
(2016) 03 CHH CK 0038
In the Chhattisgarh High Court
Case No : MAC No. 316 of 2006

Rajesh Thakur

APPELLANT

Vs

Smt. Saroj Patel

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Citation : (2016) AAC 1612 : (2016) 3 CGLJ 490 : (2016) 3 Civil LJ 361

Hon'ble Judges : Manindra Mohan Shrivastava, J.

Bench : Single Bench

Advocate : P.K.C. Tiwari, Senior Advocate, Shashi and Bhushan, Advocates, for the Appellant; Anup Majumdar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Manindra Mohan Shrivastava, J.—This appeal is directed against the award dated 9-9-2005 by which the learned 1st Additional Motor Accident Claims Tribunal, Rajnandgaon (hereinafter referred to as "the Claims Tribunal") has allowed the claimants' application under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act of 1988") and awarded compensation.

2. In an unfortunate accident which happened on 12-5-2002, Tulsiram, while driving motorcycle No. M.P. 29-4195 met with an unfortunate accident when his motorcycle dashed against a truck. In the accident, Tulsiram died.

Claimants who are the widow and sons and daughter of deceased Tulsiram filed application under Section 163-A of the Act of 1988, claiming compensation on the plea that Tulsiram was in the employment of vehicle's owner/appellant at the time of accident.

The appellant/owner of the vehicle resisted the claim mainly on the pleading that the deceased was his employee and working as driver but 10 days before the accident, he left the job and ceased to be his employee.

3. After collecting oral and documentary evidence on record, the learned Claims

Tribunal held that the claimants were entitled to payment of compensation under Section 163-A of the Act of 1988.

4. In this appeal, learned senior counsel for the appellant raised following submissions :-

(i) That the Claims Tribunal committed perversity in recording a finding of relationship of employer and employee as between the appellant and deceased-Tulsiram. It is argued that there is no clinching evidence much less any documentary evidence to prove that the deceased was in the employment of the appellant. He submits that the assertion of the deceased being employee was categorically denied in the written statement. The Claims Tribunal did not frame any issue nor it adverted to this aspect of dispute between the parties. Further contention in this regard is that except oral evidence of the wife of the deceased and one Dr. Toman Sahu (A.W.2) there is no clinching evidence to prove existence of employer and employee relationship between the appellant and the deceased.

(ii) That once it is found that it was not a case of employer employee relationship, the only capacity in which the deceased was driving the vehicle was that of a borrower. In view of the authoritative pronouncement of the Supreme Court in the case of Ningamma v. United India Insurance Co. Ltd. (2009) 13 SCC 710 : (AIR 2009 SC 3056) borrower having stepped into the shoes of the owner, application under Section 163-A of the Act would not be maintainable and consequently the award is liable to be set aside.

(iii) That even it is found that it was a case of employee-employer relationship, compensation under Section 163-A could not be awarded without proof of the fact that the deceased died in the course of employment.

5. On the other hand, learned counsel for the claimants submits that the appellant candidly admitted the deceased to be his employee though with the improbable pleading that just 10 days before the date of accident, he left the job. The appellant did not state anything in his written statement as to how and in what manner the vehicle of the owner remained in possession of the deceased. There is no specific pleading made that after termination of employer-employee relationship, the vehicle was given by the appellant to the deceased on demand so as to say that the deceased, at the time of accident, was a borrower of the vehicle. It is next submitted that once deceased is not found to have stepped into the shoes of the owner, there is no impediment in entertaining the application under Section 163-A of the Act of 1988.

6. The claim application of the claimants asserts in its pleading that the deceased was employed with the appellant/owner of the offending vehicle i.e. motorcycle. In the written statement of the appellant/owner, it is admitted that the deceased was his employee. However, the appellant pleaded that only 10 days before the date of accident, the deceased left the job and there did not exist any relationship of employer and employee.

7. I have considered the rival submissions made by learned counsel for the parties and perused the records.

8. With this backdrop where the appellant admits the relationship of employer and employee till 10 days before the date of accident, it is required to be seen whether the plea that 10 days before the date of accident the deceased left the employment is liable to be accepted.

