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

**FAO No.236 of 2008
Date of Decision: January 15, 2015**

Bajaj Allianz General Insurance Company Ltd. ...Appellant

Versus

K.C. Kirpal and others ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. J.S. Chatrath, Advocate
for Mr. Ashwani Talwar, Advocate
for the appellant-Insurance Company.

Mr. Gagandeep Singh, Advocate
for respondents No.1 and 2.

Mr. Ajay Pal Singh, Advocate
for respondent No.3.

FATEH DEEP SINGH, J.

This is an appeal by the Insurer against the award of the learned Motor Accident Claims Tribunal, Amritsar dated 17.8.2007 allowing the claim petition under Section 163-A of the Motor Vehicles Act, 1988 (in short, 'the Act') and awarding compensation to the tune of ₹2,44,500/- along with interest @ 6% per annum.

Heard, learned counsel for the parties. Learned counsel for the appellant-Insurer has not disputed the factual situation, whereby, as per the claim of the claimants, who are the unfortunate parents of the deceased Dhruv Chander Kirpal are that on 10.1.2006 deceased after attending marriage was coming in a borrowed City Honda Car No.PB-02-AE-0666 owned by respondent No.1-Keshav Kumar Dhand and insured with respondent No.2-M/s Bajaj Allianz General Insurance Co. Ltd and on account of bad weather the vehicle was fallen into a roadside drain leading to injury and death. Admittedly, the deceased was aged between 24-25 years and was getting salary of ₹6,000/- per month as has been detailed by the claimant Neeraj Kirpal AW1. The learned Tribunal has taken his earnings on account of being a degree holder of bachelor of Information Technology and assessed it to be ₹3000/- per month. It is not disputed that the deceased was a bachelor and considering the same the learned Tribunal had awarded compensation in question.

Learned counsel for the appellant had laid stress on the fact that in view of the law laid down in ***Ningamma and another vs. United India Insurance Company Limited 2009 (13) SCC 710*** since the deceased, son of the complainant was a borrower of the car owned by respondent No.1. Keshav Kumar Dhand and, therefore, in view of this position of law is termed to be the owner and, thus, as is argued by appellant the claimants were not entitled to compensation under the provisions of Section 163-A of the Act and which argument has sought to be refuted with much force and vehemence by the counsel for the respondents. It is the admitted stand of the parties that the vehicle at the time of accident was insured with the appellant. The certificate-cum-policy placed on the records depicts that the same was a comprehensive policy and quite distinguishable from the Act policy. In view of the settled position of the law the terms and conditions were settled by virtue of written contract, the Insurer cannot be allowed to wriggle out of the commitment made therein. A close look at the policy shows that there is schedule of premium for various eventualities and under the own damage head “personal accident cover owner/driver” has been charged and, thus, mandates upon the Insurer to undergo obligation arising out of this contract for having charged this premium and they cannot be permitted to get out of this obligation on the mere premise that their claim has come up under Section 163-A of the Act. Having regard to the welfare nature of the Statute and the position of law that the provisions of the Act needs to be liberally construed for the welfare of the claimants and, thus, these interpretations cannot be restricted on that score and which argument by the respondent's counsel has rightly rebutted the submissions of the learned counsel for the appellant. Learned counsel for the appellant could not convince this Court that even definition enshrined to driver means and can be construed to be any person including the insured provided that a person driving holds a effective driving licence at the time of accident and is not disqualified otherwise and in the light of any evidence otherwise the policy certainly holds good. Thus, the findings of the learned Tribunal cannot be found fault with.

No other argument has been raised. In view of the same the appeal being hopelessly without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

January 15, 2015
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