IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2161 OF 2010 (O&M)
DATE OF DECISION : 11th SEPTEMBER, 2015

United India Insurance Company Limited, Ludhiana

…. Appellant(s)

Versus

Balwant Kaur & another

…. Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

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Present : Mr. D. P. Gupta, Advocate for the appellant(s).

Mr. Pardeep Rajput, Advocate for respondent No.1.

Mr. Vipul Aggarwal, Advocate for respondent No.2.

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SURINDER GUPTA, J. (ORAL)

1. This is appeal by United Insurance Company Limited (later referred to as Insurance Company) against award passed by Motor Accident Claims Tribunal, Amritsar (later referred to as the Tribunal) on the application under Section 163-A of the Motor Vehicles Act (later referred to as the Act) filed by Balwant Kaur, whose son Arjinder Singh (later referred to as deceased) died in a motor accident while driving the scooter No.PB-46-B-8778 owned by her husband Gopal Singh-respondent No.2.

2. The case of the claimants in brief is that on 22.08.2008 the deceased had left Taran Tarn for Jandiala Guru on scooter No.PB-46-B-8778 owned by his father Gopal Singh. Amritpreet Singh, his cousin, was

also following him on separate scooter bearing No.PB-05-AU-9378. At about 3.00pm when they reached 3-4 killas ahead of Dera Radha Soami, in the area of village Khabe Dogran, a mini bus bearing No.PB-13-J-9475 came from opposite direction. It was being driven in a rash, careless and negligent manner by its driver. The bus came on wrong side of the road and hit the scooter of Arjinder Singh, who fell down and received grievous injuries. The driver of the mini bus fled away from the spot. Amritpreet Singh took Ajinder Singh to Civil Hospital, Taran Tarn in an injured condition where the Doctor declared him dead. Deceased was studying in Surya College near Kathua and was doing ETT course. He was 24 years of age and was self-employed having annual income of ₹40,000/-. The accident was caused due to the use of scooter No.PB-46B-8778.

3. This claim petition preferred under Section 163-A of the Act was contested by the respondent-appellant inter alia pleading that driver of the scooter was not holding a legal and valid driving licence. It also denied the accident. It was denied that liability of the insurance company to pay compensation is attracted in this case as the claim petition has been filed by the claimant in collusion with her husband Gopal Singh. The Tribunal on perusal of evidence allowed compensation of ₹4,12,500/- to the claimants.

4. Learned counsel for the appellant has argued that it is a case where as per the claimants, deceased was driving the scooter borrowed by him from his father. He as such was neither third party nor owner, as such, liability of the insurance company to pay any compensation is not attracted. He has relied on the observations in the case of ***Ningamma and another***

versus United India Insurance Company Limited, 2009(13) SCC, 710. In above case the Apex Court dealt with a similar question in para 12 of the judgment which reads as follows:

> "12. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provisions(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative?"

5. The above question was answered in para 21 of the judgment as follows:

> "21. In our considered opinion, the ratio of the decision in Oriental Insurance Co. Ltd. Vs. Rajni Devi, 2008(5) SCC, 736 case is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be an employee of the owner of the motorbike although he was authorized to drive the said vehicle by its owner and, therefore, he would step into the shoes of the owner of the motorbike. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said

provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle."

6. The above observation if applied to the facts of the present case, the claimant is entitled to compensation under Section 163-A of the Act, as extra premium was paid for compulsory personal accident to owner-driver of the scooter, which is evident on perusal of the insurance policy placed on file by the appellant as Mark A. In view of the law laid down in the citation referred by learned counsel for the appellant the other citations referred by him i.e. ***Sushila & others versus Sh. Pankaj Mahajan & another, 2013(1) PLR, 715*** and ***National Insurance Co. Ltd. Versus Rita Goyal and others, 2014 ACJ 2561***, are not required to be discussed in detail.

7. As conceded the owner-driver was covered by the insurance policy, as such, the appellant is liable to compensate the user of the scooter. Even otherwise if we take the concept of third party, for which the insurance company is liable to compensate in the event of accident of a motor vehicle, any party other than the contracting party under the contract of insurance becomes and can be called a third party. Normally and ordinarily a contract of insurance has two parties, i.e. insurer and the insured and any party other than contracting party falls within the definition of third party. It was also so observed by Delhi High Court in the case of ***United India Insurance Company Ltd. vs. Alka Mangla and others 2010 ACJ 272***. The above definition is, however, not required to be

discussed in detail or stretched further as in ***Ningamma & another (supra)*** the case was remanded to the High Court to consider the issues even if it found that provisions of Section 163-A of MVA were not applicable.

8. To understand the reference made to High Court while remanding the case it will be appropriate to refer to paras 34 to 37 of the judgment, which are as follows:

> "34. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not.
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> 35. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered

at least by the High Court. While entertaining the appeal, no effort was made by the High Court to deal with the aforesaid issues, and therefore, we are of the considered opinion that the present case should be remanded back to the High Court to give its decision on the aforesaid issues.

36. The High Court was required to consider the aforesaid issues even if it found that the provision of Section 163-A of MVA was not applicable to the facts and circumstances of the present case. Since all the aforesaid issues are purely questions of fact, we do not propose to deal with these issues and we send the matter back to the High Court for dealing with the said issues and to render its decision in accordance with law.

37. The High Court will also consider the question of quantum of compensation, if any, to which the claimants might be entitled to, having regard to the earning capacity of the deceased and "Just Compensation", if any. Since the claim is a very old claim, we request the High Court to consider the matter as expeditiously as possible."

9. The Tribunal in this case has allowed compensation of ₹4,12,500/-. In this case owner-driver was covered under the policy of insurance issued by the appellant and premium of this account was also

charged. Even if deceased had stepped into the shoes of owner of scooter, the insurer is not absolved of its liability to compensate for the injury caused due to user of the scooter by son of the owner. The learned counsel for the appellant-insurance company has further argued that the limit of liability of the insurance company was only to the tune of ₹1,00,000/- as mentioned in the policy itself, as such, the insurance company is not liable to pay the award amount.

10. This argument of learned counsel for the appellant-insurance company carries no weight. The claim petition was filed under Section 163-A of the Act which has introduced special provisions for payment of compensation or on structured formula basis as given in the second schedule attached with the Act. Any term and condition mentioned in the policy contrary to the statutory provision is not applicable while awarding compensation.

11. In view of my above discussion this appeal has no merits.

12. Dismissed.

11th September, 2015
'raj'

(SURINDER GUPTA)
JUDGE