IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICTION NO. 6854 OF 2015
IN FA/174/2015

SUNITA VIJAY HON AND OTHERS
VERSUS
BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
...
Advocate for Appellant : Mr. S.G. Chapalgaonkar.
Advocate for Respondent Nos.1 to 5 : Mr. Nitin Bhavar.

CORAM : A.M. BADAR, J.
DATE : 21st DECEMBER,2015.

PER COURT:

1] Heard learned counsel for the applicant/original claimants and Shri Chapalgaonkar, learned counsel for the non-applicant/insurance company. Perused the impugned judgment and award.

2] In a claim under Section 163-A of the Motor Vehicles Act, on account of death of one Vijay Hon, the learned Tribunal directed both son as well as insured to pay jointly as well as severally, compensation amounting to Rs. 3,69,500/- to the claimants. According to Shri Chapalgaonkar, the deceased himself was rider of the motorcycle, he was not owner of the said vehicle and accident occurred because of fault of the deceased. By relying on judgments of the Honourable Supreme Court in the matter of ***National Insurance Company Limited Vs. Sinitha and others, AIR 2012 SC 797***, ***Lingamma Vs. United India Assurance Company , AIR 2009 SC 2056, National Insurance Company vs. Balkrishnan AIR 2013 SC 473, National Insurance Company Vs. Jugalkishor AIR 1988 SC 719,*** as well as judgment of the Delhi High Court in the matter of ***ICICI Lombard General Insurance***

Co. Ltd. Vs. Jai Veer Singh & Ors., MANU/DE/5527/2012, Shri Chapalgaonkar argued that though comprehensive package policy of insurance covers the risk of pillion rider of the motor cycle, risk of the rider of the motorcycle is not covered by such policy. In submission of Shri Chapalgaonkar, in the matter of Jugal Kishor (supra), this aspect is considered by the Honourable Supreme Court, wherein, it is held that if the risk other than statutory risk is required to be covered, then, owner is required to pay separate premium as per the available regulations. He drew my attention to the circular dated 16.11.2009 of the Insurance Regulatory and development Authority, which was considered in the matter of ***Balkrishnan (supra)*** and submitted that the circular directs coverage of risk of the occupants of the car and pillion rider of the two wheeler.

3] Section 147 of the Motor Vehicles Act, 1988 deals with the statutory coverage of the insurance. The risk other than statutory is risk covered by separate contract and for that purpose, separate premium is required to be paid. In the case in hand, record shows that the contract of insurance of the two wheeler involved in the accident at Exhibit 40, makes it clear that personal accident risk not only of the owner but driver/rider of the motorcycle is also covered by accepting premium of Rs. 50/-. As such, prima facie, atleast some amount of compensation awarded by the learned Tribunal on account of death of deceased Vijay Hon, needs to be released in favour of the claimants. Hence the following order :-

[a] The application is partly allowed.

[b] Out of the amount of compensation assessed by the learned Tribunal, 50% of the amount be released in favour of the claimants, on tendering personal undertaking that in the event they are directed to redeposit the amount so withdrawn, they shall deposit the same within a period of one month.

[c] The apportionment and disbursement of the amount shall be strictly in accordance with the impugned award.

[d] Civil application is disposed of accordingly.

[A.M. BADAR, J]

grt/-