**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.3082 of 2007 (O&M)

Date of decision: 2nd February, 2015

United India Insurance Co. Ltd.

… Appellant

Versus

Amrinder Singh and others

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present: Mr. Vikas Mohan Gupta, Advocate for the appellant.

Mr. Binderjit Singh, Advocate for respondents No.1 to 4.

Service of respondent No.5 – dispensed with.

FATEH DEEP SINGH, J.

The factual matrix that is necessitated to be highlighted is that on 06.06.2005 Bahadur Singh (now deceased) was going on a motorcycle bearing registration No.PB-03M-5670 along with one Tek Chand @ Kala and around 7.00 p.m. while on their way to Tapa Mandi from Mehta the motorcycle hit a tree which had fallen on the road and as a consequence of which Bahadur Singh suffered injuries leading to his death.

The heirs of the deceased comprising of his minor sons, widow and aged mother invoked jurisdiction of learned Motor Accident Claims Tribunal, Bathinda in terms of Section 163A of the Motor Vehicles Act, 1988 (for short, 'the Act') seeking compensation from the insurer of the vehicle as well as the owner.

The respondents contested this claim and through impugned Award dated 15.05.2007, learned Tribunal allowed the claim petition granting a sum of ₹3,52,800 to the claimants which is impugned in this appeal by the appellant-insurer.

Heard Mr. Vikas Mohan Gupta, Advocate for the appellant-insurer and Mr. Binderjit Singh, Advocate for claimants/respondents No.1 to 4.

What permeates from the hotly contested stands of the two sides is the very maintainability of the claim petition and the entitlement of the claimants to seek compensation under the provisions of Section 163A of the Act.

The amendment to the Act introducing Section 163-A has been brought about with effect from 14.11.1994 to ameliorate benefits for the victims of accidents and thus, to enlarge the scope such a special provision has been brought about. Under these provisions the claimant is not supposed to plead, prove or establish that death or permanent disablement was due to any wrongful or negligent act of any of the drivers/owners of the vehicle/vehicles involved. It is readily accepted by the claimants as well as appellants in their stand by way of pleadings and evidence that the accident was on account of nobody's fault. It is apparent on the records that respondent No.5 Gurbhej Singh is the registered owner of the vehicle. It is nobody's case that the deceased was an agent, borrower or an employee of the registered owner and rather what is reflected is that the deceased was his brother and working as an Art and Craft Teacher in Government Senior Secondary School, Mandi Khurd, District Bathinda and getting a salary of ₹12,154 per month though the same for the purposes of this provision has been pegged at ₹40,000 per annum. Though admittedly this is the second claim petition which certainly is maintainable in the light of the fact as has come up in the cross-examination of AW1 claimant Charan Kaur widow that previous petition was withdrawn as the registered owner was not arrayed as a party and thus, is not a decision on merits. Learned counsel for the appellant could not bring to the notice of this Court how withdrawing a claim petition earlier without decision on merits would come in the way of the present petition and which is not apparently a decision on merits. Even otherwise, the appellant did not assail the amendment orders dated 07.08.2006 till filing of the present appeal and thus is even otherwise beyond limitation and barred by the principle of laches as well.

What could be gathered from the parentage given in the head note and in the cross-examination of AW2 Tek Chand @ Kala eye witness, deceased Bahadur Singh and registered owner Gurbhej Singh are real brothers.

It has been stoutly argued by the appellant's counsel that by virtue of the insurance policy Ex.R1 the insurer is not liable and has sought support from Regulations of IRDA which is opposed with much elance on behalf of the respondents who have taken refuge on the basis of ratio laid down in **'Gurmeet Kaur and others v. Hardeep Singh and another' 2005-2 PLR Vol.CXL 503.**

Appreciating these arguments the insurance policy of this vehicle shows Gurbhej Singh respondent No.5 to be the registered owner and as per this policy, which is package/comprehensive policy, premium for compulsory personal accident to owner/driver has been paid.

It is not the case of the insurer that the deceased was not holding a valid and legally effective driving licence which is placed on the record and entitles the deceased to drive scooter, motorcycle, car, jeep and was valid with effect from 05.12.2000 till 31.05.2010 and therefore, was very much valid at the time of accident, much less the arguments of the respondents' counsel adequately refutes that of the appellant that the onus was upon the insurer and this issue was even not pressed by them before the Tribunal nor any evidence has been led to that effect.

