IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4182 of 2002 (O&M)
Date of decision 24 .07. 2015.

M/s The New India Assurance Co. Ltd. ...... Appellant.

versus

Shivender Pal Bedi anr.
...... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Shri R.K.Bashamboo, Advocate for the appellant.
Shri Ashwani Arora, Advocate for the respondents.

K.C.PURI, J.

New India Assurance Co. Ltd. has directed the present appeal against the Award dated 08.05.2002 passed by Shri R.C.Godara, Motor Accident Claims Tribunal, Chandigarh vide which the Tribunal partly accepted the claim petition filed under Section 163(A) of the Motor Vehicles Act, 1988 (in short – the Act) and awarded a sum of Rs.70,000/- holding respondents liable to pay the awarded amount jointly and severally with costs along interest @ 9% per annum from the date of petition till its realization.

2. Briefly stated the case of the claimant is that he was employed as Sales Executive in Hindustan Remedies, Parwanoo (H.P.). At that time he was 38 years old. On 4.7.2000, he was coming to Chandigarh from Delhi while driving the ill fated car No.CH-01-Y-6418 and reached Zirakpur at about 11.20pm. This car met with an accident with the truck bearing registration No. PB-12-A-4635 which was parked by the side of the road. Due to this accident, Rajinder Kaur who was sitting in the front side seat, died on the spot and the claimant received injuries on his person. His left hand and left clavicle got fractured. He also sustained injuries on his nose, chin and left thumb, which were given stitches. He was admitted in the hospital on 4.7.2000 and discharged on 5.7.2000. He is still under treatment.

3. On notice respondent No.1 did not appear despite her service, thus she was proceeded against ex-parte before the Tribunal vide order dated 17.10.2000.

4. Respondent No.2-Insurance Company in its written statement has pleaded that the petition was incomplete, vague and did not disclose any cause of action against Respondent No.2. The petition is bad for nonjoinder of owners and others of the truck. The petition has been filed in contravention of the provisions of the Act. The driver of the car was not holding a valid driving licence at the time of accident nor the car was insured with respondent No.2 on the date of accident. The claimant was therefore not entitled to any amount as compensation. Denying other averments, respondent No.2 prayed for dismissal of the claim petition.

5. From the pleadings of the parties, following issues were framed :-

1. Whether the claimant sustained injuries in a road side accident which took place on 4.7.2000 when he was driving the car No. CH-01-Y-6418 ?OPP

2. If issue No.1 is proved whether the claimant is entitled to any amount as compensation, if so, to what amount and from whom ? OPP

3. Whether the petition has been filed without any cause of action ? OPR

4. Whether the claimant was driving the car without a valid and effective driving licence at the time of accident ? OPR

5. Relief.

6. The parties have led their respective evidence on the aforesaid issues. In the light of the same, the Tribunal partly accepted the claim petition and awarded a sum of Rs.70,000/- to the claimant holding the respondents liable to pay the awarded amount jointly and severally with costs along interest @ 9% per annum from the date of petition till its realization vide Award dated 08.05.2002.

7. Feeling dissatisfied with the Award dated 08.05.2002, insurance company preferred the present appeal.

8. Learned counsel for the appellant has submitted that case of the claimant/injured himself is that he was driving the offending car from Delhi to Chandigarh and when it reached Zirakpur, the injured tried to lift the water bottle from the back side and in that process car turned towards left and dashed against the truck. It is submitted that driver and owner of the truck including its insurance company have not been arrayed, although

objection was specifically taken in the written statement.

9. The next contention raised by counsel for the appellant is that in case the facts pleaded in the claim petition are taken as it is, in that case also the claimant was negligent in driving the car and as such the Insurance Company cannot be ordered to pay the compensation under Section 163-A of the Act.

10. It is further contended that owner of the car is none-else but the wife of the claimant Shivender Pal Bedi, who is claiming compensation on account of injuries sustained by him in accident. The claimant shall step into the shoes of owner. For its own wrong, the claimant cannot get the compensation from Insurance Company. It is further contended that in the insurance policy, no specific premium has been paid for injuries to the owner/driver and as such the Insurance Company cannot be held liable to pay the amount of compensation even if it is a package policy.

11. In support of his contention, learned counsel for the appellant has relied upon the following authorities :-

(1) **Ningamma and another vs. United India Insurance Co. Ltd. Reported in 2009 ACJ page 2020 ;**

(2). **National Insurance Co. Ltd. vs. Sinitha and others reported in 2012 ACJ (SC) page 1.**

12. Learned counsel for the appellant has further submitted that by issuing comprehensive policy, liability towards owner/driver cannot be made unlimited. It covers risk of owner in respect of damages to insured vehicle. To support this contention learned counsel for the appellant has relied upon authorities **New India Assurance Co. Ltd. vs. C.M. Jaya**

reported in 2002 (2) RCR (Civil) page 22 and Constitutional Bench authority of Hon'ble Supreme Court in **Girraj Prasad and another vs. Union of India and another reported in 2015 ACJ page 1579 (P & H).**

13. In reply to the above noted submissions, learned counsel for the respondent/claimant has submitted that in respect of package policy, the liability to pay the amount by Insurance Company is unlimited. It is submitted that petition has been filed under Section 163-A of the Act and claimant is not required to prove the negligence. The owner and driver of the offending truck have not been arrayed as they were not necessary parties under Section 163-A of the Act. The claimant is required to prove all respective injuries in a Motor Vehicle Accident and is not required to prove the factum of negligence. It is submitted that the Award passed by the Tribunal fastening the liability of the Insurance Company is perfectly valid. Learned counsel for the respondents has relied upon the following authorities :-

