IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5006 of 2010 (O&M)
Date of Decision: March 26, 2015

ICICI Lombard General Insurance Co. Ltd. .... Appellant

vs.

Puri @ Puri Devi and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.S. Dhull, Advocate for the appellant.

None for the respondents.

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Kuldip Singh J.

CM-21708-CII-2010

For the reasons mentioned in the application, delay of 41 days in filing the present appeal is condoned subject to all just exceptions.

Application stands disposed of.

FAO-5006-2010

Challenged in the present appeal is the Award dated 30.03.2010 passed under Section 163-A of Motor Vehicle Act, 1988 (in short 'the M.V. Act') by Motor Accident Claims Tribunal (Adhoc), Patiala (in short 'the Tribunal'), vide which the claimants-respondent Nos.1 to 4 were awarded compensation to the tune of ₹2,40,000/- (Rupees two lacs forty thousand only) along with interest @ 6% per annum from the date of filing of the claim petition till realization on account of death of Inderjeet Singh.

The brief facts of the case are that on 10.03.2008, Inderjit Singh was going from his *dhaba* to his village Beer Bahadurgarh on his motorcycle bearing registration No.PB-11T-3888. The motorcycle was owned by his son Vakil Singh-respondent No.1. Harphool Singh, brother of Inderjit Singh was sitting on the pillion of the said motorcycle, which was being followed by Bahadur Singh on his separate motorcycle. When they reached near village Dhindsa on Rajpura-Patiala road, an unknown vehicle came from behind in zig-zag manner and after overtaking the motorcycle of Bahdur Singh, went on the extreme left side of the road and hit the motorcycle of Inderjit Singh. As a result of the accident, Harphool Singh fell on *kachha* portion of the road whereas Inderjit Singh fell down on the metalled road and suffered injuries. The driver of the offending vehicle ran away from the spot along with the vehicle. Inderjit Singh was shifted to AP Jain Hospital, Rajpura, where he succumbed to injuries and was declared dead. It is stated that the permanent registration number i.e. PB-11AH-4330 of the motorcycle was issued later on.

Before the Tribunal, respondent No.1 denied the accident. The Insurance Company took the plea that the deceased was not a third party and is not covered under the policy. It was stated that the deceased was gracious passenger and, therefore, the Insurance Company is not liable to pay any compensation.

After recording the evidence, the Tribunal passed the abovesaid Award under Section 163-A of the M.V. Act.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

Respondents did not appear despite service.

The contention of learned counsel for the appellant-Insurance Company is that the motorcycle in question was owned by Vakil Singh son of the deceased. It was third party policy and that the owner of the vehicle cannot be treated as third party in the claim petition under Section 163-A of the M.V. Act. Inderjit Singh (deceased) father of the owner of the vehicle in question was a borrower of the motorcycle and he stepped into shoes of the owner. Therefore, he also cannot be treated as third party and no compensation is payable.

Learned counsel for the appellant-Insurance Company has placed reliance upon the judgment of Hon'ble the Supreme Court in case of "***Ningamma & Anr. vs. United India Insurance Co. Ltd." 2009(3) RCR (Civil) 435***, wherein the Apex Court after examining the case law on the point observed as under:

> "*19.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. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the*

insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.

Since it was third party policy and the deceased was borrower of the motorcycle, therefore, he stepped into shoes of the owner and cannot be treated as third party. Thus, the claimants are not entitled to the compensation under Section 163-A of the M.V. Act. Though, the claimants are entitled to compensation for 'no fault liability' under Section 140 of the M.V. Act.

It being so, the impugned Award is set aside and instead ₹50,000/- are awarded to the claimants under 'no fault liability'. Out of which, ₹10,000/- goes to respondent Nos.3 and 4 in equal shares being the parents of the deceased and the remaining amount shall be equally shared by respondent Nos.1 and 2 being widow and son of the deceased respectively along with interest @ 7.5% per annum from the date of filing of the claim petition till its realization.

The appeal is accordingly allowed to abovenoted extent.

(KULDIP SINGH)
JUDGE

March 26, 2015
sarita