Thus, what narrows down is the very effect of the coverage of the insurance policy. It is also not questioned that safety measures provided under Section 128 of the Act were not adhered to or there was any violation of the terms of the policy. Section 147 of the Act lays down requirements of the policy and limits the liability and by virtue of Sub-Section (5) which is reproduced below to lay emphasis:

> ***"147. Requirements of policies and limits of liability -***
>
> *xxxx xxxx xxxx*
>
> *xxxx xxxx xxxx*
>
> *(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this Section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."*

Thus, on the plain reading of this provision the insurer issuing the policy of insurance is liable to indemnify the person specified in the policy in respect of any liability which the policy purports to cover in respect of that very person or class of persons.

Reverting back to the instant case, Ex.R1 insurance policy enlists compulsory personal accident (PA) to owner/driver. Though it is sought to be projected by the appellant that by virtue of GR.36 issued by IRDA under Clause A provides that definition assigned to owner of insured vehicle holding an effective driving licence is termed to be the owner-driver for the purpose of this provision.

The Hon'ble Apex Court in **'Ningamma & another v. United India Insurance Co. Ltd.'** reported in **AIR 2009 SC 3056** relied upon by the appellants, which apparently is in respect of third party policy/Act policy which is quite distinct from package/comprehensive policy, has laid down the principle while interpreting Section 147 of the Act that the policy of insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorized representative carried in the vehicle or arising out of the use of vehicle in the public place, and has held while relying upon **'Oriental Insurance Company Ltd. v. Rajni Devi and others' 2008(4) RCR (Civil) 905** that even a borrower of a two-wheeler from its real owner steps into the shoes of the owner of the motor vehicle and if it is so laid, lays to rest this controversy that the deceased surely falls within the ambit of owner and therefore, covered by virtue of this policy.

The position of a borrower of a two wheeler has been equated with a third party in **'The Oriental Insurance Co. Ltd. v. Monika and others' 2012(1) PLR 605** and which law has been upheld by the Hon'ble Apex Court in **'Oriental Insurance Co. Ltd. v. Monika and others' SLP (Civil) No.CC 11479/2012 decided on 16.07.2012** and even the policy of insurance of the motorcycle in question is more of a contractual obligation than of a statutory one. Not much benefit can be drawn out of the ratios laid down in **'United**

India Insurance Co. Ltd. v. Ramrati and others' 2011(1) PLR 555; 'Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd.' AIR 2004 SC 2107; 'National Insurance Co. Ltd. v. Balakrishnan and another' 2013-2 PLR Vol.CLXX 1; and 'Oriental Insurance Co. Ltd. v. Hansrajbai V. Kodala' 2001-2 PLR Vol.CXXVIII 663.

As held in **Deepali Girishbhai Soni's case** (supra) and with deep reverence and apologies cap of annual income of ₹40,000, in the present day notified daily wages of a daily wager, will exclude him from its ambit and would create an innocuous situation quite contrary to the purpose for which such a welfare legislation has been brought about.

Even in **'New India Assurance Co. Ltd. v. Sadanand Mukhi and others' 2009(2) SCC 417** cited by the appellant's counsel lays down proposition that contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act and has held that by reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. Thus the ratios so relied upon by the appellants do not come to their aid.

Solace can be taken by the respondents as similar view has been expressed in **'Jaswinder Kaur and others v. Mrs.Rajinder Kaur and others' 2010(1) RCR (Civil) 668** and **'ICICI Lombard**

General Insurance Co. Ltd. v. Jagdish' 2010(3) RCR (Civil) 672 by this Court.

Moreover, one cannot remain in oblivion over the very object of the Act which is for the betterment to the claimants and victims of the motor vehicular accidents and thus, not only needs to be liberally construed with wider import and being an essential legislation in favour of the claimant the insurer cannot be given an undue advantageous position by this Court of unilateral conditions imposed in these policies as per their own business requirements and the Court has to weigh the scales even, so that administration of justice and so the purpose of the Act are not frustrated. Since as has been held in a catena of case law that provision of Section 163A of the Act is a social security provision which gives a right to the claimants to peg income of the deceased upto ₹40,000 per annum and thus, has been done so in the present case by the claimants to bring the case within the ambit of this enactment.

Thus, the questions framed earlier by this Court are answered accordingly. In the light of the same, the appeal apparently is without any merits and stands dismissed.

No costs.

(FATEH DEEP SINGH)
JUDGE

February 2, 2015
rps