



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Misc. Appeal No. 2934/2017

1. Smt. Abida W/o Late Shri Muse Khan,
2. Kumari Kushirda D/o Late Shri Muse Khan,
3. Sikander Khan S/o Late Shri Muse Khan, Resident Of Village Rajwa, Police Station Jhanwar, District Jodhpur. Appellant - Claimant No. 2 And 3 Are Minor Through Their Natural Guardian Mother Smt. Abida W/o Late Shri Muse Khan.

----Appellants

Versus

1. Ayub Khan S/o Shri Nathu Khan, Resident Of Village Rajwa, Lordi Dejgaran, District Jodhpur Register Owner Motor Cycle No. Rj19 Su 5734
2. Tata Aig General Insurance Company Ltd., Issuing Office Address Peninsula Corporate Park, Nicholas Piramlal Tower, 9Th Floor, Ganpatral Kadam Marg, Lower Parel, Mumbai-400013. Local Address- Himmat Jai Motors, Himmat Bhawan, Chopasani Road, Jodhpur. Insurer Motor Cycle No. Rj19 Su 5734

----Respondents

For Appellant(s) : Mr. S.K. Sankhla
For Respondent(s) : Mr. Aditya Singhi

HON'BLE DR. JUSTICE NUPUR BHATI

Judgment

09/10/2024

1. The present civil misc. appeal has been filed by the appellant-claimants under Section 173 of the Motor Vehicles Act, 1988 ('MV Act') assailing the judgment and award dated 19.07.2017, passed by the learned Judge, Motor Accidnet Claims Tribunal (First0, Jodhpur ('Tribunal') in MAC Case No. 08/2012,



whereby the learned Tribunal has dismissed the claim petition filed by the appellant-claimants.

2. Briefly stated, the facts of the case are that on 11.07.2011, at 7:30 PM, the deceased, Muse Khan was returning to his village after completing his work on a motorcycle bearing number RJ-19-SU-5734 along with a pillion rider, Sohanram Bishnoi. At Meghlesiya stand, the motorcycle slipped when an animal came in front of it, and subsequently, both the deceased and the pillion rider fell down, on account of which the deceased suffered grievous injuries on his head and other injuries on the body. Thereafter, the deceased was admitted in the Hospital, where during treatment, he died on 13.07.2011.

3. A claim petition was filed under Section 163-A by the appellant-claimants claiming compensation to the tune of Rs. 12,80,000/- on account of the said accident, under the heads of loss of income and loss of love and affection. Respondent no. 1 did not file a reply to the said claim, while the respondent no. 2/Insurance Company denied the averments in its reply and submitted that the deceased took the vehicle from the owner of the vehicle and therefore, had stepped into the shoes of the owner himself and thus, the deceased does not fall within the category of third party under Section 163-A and thus, not entitled to get compensation under the said provision.

4. After hearing the parties, the learned Tribunal framed 4 issues including relief, which are as follows:

"1- आया दिनांक 11.7.2011 को शाम के 7.30 बजे मेधावालिया बस स्टैण्ड के पास मोटरसाईकिल. न० आर.जे. 19. एसयू-5734 के उपयोग के दौरान घटित दुर्घटना में मूँसें खां को चोटें आने से उसका निधन हो गया तथा आहत सोहनराम के स्थाई निर्योग्यता कारित हुई?



2- आया अप्रार्थीगण के द्वारा अपने जवाब में उल्लेखित आधारों के बल पर अप्रार्थीगण क्षतिपूर्ति के लिये दायित्वाधीन नहीं है ?

3-आया प्रार्थीगण. / प्रार्थी क्लेम प्राप्त करने के अधिकारी है अगर हां तो कितना व किससे ?

4- अनुतोष ?”

5. The appellant/claimants produced 22 exhibits in support of their claim while the respondent no. 2/Insurance Company produced 5 exhibits and examined NAW-1, Ghanshyam as their witness.

6. Learned Tribunal dismissed the claim petition filed by the appellant-claimants on the ground that since the deceased took the vehicle in the capacity of the borrower, who was not employed as a driver under the respondent no.1/owner and thus, he ceases to fall within the category of third party under Section 163-A, and therefore, the appellant/claimants were not held entitled for compensation on account of the death of appellant/claimant no. 1's husband, caused in the said accident. Thus, aggrieved of the judgment passed by the learned Tribunal, the appellant/claimants have preferred the present appeal.