9. The claimants in order to prove its case have examined two witnesses namely claimant No. 1 Smt. Saroj Patel, wife of deceased Tulsiram as A.W.1 and Toman Sahu (A.W. 2). As far as Smt. Saroj Patel (A.W. 1), wife of the deceased is concerned, she has categorically stated regarding Tulsi employed as driver in the firm of appellant-owner Rajesh. She has stated in her evidence that on 12-5-2002, her husband left at 4:45 in the morning and then met with accident near a temple at Bhanpuri. In the cross-examination, suggestion has been given that 10 days before the death of her husband, her husband had left the job. This suggestion has been denied by Saroj. From the evidence of this witness, as stated in examination-in-chief as also in the cross-examination, it is proved that the motorcycle had remained in possession of the deceased Tulsi. In para 6 of her cross-examination, Saroj stated that her husband had gone to the place of work in motorcycle.

The other witness Toman Sahu (A.W.2), a private doctor, supports the version of A.W. 1.

10. What is important to note is that though the appellant-owner pleaded in his written statement that deceased Tulsiram was his driver but took a plea that he left the job 10 days before the accident. There is nothing stated in the written statement as to under what circumstances the vehicle of the appellant owner remained in possession of the deceased. It is not a case stated in the written statement that after termination of the employer-employee relationship, the vehicle was later on borrowed by the deceased from the appellant-owner.

11. The appellant did not lead any evidence before the Court below. The order sheets show that he was granted opportunity to lead evidence but he did not lead evidence in the case.

12. The preponderance of probabilities on the basis of aforesaid consideration, leaves this Court to draw inference that the plea of the appellant that deceased had left his job 10 days before the accident cannot be accepted and is liable to be rejected.

13. The next question which falls for consideration is whether the application under Section 163-A of the 1988 was maintainable or not. In order to decide this issue, it is necessary to look into the provision of Section 163-A of the Motor Vehicles Act which is reproduced herein below :

"163-A. Special provisions as to payment of compensation on structured formula basis- (1) Notwithstanding anything contained in this Act or in any other law for

the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation - For the purposes of this sub-section "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1) the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule".

14. A perusal of the aforesaid provision would show that the provision is intended to provide speedy remedy to the claimants without establishing the fault on the part of the owner in the matter of accident arising out of use of motor vehicle. The claimants can succeed once the jurisdictional facts stated in Section 163-A are proved by it, irrespective of any inquiry as to who was responsible for the accident or whose negligence or rash and negligent act, led to accident.

15. The scope and ambit of the provisions contained in Section 163-A of the Act of 1988 was considered by the Supreme Court in the case of Ningamma (AIR 2009 SC 3056) (supra), wherein an issue arose as to whether the borrower could invoke provision of Section 163-A of Act. The Supreme Court, after examining the statutory scheme of the Act, particularly Section 163-A, held :

"19. In Oriental Insurance Co. Ltd. v. Rajni Devi - 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.

20. It was held in Oriental Insurance Co. Ltd. case 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.

21. In our considered opinion, the ratio of the decision in Oriental Insurance Co. Ltd. case 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 person like the deceased in the present case would step into the shoes of the owner of the vehicle."

16. Ratio of the aforesaid decision is that where the driver of the vehicle has stepped into the shoes of the owner, he is not entitled to invoke provision under Section 163-A of the Act of 1988. What has been observed by the Supreme Court in para 18 of its order, by necessary corollary, leads to an inference that in case of relationship of employer and employee, the employee cannot be said to have stepped into the shoes of the owner while driving the vehicle of the owner. If that be so, there is no legal impediment in claiming compensation by the dependents of deceased employee by taking recourse to the speedy remedy provided under Section 163-A of the Act of 1988.

17. Learned senior counsel also raised submission that even if it is held that the deceased had not stepped into the shoes of the owner, unless it is proved that the deceased suffered accident during the course of employment, compensation under Section 163-A could not be awarded. The submission cannot be accepted because the scheme of grant of compensation under Section 163-A of the Act and grant of compensation under the provision of Workmen's Compensation Act are entirely different. While statutory scheme of compensation under the Motor Vehicles Act is dependent upon accident arising on account of use of vehicle, the basis for grant of compensation under Workmen's Compensation Act is enforcement of vicarious liability of the employer in case the employee suffers injury or dies in the course of employment.

18. Therefore, in a case where application under Section 163-A of the Act of 1988 is filed, the compensation can be granted without decision of the issue as to whether the deceased had died in the course of employment. That would be relevant consideration while considering application for grant of compensation under Workmen's Compensation Act. (now the Employees Compensation Act, 1923).

19. In view of the above, I do not find any merits in this appeal. The appeal is dismissed.