CNR : MHST01-001249-2019

ORDER BELOW EXH.21 IN M.A.C.P. NO.91/2019
(Krishna Shelar & Ors. Vs. Akshay Shinde & ors.)

In the instant application, claimant prayed permission to conduct the case against respondent No.2 without bringing on record the heirs of respondent No.1.

02. Mr.H.V. Veer, the Ld. Counsel for the claimant submitted that respondent No.1 is the owner of vehicle involved in the accident. The accident occurred on 20.09.2018. After issuance of notice, it was reported that, he died on 09.10.2018. As per Section 155 of the Motor Vehicles Act, the cause of action survives against the respondent No.2, which is Insurance Company. However, the order of abetment has been passed against respondent No.1 by passing order below Exh.15. Hence, said order be set aside and permission be granted to conduct the case without bringing on record the heirs of respondent No.1.

03. Per contra, Mr. M.N.Kulkarni, the Ld. Counsel for the respondent No.2 submitted that this Court already rejected the application (Exh.15) on merit. The heirs of respondent No.1 are necessary parties to the claim petition. No ground made out for review of the order. Hence, he prayed to dismiss the application.

04. Mr. H.V. Veer, the Ld. Counsel for the claimant placed reliance on the decision of Hon'ble Bombay High Court in the case of ***New India Insurance Company Ltd. Beed Vs. Vishal Rameshwar Mote 2020(4) Mh.L.J.598***. In said case, the owner of the vehicle involved in the accident was died after the accident. Notice was returned unserved on the ground that the owner was expired and

Tribunal has passed the order for abetment of the proceeding the truck owner. In the backdrop of these facts, Hon'ble Bombay High Court observed as under

“**11.** When it has been proved by the claimants that, the accident took place due to the sole negligence on the part of the jeep driver and Anita expired due to the accidental injuries, the further consequence would be that the claimants being the son and daughter of Anita, were entitled to get compensation for the said tortuous act. Admittedly the jeep was owned by original respondent No.1 and it was insured with respondent No.2 on the date of the accident. Therefore, the liability to pay compensation to the claimants definitely arose or in other words the cause of action for the claimants to claim compensation from the respondents arose on the date of the accident immediately after their mother expired due to said accidental injuries. At that time respondent No.1 was alive. <u>When the claimants fled petition and the summons was issued to respondents, the summons issued to respondent No.1 returned unserved on the ground that, he expired on 05-01-2013</u>. As per the order passed below Exhibit 15 by the learned Tribunal, the claim petition stood disposed of as against respondent No.1 as abated. Therefore, the question before the Tribunal was, whether to proceed with the claim petition or not. In the impugned Judgment, the learned Tribunal has relied on Section 155 of the Motor Vehicles Act. In Natha Singh Versus Gurdial Singh and others, reported in 1982 A.C.J. 95, the learned Judge of the Punjab & Haryana High Court has held that, "3. Section 96 of the Act provides for the duty of the insurers to satisfy judgments against persons insured in respect of third party risks. It also provides that the insurance company or the insurer to whom the notice of the bringing of any such proceedings is given, shall be entitled to be made a party thereto and to defend the action on any of the grounds given therein. Section 102 of Act provides, -

"Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925 (XXXIX of 1925), the death of a person in whose favour a certifcate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer."

<u>In view of these provisions of the Act, it cannot be said that the insurance company is not liable to satisfy the claim for compensation to be awarded in the claim application simply because the legal representatives of Amrit Lal Gupta insured who died during the pendency of the proceedings, were not brought on the record</u>. It is particularly so because in the insurance policy, Exhibit R- 11, it has been provided inter alia vide Cl.(4) of section II, thereof that the company may, on its own option, undertake the defence of proceedings in any Court of law in respect of any act or alleged ofence causing or relating to any event which may be the subject of indemnity under that section. It was because of this term of the policy that the insurance company took a specifc plea in paragraph 3 of their additional grounds that it had taken over the defence of the claim petition in the name of the insured to contest the claim, as they had reserved the right under the policy of insurance. As observed earlier, this claim was accepted by the Tribunal and on that account, it was allowed to cross-examine the witnesses, on merits, as well. Under the circumstances, the ratio of the decision in Norati Devi's case, is most relevant. It has been held therein -

"Section 96 only clarifes that if an award is made, it would be the duty of the insurance company to meet the claim. It nowhere lays down that if the insurance company is allowed to contest the liability in the absence of the insurer, it should not be held liable. Therefore, it cannot be contended that an insurance company can never be held liable so long as the insured is not impleaded as a party to the proceedings, or having been impleaded his name is ordered to be struck of from the array of the respondents on the basis that he enjoys diplomatic immunity from being sued in a Court.."

In view of the abovesaid decision of this Court, the claim application of Natha Singh, appellant, could not be dismissed on the ground that the legal representatives of Amrit Lal Gupta, deceased, were not brought on the record."

Section 96 of the earlier Act is Section 155 of the Amended Act. Further reliance can be placed on the decision in, Oriental Insurance Co. Ltd. Versus Nanjamma and others , reported in 2005 ACJ 1534, (Karnataka High Court), wherein relying on the Division Bench decision of the said Court in New India Assurance Co. Ltd. Versus H. Siddalinga Naika, reported in 1985 ACJ 89 (Karnataka High Court), it was held that, "Death of the owner of the vehicle pending claim petition would not absolve the insurer and award could be passed against the insurer."

Further in, United India Insurance Co. Ltd. Versus Sakhamuri Venkayamma and others, reported in 2007 ACJ 1085, (Andhra Pradesh), after relying on the decision of Division Bench of the said Court in R. Kamala Versus Shaik Mohd. Ghouse, 2004 ACJ 2112 (AP) it was held that, "Section 155 of the Motor Vehicles Act directs that, the death of an insured does not bring about abatement of the proceeding."

Further as aforesaid, in the recent decision of this Court in, Pushpa Bajirao thorat (Supra), the same view has been taken. In that case also on the date of the accident the insured was admittedly alive. The only diference was that, on the date of the fling of the petition also in that matter the insured was alive. Here in this case before the fling of the petition respondent No.1 had expired, but that does not make any diference for the simple reason that the liability arose when the tortuous act was committed. When he was alive on that day, defnitely the claimants can take beneft of Section 155 of the Motor Vehicles Act. Therefore, the said petition was defnitely maintainable only against the Insurance Company in absence of bringing the legal representatives of respondent No.1 on record."

05. The ratio laid down in the aforesaid case clearly shows that in view of Section 155 of the M.V. Act, the cause of action survives against Insurance Company even after death of the owner of the vehicle. Therefore, the claimant has right to conduct the case without bringing on record the heirs of respondent No.1.

06. There is apparent error in the order passed below Exh.15. The law laid down by the Hon'ble Bombay High Court as well as the provisions of Section 155 of the M.V.Act have not been taken into account. Hence, the order passed below Exh.15 needs to be reviewed. If there is breach of the conditions of the insurance policy, then claimant will suffer. However, merely on the death of the owner of the vehicle, the claim petition is not abated. Hence, application deserves to be allowed. In the result, I pass the following order.

ORDER

1) Application is allowed.

2) The order passed below Exh.15 is hereby reviewed and it is hereby set aside.

3) Permission is granted to claimant to conduct the case without bringing on record the heirs of deceased respondent No.1.

Digitally signed by SARDAR RAJEKHAN TAMBOLI
Date: 2025.06.10 13:20:39 +0530

(S.R.Tamboli)
Member, M.A.C.T.
Satara.

Date: 09.06.2025
Place : Satara.