

THE HIGH COURT OF TRIPURA
AGARTALA

MAC App. No. 23 of 2013

National Insurance Company Ltd.,

Udaipur Branch, Udaipur,
PO, PS- R.K. Pur,
Sub Division- Udaipur,
District- Gomati,

Represented by - The Divisional Manager,
National Insurance Company Ltd.,
Agartala Divisional Office,
Akhaura Road, PO - Agartala,
PS-West Agartala, Sub Division- Agartala,
District- West Tripura, Pin- 799001.

.....Appellant.

Versus

- 1. *Smti. Rupashree Roy (Sukladas),***
Wife of Late Bhaskar Sukladas,
- 2. *Shri Ranabir Sukladas (Minor),***
Son of Late Bhaskar Sukladas,
- 3. *Smti Ratna Sukladas,***
Wife of Shri haradhan Sukladas,
- 4. *Shri Haradhan Sukladas,***
Son of Late Jagabandhu Sukladas,

All are residents of Sourth Chandrapur,
PO & PS- R. K. Pur, Sub- Division- Udaipur,
District- Gomati.

(The respondent No.2 being minor is
represented by her natural guardian,
mother, respondent No.1)

- 5. *Md. Abdul kadir,***
Son of Late Gutu Miah,
resident of South Chandrapur,
PO & PS- R. K. Pur, Sub Division- Udaipur,
District- Gomati.
(Owner of Vehicle No.TR-03-C-0643, Maruti Van).

..... Respondents.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the appellant : Mr. S. Lodh, Advocate.
For the Respondents : Mr. T. D. Majumder, G. A.
Date of hearing &
Judgment & Order : 28.3.2016.
Whether fit for reporting : **Yes/No.**

JUDGMENT & ORDER (ORAL)

This appeal by the insurance company is directed against the award dated 19th October, 2012 passed by the Motor Accident Claims Tribunal, South Tripura, Udaipur whereby the learned Tribunal awarded a sum of Rs.16,04,500/-, as compensation in favour of the claimants along with interest.

2. The claim petition was filed by Smt. Rupashree Roy (Sukladas), Sri Ranabir Sukladas, Smt. Ratna Sukladas and Sri Haradhan Sukladas being wife, minor son and parents of deceased Bhaskar Sukladas. The allegations set out in the claim petition itself were that the deceased was a driver by profession. It was further alleged that he was engaged as driver by one Md. Abdul Kadir, owner of Maruti Van (TR03-C-0643) which was insured with the National Insurance Company Ltd. It was further alleged that the claimant was earning Rs.8,000/- per month as driver of the vehicle.

3. The case of the claimants was that on 21st December, 2011 at about 7.30 p.m. when the deceased was driving the vehicle the steering wheel malfunctioned and due to sudden failure of the steering the vehicle capsized by the side of the road and as a result of the injuries sustained the deceased died.

4. The petition was filed under Section 166 of the Motor Vehicles Act 1988. One of the defences taken by the insurance company was that since the deceased himself was driving the vehicle and there was no negligence of any other party the insurance company could not be held liable. The learned Tribunal held that the accident occurred due to mechanical disorder and then held the insurance company liable to pay compensation. I am pained to observe that the learned Tribunal did not take into consideration the law settled by the Supreme Court as far back as in the year 2008.

5. The main issue which arises is, whether a claim petition under Section 166 by the legal heirs of the person who was driving the vehicle himself is maintainable under the Motor Vehicles Act when there is no negligence of any other party. In ***Oriental Insurance Company Limited Vs. Rajni Devi and others : (2008) 5 SCC 736***, the deceased was the owner of the vehicle. The Supreme Court held that there is no liability under the Motor Vehicles Act to cover the owner of the vehicle under Section 163A, but it found that in the policy in question, the insurance

company had agreed to pay accident insurance to the owner to the extent of Rs.1,00,000/- and therefore, Rs.1,00,000/- was awarded as not under 163A, but as per the terms of the policy of insurance.