7. Learned counsel for the appellant/claimants submits that the controversy involved in this case is squarely covered by the judgment passed by the Hon'ble Apex Court in the case of **Ram Khiladi v the United India Insurance Company** reported in **AIR 2020 SC 527**, wherein the Hon'ble Apex Court has awarded Rs. 1,00,000/- to the deceased/borrower of the vehicle, on account of the premium charged towards personal accident cover of the owner, while observing that the deceased/borrower had stepped into the shoes of the owner, and thus, the liability of the Insurance Company was determined according to the contract of



Insurance, while considering him to be the owner, for which the premium was also charged. He thus, makes a limited submission that Rs. 1,00,000/- be awarded to the appellant/claimants in the light of judgment passed by the Hon'ble Apex Court in the case of **Ram Khiladi** (supra).

8. *Per contra*, learned counsel for the respondent no.2/Insurance Company submits that the learned Tribunal has rightly dismissed the claim on account of the deceased being a borrower and thus, not entitled to get compensation under Section 163-A, inasmuch as he did not fall within the ambit of third party. He thus submits that the appeal preferred by the appellant/claimants calls for no interference by this Court.

9. This Court finds that the learned Tribunal has observed that the appellant/claimant no. 1 has clearly deposed in her statement that her deceased husband was driving the motorcycle of the respondent no.1/owner after taking it from him and that, when the vehicle is driven after being borrowed from the registered owner, the person who drives it becomes the borrower and since the borrower does not fall within the category of third party, the Insurance Company is not liable to compensate for the death or injury of the said borrower under Section 163-A of the MV Acts. It is also seen that the learned Tribunal has also taken note of the fact that no evidence has been produced by the appellant/claimants that the deceased was employed as a driver of the vehicle and thus, he was driving the motorcycle at the time of accident in the capacity of a borrower.

10. This Court, while taking into consideration the judgment passed by the Hon'ble Apex Court in the case of **Ningamma &**



Anr. v. United India Insurance Co. Ltd. reported in **AIR 2009 SC 3056**, wherein the Hon'ble Apex Court has observed that a borrower steps into the shoes of the owner, when borrows his vehicle and that, he virtually becomes the owner at the time of driving the vehicle, thus, the owner cannot be a recipient of the compensation as the liability to pay the same is upon him. The relevant part of the judgment passed by the Hon'ble Apex Court in case of **Ningamma** (supra) is reproduced as under:

"19. 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. 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."

Thus, this Court finds that the learned Tribunal has rightly dismissed the claim of the appellant/claimants inasmuch as the deceased was not employed as the driver of the motorcycle, and he, being the borrower, stepped into the shoes of the owner and



thus, the appellant/claimant are not entitled to claim compensation, as the liability to pay the same is upon them.

11. Nevertheless, this Court also finds merit in the argument of the learned counsel for the appellant/claimants and thus, while taking into consideration the judgment passed by the Hon'ble Apex Court in the case of **Ram Khiladi** (supra), wherein the Hon'ble Apex Court has awarded Rs. 1,00,000/- as compensation, towards Personal Accident Cover even though it has been categorically observed that the deceased/appellant, in the present case had stepped into the shoes of the borrower, since even the owner shall be entitled to compensation to the tune of Rs. 1,00,000/- as per the contract of Insurance, in case of premium charged towards personal accident cover. The relevant part of judgment passed by the Hon'ble Apex Court in the case of **Ram Khiladi** (supra) is reproduced as under:

"5.8 However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2 nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of



the amendment to the 2 nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.”

Upon perusal of the Insurance Policy (Ex.NA2), finds that the limit of liability of the respondent no.2/Insurance Company in respect of any one accident as per the MV Act, is stipulated up to Rs. 1,00,000/- and that, the compulsory Personal Accident Cover of Rs. 50/- has also been charged against the owner and thus, this Court, in the light of the judgment passed by the Hon'ble Apex Court in the case of **Ram Khiladi** (supra), deems it fit to award Rs.1,00,000/- as compensation to the appellant/claimants, on account of the death of the borrower, who had stepped into the shoes of the owner.

13. Accordingly, for the reasons mentioned hereinabove, the present appeal is partly allowed to the extent that the appellant/claimants are entitled to get Rs.1,00,000/- @ 6% as compensation on account of death of the husband of appellant/claimant no.1, who was driving the vehicle in the capacity of a borrower, who had stepped into the shoes of the owner, from the respondent no. 2/Insurance Company, subject to the condition that appellant/claimants have not received compensation on the same grounds while availing the benefit of Personal Accident Cover, and arising out of the same accident, from any other forum, authorized to do so.

14. Record be sent back forthwith. No costs.

(DR. NUPUR BHATI),J

80-/ajayS/-