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**IN THE HIGH COURT OF KARNATAKA, DHARWAD
BENCH**

DATED THIS THE 30TH DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

M.F.A. No.22468/2011 (MV)

BETWEEN

1. UNITED INDIA INSURANCE CO., LTD.,
DIVISIONAL OFFICE, "SITA SMRUTI",
IIND FLOOR, MARUTI GALLI, BELGAUM.
BY ITS DIVISIONAL MANAGER.

...APPELLANT

(BY SRI. C V ANGADI, ADVOCATE)

AND

1. SMT.SUSILA W/O. SHAMRAO PATIL,
AGE: NOW ABOUT 46 YRS,
OCC: HOUSEHOLD WORK,
R/C: RAM NAGAR, KANGRALI (KH)
TQ/DIST: BELGAUM.
2. KUMARI. ANITA D/O. SHAMRAO PATIL,
AGE: NOW ABOUT 24 YRS,
OCC: HOUSEHOLD WORK,
R/O: RAM NAGAR, KANGRALI (KH)
TQ/DIST: BELGAUM.
3. KUMAR. PRAVEEN
S/O. SHAMRAO PATIL,
AGE: NOW ABOUT 24 YRS,
OCC: STUDENT,R/O: RAM NAGAR,
KANGRALI (KH)
TQ/DIST: BELGAUM.

4. MR. BABASAHEB S/O. BHIMRAO DESAI,
AGE: MAJOR, OCC: BUSINESS, R/O:
GIRGAON, POST: HEDAWADE,
TQ: BHUDARGAD, DIST: KOLHAPUR.

...RESPONDENTS

(BY SRI.SANJAY S KATAGERI, ADVOCATE FOR R1 TO T3)

THIS APPEAL IS FILED U/SEC.173(1) OF M.V. ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED:05.02.2011, PASSED IN M.V.C. NO.3020/2007, ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE & ADDL. MACT, BELGAUM AT BELGAUM, AWARDED THE COMPENSATION OF RS.3,62,000/- WITH INTEREST AT THE RATE OF 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed challenging the judgement and award passed in MVC No.3020/2007 dated 05.02.2011 on the file of II Additional District and Sessions Judge and Additional MACT, Belagavi, questioning the liability and quantum of compensation.

2. Factual matrix of the case of the claimants before the Tribunal is that the claimants invoking Section 163-A of Motor Vehicles Act claimed compensation of Rs.5,00,000/- in respect of death of Shamrao Patil in a road traffic accident, who died on 02.07.2006 at 6.00 p.m. when he was proceeding on Hero Honda motorcycle bearing Reg.No.MH-09/AV-706 and when he came near Somali land on Salpewadi-Gargoti road within the limits of Salpewadi village, at that time a big branch of eucalyptus tree suddenly fell on the head of the deceased, as a result of which he had sustained grievous injuries. Immediately he was shifted to Government hospital, Gargoti for treatment and he succumbed to injuries and they have spent an amount of Rs.25,000/- towards medical treatment and funeral expenses and the deceased was hale and healthy and was aged about 44 years on the date of accident. It is further

contended that he was earning Rs.3,300/- by doing mason work and was maintaining his family and due to untimely death, the claimants have put to great mental agony, shock and lost their love and affection and family also put to financial difficulties.

3. It is further contended that the accident is on account of use of motorcycle which is owned by respondent No.1 and insured with respondent No.2 and hence, claimed compensation.

4. In pursuance of the clam petition, notice was ordered and respondent No.1 appeared and filed objections denying the allegations and other averments made in the claim petition, however it is admitted that the deceased being relative of respondent No.1 has requested the vehicle of respondent No.1 to visit the relatives house nearby village and respondent No.1 on verifying the driving

licence has given his vehicle for his convenient travelling but unfortunately by act of god the accident has taken place and he died and there is no fault on the part of respondent No.1 and if any compensation payable that should be indemnified by respondent No.2.

5. Respondent No.2-insured denied the age, occupation and income of the deceased and further denied the accident. It is also denied that the vehicle was insured with respondent No.2. It is contended that compensation claimed is imaginary, excessive, speculative and disproportionate and also denied spending of Rs.25,000/- for medical and funeral expenses. It is further contended that the accident is because of fall of branch of eucalyptus tree while the deceased was proceeding in a motorcycle and hence the company is not liable to pay the compensation.

