcycle at the time of the accident. The evidence on record shows that he had borrowed the motorcycle from his friend, who was the registered owner of the vehicle. Hence, the deceased stepped into the shoes of the owner and, accordingly, was covered under the insurance policy (Ex. D-1) only to the extent of the premium paid for "Personal Accident Cover for Owner-Driver".

11. The Apex Court in the case of **Ramkhiladi and another vs. United India Insurance Company and another**, 2020(1) T.A.C. 353 (SC) in para 5.4 to 5.6 has held as under :-

"5.4 An identical question came to be considered by this Court in **Ningamma [Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710 : (2009) 5 SCC (Civ) 241 : (2010) 1 SCC (Cri) 1213]**. 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 163-A 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 163-A 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 163-A 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 163-A 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 163-A 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 163-A 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 Ningamma [Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710 : (2009) 5 SCC (Civ) 241 : (2010) 1 SCC (Cri) 1213] , 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 163-A 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 163-A 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 163-A 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 163-A 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 163-A 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 Dhanraj [Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553 : 2005 SCC (Cri) 363] , 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 authorised 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 163-A 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 163-A 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."

12. Applying the principle laid down in the aforesaid judgment, it is clear that since the deceased had borrowed the motorcycle and was driving it at the time of the accident, he stepped into the shoes of the owner. Therefore, the claimants are entitled only to the amount payable under the "Personal Accident Cover for Owner-Driver" as per the terms of the insurance policy (Ex. D-1).

13. Learned counsel for the Insurance Company has submitted that as per the insurance policy, the amount of personal accident cover for owner-driver is Rs.1,00,000/-. Therefore, the claimants are entitled to receive only Rs.1,00,000/- towards compensation.

14. In view of this Court, the just and proper amount of compensation in the instant case is Rs.1,00,000/- as against the award of the Claims Tribunal of Rs.1,89,500/-. Accordingly, the compensation amount is reduced from Rs.1,89,500/- to Rs.1,00,000/-.

15. In the result, the appeal is **partly allowed** by reducing the compensation amount to a sum of Rs.1,00,000/-. The said amount shall bear **interest @ 6 per cent** from the date of the filing of the claim petition till its realization. All other findings recorded by the Claims Tribunal shall remain intact. Insurance Company is entitled to get



excessive amount (if already deposited) from the Claims Tribunal in accordance with law.

With the aforesaid modification, the appeal is **partly allowed** and stands **disposed of**.

(HIRDESH)
JUDGE

AVI