6. In *Ningamma & anr. Vs. United India Insurance Co. Ltd., 2009 AIR SCW 4916*, the deceased was not the owner of the vehicle. He had borrowed the vehicle from the owner and was driving the vehicle. A claim petition was filed under Section 163A and the question which arose for decision by the Apex Court was whether any compensation was liable to be paid to the person, who had borrowed the vehicle from the owner. The Apex Court answered this question in the following terms:-

“18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon'ble Justice S.B. Sinha is 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. It was held in the said decision 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. In our considered opinion, the ratio of the aforesaid decision 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 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."

7. The Apex Court clearly held that the deceased, who had borrowed the vehicle, stepped into the shoes of the owner and therefore, no compensation could be claimed on his behalf under Section 163A. If a borrower of the vehicle steps into the shoes of the owner I see no reason why the employee of the owner would not also step into the shoes of the owner. The relationship of an owner and an employee is much more legal relationship than the relationship between a owner and a borrower. Moreover, the observations of the Apex Court has to be read in the context of Section 147 of the Motor Vehicles Act wherein even in respect of a driver of the vehicle the insurance company would be liable as far as the liability under the Workmen's Compensation Act is concerned.

8. In any event, this question is not in dispute any longer. The Apex Court in ***National Insurance Company Ltd. v. Sinitha & ors : 2012 AIR SCW 10*** was dealing with a case in which, the deceased Shijo was driving a vehicle and died. A claim petition under Section 163A was filed. While allowing this petition, the Apex Court held that if the insurance company wanted to defeat the claim of the claimants it had to prove that the deceased had stepped into the shoes of the owner and one or the

ways proving this was to be show that he was the employee of the owner.

9. In this regard, reference may be made to Para 19 of the judgment, which reads as follows:-

“19. To substantiate his second contention, it would be essential for the petitioner to establish, that Shijo having occupied the shoes of the owner, cannot be treated as the third party. Only factual details brought on record through reliable evidence, can discharge the aforesaid onus. During the course of hearing, despite our queries, learned counsel for the petitioner could not point out the relationship between Shijo and the owner of the motorcycle involved in the accident. Shijo is not shown to be the employee of the owner. He was not even shown as the representative of the owner. In order to establish the relationship between the Shijo and the owner, the petitioner-Insurance Company could have easily produced either the owner himself as a witness, or even the claimants themselves as witnesses. These, or other witnesses, who could have brought out the relationship between the owner and Shijo, were not produced by the petitioner herein, before the Tribunal. The petitioner has, therefore, not discharged the onus which rested on its shoulders. Since the relationship between the Shijo and the owner has not been established, nor the capacity in which he was riding the vehicle has been brought out, it is not possible for us to conclude, that Shijo while riding the motorcycle on the fateful day, was an agent, employee or representative of the owner. It was open to the petitioner to defeat the claim for compensation raised by the respondents by establishing, that the rider Shijo represented the owner, and as such, was not a third party, in terms of the judgment rendered by this Court in Oriental Insurance Company Limited case (AIR 2001 SC 1832 : 2001 AIR SCW 1602)(supra). The petitioner failed to discharge the said onus. In view of the above, it is not possible for us to accede to the second contention advanced at the hands of the learned counsel for the petitioner.

10. The Apex Court has clearly held that it was open to the insurance company to defeat the claim for compensation raised by the claimants by establishing that the rider of the motor cycle represented the owner and as such was not a third party. The Apex Court while holding this, further held that the relationship between the driver (Shijo) and the owner was not established nor the capacity in which he was riding the vehicle have been brought out and it was not possible for the Supreme Court to conclude whether he was driving the motor cycle as an agent, employee or representative of the owner. All these words have to be read in conjunction with each other and therefore, the agent, employee or representative of the owner would step into the shoes of the owner.

