IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5170 of 2006 with XOBJC No.189-CII of 2014

Date of decision: 22nd January, 2015

Vina @ Veena and others

… Appellants

Versus

Rajesh Kumar and another

… 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. Ashok Jindal, Advocate
for the appellants.

None for respondent No.1.

Mr. Paul S. Saini, Advocate – Standing Counsel
for the cross-objector/respondent No.2.

FATEH DEEP SINGH, J.

This will dispose off the appeal of the appellant-claimants as well as the objections preferred by the insurer and being cojoint matters pertaining to the same very Award dated 07.09.2006 of the learned Motor Accident Claims Tribunal, Bathinda, are therefore being disposed off together.

The facts in brief are that on 10.12.2005 Anil Kumar (since deceased) was going on borrowed motorcycle bearing registration

No.PB-03M-0118 owned by respondent Rajesh Kumar and insured with the cross-objector United India Insurance Company Ltd. Around 11.00 p.m. near railway bridge the motorcycle slipped and he fell down on the road and received injuries leading to his death. DDR pertaining to this accident and post-mortem were also undertaken. Claimants are the widow, minor son and aged parents who invoked the jurisdiction of the Tribunal in terms of Section 163A of the Motor Vehicles Act, 1988 (in short, 'the Act') seeking compensation.

Heard at length Mr. Ashok Jindal, Advocate for the appellants and Mr. Paul S. Saini, Advocate – Standing Counsel on behalf of the insurer/cross-objector/respondent No.2.

The stand of the owner is of total admission claiming that the vehicle at the time of accident was insured with the insurer. The insurer has taken the plea as to the non-maintainability of the petition denying that the claimants were in any manner entitled to compensation.

Learned Tribunal through the impugned Award, awarded a sum of ₹2,65,000. The same is impugned by the claimants seeking enhancement whereas the objectors have laid objections that the same cannot be allowed in any manner.

On account of the destruction of records, not much evidence is before this Court, however, the inter-se relationship and the avocation of the deceased who was proved to be working as a labourer with National Fertilizers Limited, Bathinda and his earnings from salary have been established to be ₹3,300 per month though the wife in her cross-examination has pegged these earnings between ₹2,400 to ₹2,500 per month and the Tribunal has considered in the light of the evidence this income to be ₹2,000 per month and the age of the deceased in the light of post-mortem report Ex.A5 and DDR Ex.A4 to be between 30-35 years and which could not be refuted by learned counsel for the insurer and which have been enlivened in the arguments of the appellants' counsel.

From the arguments of the two contesting sides, it permeates and as is reflected and proved in the evidence of the eye-witnesses by way of AW-1 Surinder Kumar and AW-3 Gurvinder Singh as well as deposition of RW-1 Assa Nand Arora examined on behalf of the owner and the registration certificate Ex.R3 it leads to irresistible conclusion that the deceased Anil Kumar was going on borrowed motorcycle when the accident took place and it was on account of nobody's fault the motorcycle slipped and deceased fell down and received injuries leading to his death.

It is seen that over a period of time the provisions of the Act have leaned towards the victims welfare covering more avenues to bring within its ambit cases where compensation could be awarded commensurate with the intent of the legislature which is more of welfare in nature and it was with this end in view with the amendment to the Act in 1994 provisions by way of Section 163A were introduced. The simplicitor reading of this provision shows that the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of use of the motor vehicle compensation as detailed in Schedule II to the legal heirs of the victim depending upon the case and further it was provided that the claimant shall not be required to plead or establish that death or permanent disablement for which claim has been lodged was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. However, in **'Ningamma & another v. United India Insurance Company Ltd.'** reported in **2009(13) SCC 710,** Hon'ble Apex Court has in such a situation interpreted that the borrower of the vehicle of the accident steps into the shoes of the owner and is termed as owner of the vehicle and therefore, cannot seek compensation as a third party and which learned counsel for the appellants could not rebut. Thus, by this analogy the learned Tribunal has certainly fallen into an error by awarding compensation to the claimants under the provisions of Section 163A of the Act.

In the light of the same, the impugned Award certainly goes contrary to the ratio laid down in **Ningamma's case (ibid)** and therefore, as has been argued these findings are wholly erroneous and perverse and are thereby set aside by allowing the cross-objections and dismissing the appeal with no order as to costs.

(FATEH DEEP SINGH)
JUDGE

January 22, 2015
rps