6. Based on the pleadings of the parties, the Tribunal framed four issues and answered issues as affirmative and directed the Insurance Company to pay the compensation. The claimant No.3 is examined as P.W.1 and one witness as P.W.2 and in all produced documents as per Exs.P.1 to P.7 and respondents did not choose to examine any witnesses, but only produced copy of policy which is marked as Ex.R.1.

7. Being aggrieved by the judgement and award of the Tribunal, the appellant-Insurance Company has preferred the present appeal by raising some of the grounds that the judgement and award is against the material on record. It is contended that the claim petition is filed under Section 163-A of Motor Vehicles Act and for the death of rider of the motorcycle, there cannot be any compensation and Tribunal has committed an error. It is also contended that accident has taken place because of fall of big

branch of eucalyptus tree on the head of the deceased and the same cannot be treated as a motorcycle accident and hence, the Tribunal ought to have dismissed the claim petition but erroneously allowed the same.

8. The other count of argument of the appellant's counsel is that the petition is filed under Section 163-A of Motor Vehicles Act and the Tribunal ought to have awarded compensation as per the II schedule of Motor Vehicles Act. The compensation awarded under the head of funeral expenses, loss of estate and consortium is on higher side and hence, it requires interference.

9. Counsel also contends that the Tribunal has completely overlooked the material evidence. The counsel during the course of argument also raised a contention that the deceased being the relative of the

insured cannot maintain a petition under Section 163-A of Motor Vehicles Act and the claimants stepped into the shoes of the owner since the deceased has borrowed the vehicle from the original owner and hence, the claimants cannot be recipients and also beneficiaries under the Contract of Indemnity which is in existence between the insured and the insurer.

10. Counsel in support of his argument, relied upon the judgement of the Apex Court reported in **2020 ACJ 627** in the case of ***Ramkhiladi and Another vs. United India Insurance Company Limited and Another***, wherein it is held that when a petition is filed under Section 163-A of Motor Vehicles Act by heirs of owner of vehicle or by heirs of borrower of the vehicle who step into the shoes of the owner for the death of owner or borrower is maintainable and ultimate liability under Section 163-A of Motor Vehicles Act is on the owner of the vehicle

and a person cannot be both, a claimant as also a person on whom the liability falls; Insurance Company is liable to pay compensation to third party and not the owner; deceased stepped into the shoes of the owner and he was not a third party.

11. Per contra, counsel for the respondents-claimants in his argument, vehemently contends that the very argument canvassed by the appellant's counsel cannot be accepted. The counsel relied upon the judgement of Division Bench of this Court reported in ***ILR 2003 KAR 4911*** in the case of ***Sulochana and Others vs. Karnataka State Road Transport Corporation***, wherein also the petition is filed under Section 163-A of Motor Vehicles Act and facts of the said case is that A Banyan tree grown on the side of the road fell on the running bus resulting the death of three persons including the petitioner. In the case, it is held that proof of fault can it still be made a basis

and held that all that need be shown by the claimant in support of the claim is that the injury or death which is made the basis for the claim arose out of the use of a motor vehicle, the provision is not intended to introduce a rule of evidence merely shifting the burden of proof from the claimant to the owner and the driver of the vehicle. If the intention of the parliament behind the introduction of Section 163-A was to simply shift the burden of proof to the owner or the driver of the vehicle, the provisions of Section 163-A would have been differently worded, therefore, this Court has no hesitation in holding that a victim or legal heirs of a victim are entitled to claim compensation in terms of Section 163-A read with Schedule II to the Act without either pleading or proving that the accident in question had resulted from any act of negligence or default on the part of the owner or the driver of the vehicle.

12. In this judgement also Division Bench held that under Section 163-A, schedule II, expression "due to accident arising out of use of motor vehicle", accident leading to death of the deceased in the instant case arose out of use of bus owned by respondent corporation and has given interpretation by relying the pronouncements of the Apex Court and referred to several judgements.