11. An employee represents the owner. That is why for the wrongful acts of the employee, the owner is held vicariously liable. If the employee was not to represent the owner then the question of holding the owner vicariously liable in cases of tort would not arise. The employee steps into the shoes of the owner and as such in view of the judgments referred to above, no claim under Section 163A or under Section 166 would be maintainable where the driver of the vehicle has stepped into the shoes of the owner and is driving the vehicle under his wish and command.

12. Lastly, I am of the view that under Section 147 of the Motor Vehicles Act 1988, the insurance company is not liable to

cover liability in respect of the employee engaged in driving the vehicle except in so far as the liability is under the Workmen's Compensation Act. Reference may be made to Section 147(1) of the Act, which reads as follows:-

*"147 Requirements of policies and limits of liability.
(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which*

*—
(a) is issued by a person who is an authorised insurer; and*

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including 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 a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place: Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

13. The proviso to Section 147(1) of the Motor Vehicles Act clearly lays down that the insurance company is not required to cover in the policy, any liability in respect of death

arising out of and in the course of employment of the employee of the person insured by the policy or in respect of bodily injury sustained by such employee in the course of his employment other than a liability arising under the Workmen's Compensation Act 1923. The language of the Section is very clear that the insurance company is only liable to pay cover liability which may fall upon it under the Workmen's Compensation Act.

14. I may have been inclined to even convert this petition to one under the Workmen's Compensation Act 1923, and to grant compensation as payable under the Workmen's Compensation Act now called the Employees Compensation Act but I find that the claimants have not come to Court with clean hands. The learned trial Court has also not cared to go through the documents carefully especially the driving licence. What has been produced before the learned Tribunal is not the original driving licence of the deceased but a poor quality colour photostat or colour photograph of the driving licence which has been laminated and produced before the Court. This is apparent to the naked eye. The Motor Accident Claims Tribunal while considering evidence must satisfy their conscience that the document which has been produced before them is a genuine document. I find on the face of the document that the licence is shown to be valid till 29-10-2016

but in the figures “29-10-2016” the figure '6' which occurs at the last has been interpolated and this is overwriting. There can be no doubt with regard to that.

15. The licence is supposed to be issued on 30th October, 2006. The insurance company has filed an application being CM Application No.131 of 2013. Notice was issued in this application on 27th January, 2014 and time has been granted again for filing reply on 12th March, 2014 but no reply to the application has been filed till date. Along with the said application, the insurance company has filed a document wherein in the first part of the document the National Insurance Company has requested the licensing authority South Tripura, Udaipur to give details of the driving licence No.20734/UDP, issued in favour of Bhaskar Sukladas which authorizes the deceased Bhaskar Sukladas to drive a non-transport vehicle and in this it is mentioned that the period of the validity of driving licence was till 29th October, 2011. Therefore, the deceased had no valid driving licence on the date of accident i.e. 21st December, 2011.

16. Section 15 (1) of the Motor Vehicles Act 1988, reads as follows:

“15. Renewal of driving licences- (1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expire;

Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section(3) of section 8, and the provisions of sub-section(4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence."

This Section clearly lays down that where the application for renewal of a licence is made more than 30 days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal. This will mean that there was no licence from the date when the previous licence expired till the date when the renewal was made. However, this also means that if the application for renewal of driving licence is filed within 30 days and the renewal is granted then the renewal will date back to the date of expiry of the original licence. Therefore, I cannot even award any amount under the Workmen's Compensation Act at this stage. However, liberty is reserved to the claimants to apply for compensation under the Workmen's Compensation Act 1923, and it will be for the Commissioner, Workmen's Compensation to decide whether the deceased had a valid driving licence on the date of accident and in case the insurance company is not liable then the employer can be held liable to pay the compensation.

17. A copy of this judgment shall be circulated to all the Judicial Officers in Tripura who must ensure that they actually verify the documents which are filed and should also go through the bare provisions of the Act to see whether the documents are in accordance with the Motor Vehicles Act or not.

The appeal is allowed and accordingly disposed of.

CHIEF JUSTICE

Satabdi