

ORDER BELOW EXH. 15 IN M. A. C. P. No. 91 OF 2019

(Krishna Ramchandra Shelar & others Vs. Akshay Rajendra Shinde & others)

CNR : MHST01-001249-2019

1) This is an application filed by the applicants under Section 155 of the Motor Vehicles Act, 1988.

2) It is contended that, Respondent No. 1, owner of offending vehicle had died on 09/10/2018, however since the claim against Insurance Company survives, therefore without bringing the legal heirs of deceased owner Respondent No. 1, Claim Petition may be prosecuted against Respondent No. 2 Insurance Company only.

3) Respondent No. 2 by filing reply submitted that, the Claim Petition cannot be prosecuted only against Insurance Company in absence of owner of offending vehicle. If the application is allowed, there will be legal impediment of non-joinder of necessary parties of Claim Petition, therefore, it is prayed that, application be rejected.

4) Heard Ld. Advocate H.V. Veer for the Applicants and Ld. Advocate M.N. Kulkarni for the Respondent No. 2.

5) Having considered the legal provision, Section 155 of the Motor Vehicles Act, 1988, it is provided that :

“Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925 (39 of 1925) the death of a person in whose favour a certificate 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.”

6) The object and reasons of Clause 155 of the Motor Vehicles Act, 1988, makes it clear that, in the event of the death of the insured after the happening of accident in which his motor vehicle was involved, the right of third parties will not be barred against the insured or his excise.

7) The law in Order-22 of Rule-2 of the Code of Civil Procedure, 1908, prescribed the procedure where one of several plaintiffs or defendants dies and right to sue survives. Having considered the contention of Claim Petitioner, the right to sue survives against the Respondent No. 2 only and there would no legal impediment in prosecuting the Claim Petition only against the Respondent No. 2. If the applicant wish not to bring the legal heirs of deceased Respondent No. 1 on record, the consequences would be the abatement of Claim Petition against Respondent No. 1.

8) The judgment cited by the Applicants of Hon'ble Delhi High Court in ***Oriental Insurance Co. Ltd. Vs. Biro Devi and others reported in 2015 ACJ 340*** is not helpful to the Applicants. In the said judgment, the Insurance Company pleaded that, when the insurer or his legal heirs of the offending vehicle was/were not made party to the Claim Petition, the Claim Petition stood abated against the Insurance Company, thus not liable to pay compensation. In Para-23 of said judgment, Hon'ble Delhi High Court observed that :-

“On perusal of the aforesaid section, it is clear that the liability of the owner arises independently under the provisions of Chapter XI of the Act as it does not bar the survival of any cause of action arising out of the said even against his estate or against the insurer. Therefore, the death of the owner of the vehicle is not a ground for evading the liability. Moreover, it has no legal significant in the contractual relationship between the insurer and insured for the purpose of fastening the liability.”

9) In view of the legal provisions and the observations of the Hon'ble Delhi High Court, no doubt right to sue against the Respondent No. 2 will survive, but result would be the claim against the Respondent No. 1 will be get abated. Hence, order.

ORDER

- 1) Application (Exh. 15) is disposed of in above terms.

Place : Satara
Date : 30th January, 2021.

(Nandkishor L. More)
Member, M.A.C.T.
Satara.

Dictated on	:	30/01/2021
Typed on	:	30/01/2021
Singed by Member	:	30/01/2021