1. **United India Insurance Company Limited. vs. Niharika and another FAO No.3355 of 2011 decided on 19.03.2012 ;**

2. **Oriental Insurance Co Ltd. vs. Asha Devi and others SLP (Civil) No.(s) 29726/2000 decided on 03.10.2013.**

3. **The Oriental Insurance Company Limited vs. Smt. Asha Devi widow and others FAO No.712/2009 (O&M) decided on 10.02.2009 ;**

4. **New India Assurance Company Limited vs. Parmod Kumar and another FAO No.3542 /2009 decided on 24.08.2010 ;**

5. **Bajaj Allianz General Insurance Company Ltd., vs. Smt. Sunita and others FAO No.3720 of 2011 (O&M) decided on 25.05.2011**

6. **United India Insurance Co. Ltd. vs. Sunil Kumar and another Reported in 2013 ACJ page 2856.**

14. I have given my thoughtful consideration to the rival submissions made by both the sides and have gone through the records of the case.

15. In order to properly appreciate the facts of the case, the relevant provisions of Section 163A of the Act, are reproduced as under :-

> **"163A, 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 the authorized 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."

16. Section 163-A of the Act has been inserted by Act No. 54 of 1994 w.e.f. 14.11.1994, in order to overcome the difficulties of road victims to prove the negligence of driver in a claim petition.

17. Counsel for the appellant has submitted that claimant himself is negligent and on that account, he cannot get the amount of compensation from insurance company. However, that contention is meritless.

18. In authority **National Insurance Co Ltd. vs. Sinitha and others' case (supra)** relied upon by the counsel for the appellant during the course of arguments, Shijo-deceased was driving motor cycle and while giving way to bus coming from opposite side, motor cycle hit a big lateric stone lying on the tar road. Due to impact, motor cycle overturned resulting in injuries to pillion rider. In these circumstances, the Hon'ble Apex Court has held that even in an act policy the insurance company is liable.

19. Authority **Ningamma and another's case (supra)** relates to act policy and not comprehensive policy and as such the said authority is distinguishable to the facts of the present case.

20. So far as authority **New India Assurance Co. Ltd. vs. C.M. Jaya's case (supra)** and authority **Girraj Prasad and another's case**

(supra) are concerned, these authorities relate to damage to the property of 3rd party. None of these authorities relate to claim in respect of injuries sustained by the driver of the vehicle. There is no dispute to the fact that terms of the policy will prevail. Counsel for the appellant could not point out anything from the policy that liability of the Insurance Company is limited in case of injury sustained by the driver/owner of the offending vehicle.

21. Hon'ble Apex Court in authority **National Insurance Company Limited vs. Ballakrishnan and another reported in (2013) Supreme Court Cases 731** while discussing the act policy and comprehensive/package policy has gone through the Insurance Regulatory and Development Authority (IRDA) which is presently the statutory regulatory authority regarding insurance. In the said authority, it has been held that the liability to pay the amount of compensation in the act policy and comprehensive policy are different. Even for the sake of arguments, it is presumed that claimant stepped into the shoes of the owner, in that case also, since there is no limit in the policy regarding amount of compensation to the owner and driver and as such the Insurance company has been rightly held liable to pay the amount of compensation.

22. This Court in authority **United India Insurance Company Ltd. vs. Niharika and another's case (supra)** has discussed this point.

23. Hon'ble Apex Court in authority **Oriental Insurance Co Ltd. vs. Asha Devi and others SLP (Civil) No.(s) 29726/2000**

decided on **03.10.2013** declined to entertain the special leave to petition only on the ground that amount involved is small one. The amount involved in the said case was Rs.3,36,000/- whereas the amount involved in the present case is Rs.70,000/-.

24. In authority **The New India Assurance Company Limited vs. Parmod Kumar and another's case (supra),** this Court after discussing the authorities **Ningamma and another's case (supra)** and **Insurance Co. Ltd. vs. Sinitna and others' case (supra)** held that the Insurance company is liable where the death of the two wheeler driver has taken place on account of hitting manhole lid and falling from the vehicle and succumbing to injuries.

25. Hon'ble Apex Court in authority **United India Insurance Co. Ltd. vs. Sunil Kumar and another's case (supra)** overruled the objection raised by the Insurance Company wherein the injured who was driving the vehicle was himself negligent. It was observed by the Apex Court that liability under Section 163-A of the Act is on the principle of no fault liability. Legislature never wanted the claimant to plead or establish negligence of owner or driver. It has been further observed that under Section 163-A of the Act, there is no provisions for apportionment of liability. It has been further observed in the said ruling that owner or Insurance Company cannot be permitted to prove the contributory negligence on the part of victim. Otherwise the very object of provision under Section 163-A of the Act would be defeated. So, the matter was referred to larger Bench for interpreting the scope of Section 163-A of

the Act in view of the observations made in authority **National Insurance Co. Ltd. vs. Sinitha and others' case (supra).**

26. So, in view of the above discussion, the appeal is without any merit and the same stands dismissed.

27. A copy of this judgment be sent to the Tribunal for strict compliance.

(K.C.PURI)
JUDGE

July 24 , 2015
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