13. The counsel also in support of his argument relied upon the judgement of the Apex Court reported in **(2004) 5 SCC 385** in the case of **Deepal Girishbhai Soni and Others vs. United India Insurance Company Limited, Baroda** and brought to notice of this Court para 66, wherein the Apex Court discussed Section 163-A taking note of the expression and comes to the conclusion that under Section 163-A covers cases where even negligence is on the part of the victim and it is by way of exception

to Section 166 and the concept of social justice has been duly taken care of.

14. The counsel would also vehemently contend that other than the insured all are become third parties and mainly relied upon the judgment in the case of ***United India Insurance Company Limited vs. Sunil Kumar and Another*** reported in ***2018 ACJ 1*** and in the case of ***Shivaji and Another vs. Divisional Manager, United India Insurance Company Limited and Others*** reported in ***2018 ACJ 2161***. Referring to these judgments, the counsel contends that the deceased become third party since he is not insured.

15. The counsel also relied upon the judgement of Division Bench of this Court passed in ***MFA No.8455/2014*** and connected appeal and brought to notice of this Court para 10, wherein it is discussed

with regard to judgments in the cases of Ningamma and Sadananda Mukhi and referring the judgment of Sunil Kumar and Shivaji, held that deceased is not the owner of the motorcycle as against the Insurance Company he would be treated as a third party and extracted para 6 of the judgment of Sunil Kumar and also extracted para 5 of Shivaji and held Insurance Company is liable and appeal filed by Insurance Company is dismissed.

16. The counsel also relied upon the judgement of Co-ordinate Bench of this Court passed in MFA No.20323/2010 dated 26.07.2021, wherein by relying upon the judgements of the Apex Court in Ningamma, Sunil Kumar, Ramkhiladi and Shivaji, this Court allowed the petition and set aside the judgment of Tribunal in coming to the conclusion that the claimants stepped into the shoes of the owner cannot be sustained.

17. The counsel also relied upon an unreported judgement of this Court passed in MFA No.20465/2012 dated 05.06.2017 and contend that Insurance Company is liable to pay the compensation.

18. In view of the rival contentions of the parties, the following points would arise for consideration:

- i. Whether the claimants are entitled for compensation in a case of fall of big branch of eucalyptus tree on the head of deceased while he was proceeding on a motorcycle?*
- ii. Whether the deceased stepped into the shoes of the insured as contended by learned counsel for Insurance Company?*
- iii. Whether the deceased would become third party as contended by learned counsel for claimants?*

- iv. *Whether in a case of this situation, the Insurance Company is liable to pay the compensation?*
- v. *What order?*

19. **Regarding Point No.1:** The main contention of the appellant-Insurance Company in this appeal is that petition is filed under Section 163-A of Motor Vehicles Act and the appellant being the insurer of the motorcycle cannot be made liable to pay the compensation for the death of rider of the motorcycle since the accident has taken place because of fall of big branch of eucalyptus tree on the head of the deceased and the same cannot be treated as motor vehicle accident and hence, this Court has raised point No.1 for consideration. It is not in dispute that when the motorcyclist was proceeding in his motorcycle, a big branch of eucalyptus tree had fallen on the head of the deceased. The main contention of the Insurance

Company is that the same not comes within the purview of Section 163-A of Motor Vehicles Act, but the counsel appearing for the respondents brought to notice of this Court judgement in the case of ***Sulochana***, referred supra, wherein also a banyan tree grown on the side of the road fell on the running bus resulting in the death of three persons including the petitioner and taking into note of Section 163-A of Motor Vehicles Act, not only the Court has to take note of any act of negligence or default on the part of the owner or driver of the vehicle and Division Bench of this Court held that it is evident that the expression 'arising out of the use of the motor vehicle' has been given the widest interpretation by the Apex Court as also other Courts in the country having regard to the purpose underlying the motor vehicle legislation.

20. This Court would like to rely upon judgement reported in ***1991 AIR 1769*** in the case of

Shivaji Dayanu Patil & Another vs Smt. Vatschala

Uttam More, the Apex Court taken note of principles enunciated in the said judgement and given wider meaning to the word expression 'arising out of use of motor vehicle' and in that case, a petrol tanker was used for transporting petrol overturned due to collision with another motor vehicle and hit to the extent that it became immobile and few hours after the collision, there was explosion and fire causing injuries to number of persons who had gathered there to collect petrol. In the claim petition filed for payment of compensation on the death of one of such injured person raised question whether the accident had arisen out of use of motor vehicle. The Apex Court considered the question in context of provisions of Motor Vehicles Act and came to the conclusion that even when the tanker in question had turned turtle and could not be moved unless it was once put back

again on wheels yet, explosion resulting in injuries to people who had gathered to collect petrol was an accident arising out of use of motor vehicle.

