IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 336 OF 2010 (O&M)
DECIDED ON : 30.06.2015

ICICI Lombard General Insurance Company Limited

...Appellant

versus

Sunil Kumar and another

...Respondents

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

Present : Ms. Vandana Malhotra, Advocate,
for the appellant.

Mr. Vishal Gupta, Advocate,
for respondent No.1.

K. C. PURI, J.

This is an appeal directed by the Insurance Company against the Award dated 22.07.2009 passed by Ms. Mandeep Pannu, Motor Accident Claims Tribunal, Rupnagar, vide which the claim petition preferred by claimant Sunil Kumar was partly accepted and a sum of ₹4,37,000/- was allowed as compensation.

Briefly stated, the case of claimant set forth in the claim petition is that on 20.07.2006, claimant Sunil Kumar was coming on motorcycle bearing No. PB-12-J-2474 Engine No.06E29E32987, Chasis No. 6E29F33165 and temporary No.

PB-12-D(T) 1840 from Kharar to Ropar along with one Mohit Kumar who was the pillion rider on said motorcycle. The said motorcycle was being driven by the claimant with proper care and caution and on the left side of the road. At about 9.30 PM, when the claimant reached near village Dau Majra, on GT Road, Tehsil Kharar, District Ropar, then suddenly a stray cow came in front of the motorcycle. In order to save the said cow, the motorcycle of the claimant slipped and struck against a tree on the road side. Due to the said accident, both the claimant as well as his pillion rider fell down on the road and sustained grevious injuries. The leg of claimant was fractured from three places i.e above the knee and below the knee. He also received injuries on other parts of the body. He was taken to Civil Hospital, Kharar from where he was taken to KUC Hospital, Sector-46, Chandigarh where his leg was operated several times. He remained admitted in the said hospital as indoor patient for several months and spent about ₹5 lacs on his treatment and is still under treatment. He also became permanently disabled. Therefore, claim petition claiming compensation to the tune of ₹10 lacs was filed.

Upon put to notice, respondent No.1-Insurance Company contested the claim petition by filing written statement taking preliminary objections that respondent No.1 is not liable to satisfy the claim of compensation of rider of the vehicle. The claimant is not a third party and as such, the Insurance Company is not liable to pay the amount of compensation. The objection of driving license was also taken. It was further pleaded in the written statement that no accident had taken place with the vehicle in question and the claim petition was filed in collusion with the owner of the vehicle.

Respondent No.2-owner of the offending vehicle also filed written statement admitting the factum of accident. The ownership of vehicle was also admitted. However, it was alleged that respondent No.2 was not negligent and the vehicle was duly insured.

Replication was not filed. From the pleadings of parties, following issues were framed :-

1) Whether the accident that took place at 9.30 PM on 20.07.2006 in the area of village Dau Majra, occurred due to the use of motorcycle No. PB-12J-2474 by the claimant ? OPP

2) Whether the claimant received injuries in the said accident and is therefore entitled to compensation of Rs.10 lacs from the respondents along with interest at the rate of 8% per annum ? OPP

3) Whether the claim petition is not maintainable on account of the preliminary objections taken in the written statement ? OPR

4) Relief.

Learned Tribunal has taken Issues No.1 and 2 together and returned the findings on both these issues in favour of the claimant and against respondents. Issue No.3 was also decided against the Insurance Company for want of evidence. Consequently, the claim petition was partly accepted and the claimant was allowed a sum of ₹4,37,000/- as compensation.

Feeling dissatisfied with the above said Award dated 22.07.2009 passed by Motor Accident Claims Tribunal, Rupnagar, the Insurance Company has preferred the instant appeal.

Learned counsel for the appellant has submitted that the claimant was neither third party nor owner of motorcycle in question. It is further submitted that the Hon'ble Apex Court in authority ***"New India Assurance Company Limited vs Sadanand Mukhi and others" 2009 (1) RCR (Civil) 817 (SC)***, held that Insurance Company is not liable to pay any amount of compensation, when the son of the owner was driving the vehicle. To further fortify this argument, learned counsel for the appellant has relied upon authority ***"Ningamma and another vs United India Insurance Company Limited" 2009 (3) RCR (Civil) 435.***

In rebuttal, learned counsel for the claimant has submitted that the terms of the policy will prevail. The policy was a package policy and the Hon'ble Apex Court in authority ***"National Insurance Company Limited vs. Balakrishnan and another" 2013 (2) PLR 1***, held that Insurance Company is liable to pay the compensation where there is comprehensive/package policy. It is further submitted that both the cases ***New India Assurance Company Limited's case (supra)*** and ***Ningamma and another's case (supra),*** relates to Act policy and as such, the same are distinguishable from the facts of present case. It is further submitted that additional premium has been taken by the Insurance Company as per the terms of the policy in respect of owner/driver, so the Insurance Company has been held liable.