21. This Court would like to rely upon judgement in the case of ***Smt.Rita Devi & Ors vs. New India Assurance Company Limited & Another*** reported in ***AIR 2000 SC 1930***, it is a case of driver of an auto rickshaw was employed by the owner and in that case he was carrying passengers on hire. The deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so

caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased was caused accidentally in the process of committing the theft of the auto rickshaw.

22. This Court also would like to rely upon the judgment reported in the case of ***S. Kaushnuma Begum and Others vs. The New India Assurance*** reported in ***AIR 2001 SCW 85***. In that case, because of the bursting of the front tyre of the vehicle, the vehicle appears to have hit the footpath and crushed a pedestrian. The question that arose was whether a claim for compensation could be maintained even if the driver of the vehicle was not proved to be

negligent in driving the vehicle. The Supreme Court declared that jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of Motor Vehicles. Negligence is only one of the species of causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles.

23. Having considered the principles laid down in the judgements referred supra and also the judgement in the case of ***Sulochana***, wherein it is held that all that need be shown by the claimant in support of the claim is that the injury or death which is made the basis for the claim arose out of the use of a motor vehicle, the provision is not intended to introduce a rule of evidence merely shifting the burden of proof from the claimant to the owner and the driver of the vehicle. If the intention of the parliament behind the introduction of Section 163-A

was to simply shift the burden of proof to the owner or the driver of the vehicle, the provisions of Section 163-A would have been differently worded, therefore, this court has no hesitation in holding that victim or legal heirs of a victim are entitled to claim compensation in terms of Section 163-A read with Schedule II to the Act without either pleading or proving that the accident in question had resulted from any act of negligence or default on the part of the owner or the driver of the vehicle. Under such circumstances, the very contention of the Insurance Company cannot be accepted and hence, point No.1 is answered in affirmative.

24. **Regarding point Nos.2 & 3:** Now the question before this Court is whether the deceased stepped into the shoes of the owner as contended by the learned counsel for Insurance Company and the contention of the learned counsel for the claimants is

that the deceased would become third party and he cannot step into the shoes of the insured. Having taken note of these contentions and on perusal of the material available on record, admittedly the vehicle which was involved in the accident is standing in the name of daughter of the deceased and in the cross-examination it is admitted that Hero Honda motorcycle belongs to sister of P.W.1 i.e. daughter of deceased and hence, it is clear that father was driving the vehicle belonging to the daughter and eucalyptus tree fallen down on the head of the father and he succumbed to injuries.

25. The learned counsel for respondents-claimants in his argument vehemently contend that even though the deceased is father of insured, he become third party and relied upon judgement of Division Bench of this Court in the case of ***Smt.Lakshmi vs. Sri.Gopal S/o Late Nagegowda***

in MFA No.8455/2014, referred supra wherein this Court in view of principles of law settled in the judgements in the case of *Sunil Kumar* and *Shivaji*, held that he would be treated as a third party and having perused the judgement in the case of *Sunil Kumar* and also *Shivaji*, the Apex Court discussed with regard to negligence is concerned and comes to the conclusion that the ground of negligence cannot be urged by Insurance Company even if negligence is on the part of the victim and nowhere in the judgement held that the borrower of the vehicles becomes third party and hence, the contention of the claimants counsel cannot be accepted.

26. The counsel also relied upon judgement passed in MFA No.20323/2010 (***Lagamawwa's*** case), wherein also this Court relied upon the judgements in the case of *Ningamma*, *Shivaji*, *Sunil Kumar*, *Ramkhiladi* and *Dhanraj* and comes to the conclusion

the deceased is not the owner of the vehicle in question and he is third party and in those judgements also nowhere it is held that other than the insured all are become third party. Hence, the said judgement cannot be accepted.

27. The judgements in *Sunil Kumar* and *Shivaji* are prior to the judgement in *Ramkhiladi*, wherein the Apex Court held that question was raised whether claim application under Section 163-A by heirs of owner of vehicle or by heirs of borrower of vehicle, who stepped into the shoes of the owner for the death of owner or borrower is maintainable and the said question was answered that ultimately liability under Section 163-A of Motor Vehicles Act is on the owner of the vehicle and a person cannot be both, a claimant as also a person on whom the liability falls; Insurance Company is liable to pay compensation to third party and not the owner; deceased stepped into the shoes

of the owner and he was not a third party. Hence, in view of the judgement of the Apex Court in the case of **Ramkhiladi**, the very contention of the claimants counsel cannot be accepted. On the other hand, the principles laid down in **Ramkhiladi** favours the Insurance Company.

28. Learned counsel for the claimants also brought to notice of this Court the judgement in the case of **Deepal**, referred supra and brought to notice of this Court para No.66, wherein it is discussed with regard to the provisions of Motor Vehicles Act and also discussed Section 163-A particularly and held that it is by way of an exception to Section 166 and the concept of social justice has been duly taken care of and no doubt in the principles laid down in the judgement it is distinguished between Section 163-A and Section 166 and in case the claim petition is under Section 166, negligence is the criteria for

deciding the claim and in case the claim petition is under Section 163-A, it covers where even negligence is on the part of the victim and nowhere it is held that family members of the insured become third party as contended by learned counsel for the claimants.

29. Having perused materials on record, the father (deceased) stepped into the shoes of the insured since he has borrowed the vehicle from the daughter and was driving the motorcycle at the time of accident which has taken place and he succumbed to injuries. Hence, point No.2 is answered in favour of Insurance Company and point No.3 is answered against the claimants and it cannot be held that the deceased would become third party as contended by counsel for claimants.

30. **Regarding point No.4:** Now the question before this Court is whether Insurance Company is

liable to pay the compensation. Having considered the material on record, admittedly the claim petition is filed under Section 163-A of Motor Vehicles Act and negligence is not a criteria while considering the claim petition under Section 163-A. But, when this Court has come to the conclusion that the deceased stepped into the shoes of the insured who being the daughter of the deceased whether Insurance Company is liable to pay compensation is a question that needs to be decided.

31. In view of **Ramkhiladi's** case, if policy covers the risk of the insured, the company is liable to pay the compensation on the head of compulsory PA to owner-cum-driver and in terms of Ex.R.1 for compulsory PA to owner-cum-driver an amount of Rs.50/- is collected and the same is not disputed and the Tribunal failed to take note of the contents of the document at Ex.R.1 and instead of fastened liability on

Insurance Company to pay entire compensation. In view of payment of Rs.50/- under the coverage of compulsory PA to owner-cum-driver and also in view of judgement in **Ramkhiladi**, wherein the Apex Court held that when the additional premium had been paid towards personal accident cover to owner-cum-driver, an amount of Rs.1,00,000/- has to be paid to the heirs of borrower of vehicle, since he stepped into the shoes of the owner of vehicle. The judgement of *Ramkhiladi* is very clear regarding the said aspect in para Nos.5.8 and 5.9. Hence, claimants are entitled for an amount of Rs.1,00,000/- since there is explicit coverage of the insurance under the head of personal accident cover to insured-cum-driver. Hence, the Insurance Company is liable to pay compensation of Rs.1,00,000/- with interest.

32. In **Ramkhiladi's** case, interest at the rate of 7.5% p.a. is awarded. Hence, it is appropriate to

direct the Insurance Company to pay interest at 7.5% p.a. from the date of claim petition till realization. Accordingly, point No.4 is answered.

33. **Regarding point No.5**: In view of the discussions made above, I pass the following:

ORDER

Appeal filed by the Insurance Company is allowed in part.

In modification of the impugned judgment and award passed by the Tribunal, the claimants are entitled for a sum of Rs.1,00,000/- with interest at 7.5% p.a. from the date of claim petition till realization as against Rs.3,62,000/-.

Insurance Company is directed to pay/deposit the compensation amount along with interest within six weeks from the date of this order.

Amount in deposit, if any, is ordered to be transferred to the Tribunal forthwith.

The registry is directed to transmit the trial court records forthwith.

**Sd/-
JUDGE**

SH