I have given my thoughtful consideration to the rival submissions made by learned counsel for the parties and have gone through the records of the case.

The moot point raised by learned counsel for the appellant is whether on the facts of the present case, Insurance Company can be held liable to pay the amount of compensation ? In ***Ningamma and another's case (supra),*** the Hon'ble Apex Court has held that borrower of the vehicle stepped into the shoes of owner and as such, the Insurance Company is not liable. However, it is not clear from the facts of the said case whether it is a case of Act policy or package policy. Each case has to be decided depending upon the facts of that case. In the present case, from the perusal of record it is revealed that, the policy was a package policy and even special premium has been paid in respect of death or injury of owner/driver of the vehicle. Even if it is presumed that the claimant stepped into the shoes of owner, in that case also, the claimant is entitled to claim compensation from the Insurance Company also, as the premium has been paid. In authority ***National Insurance Company Limited's case (supra),*** the Hon'ble Apex Court has held that where there is comprehensive/package policy, in that case, the Insurance Company cannot avoid liability to pay the compensation. The authority ***Ningamma and another's case (supra)*** relates to "Act Policy" and not to "Comprehensive Policy" and as such, the facts of that case are distinguishable. The Hon'ble Apex Court in that case held that the son of the owner was driving the vehicle, and as such, he stepped into the shoes of owner and as such, the Insurance Company is not liable to pay the compensation. However, in the present case, special premium has been paid for the owner/driver and it is a package policy and as such, the Insurance Company has been rightly held liable to pay the amount of compensation.

Learned counsel for the appellant has submitted that an amount of ₹2,61,000/- has been allowed to the claimant in respect of medical bills. It is further submitted that according to provisions of Section 163-A of the Motor Vehicles Act, 1988 (in short "the Act") only an amount of ₹15,000/- can be allowed to the claimant. So, the claim beyond ₹15,000/- is liable to be rejected.

I have carefully considered the said submissions but do not find any force in the same.

In second Schedule of Section 163-A of the Act clause 4(ii) deals with medical expenses wherein it has been mentioned that the medical expenses incurred by the bills/vouchers but not exceeding as one time payment. From the bare perusal of the said provision of law, it is revealed that amount of ₹15,000/- is for one time payment. However, the bills Exhibit P-3 to P-118 relates to different dates. Otherwise also, this court in authority ***"Oriental Insurance Company Limited vs Kulwinder Kaur and another" 2014 (1) RCR (Civil) 756*** has allowed a sum of ₹2,90,000/- in respect of medical expenses in a claim petition filed under Section 163-A of the Act. It has been held that in suitable cases where treatment is long and loss is heavy, the compensation cannot be kept confined within the limitations prescribed in the Second Schedule of the Act. The said judgment has been given relying upon the authority of Hon'ble Apex Court titled as, ***"U.P State Road Transport Corporation vs Trilok Chandra" 1996 (2) RRR 718: 1996 (4) SCC 362***.

The claimant has suffered 25% permanent disability. The income of claimant has been taken as ₹36000/- per annum. The total loss of income has been taken as Rs.9000/- per annum and by applying the multiplier of 17, the amount of compensation has been calculated as ₹1,53,000/-. In respect of permanent disability, PW-3 has stated that the claimant has to undergo multiple surgeries over four months and he has still to undergo one more surgery. So, keeping in view all these evidence available on record, the amount of compensation to the tune of ₹4,37,000/- cannot be said to be excessive. More so, when the claimant has actually spent a sum of ₹2,61,000/- as expenses on his treatment.

No other point has been urged before me.

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

JUNE 30, 2015 **(K. C. PURI)**
shalini **JUDGE**