IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.6704 of 2011 (O&M)
Date of Decision: 24.03.2015

M/s Reliance General Insurance Company ......Appellant

Versus

Ranjit and another ......Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. **Whether Reporters of local papers may be allowed to see the judgment? Yes**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest? Yes**

Present:- Mr. Rajneesh Malhotra, Advocate, for appellant.

Mr. R.S.Hooda, Advocate for Mr. J.S.Hooda, Advocate, for respondent No.1.

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SHEKHER DHAWAN, J.

The present appeal has been filed to challenge the Award dated 30.07.2011 by Motor Accident Claims Tribunal, Faridabad (hereinafter referred as 'The Tribunal') whereby the Tribunal awarded a sum of ₹2,03,100/- as compensation to the claimant and directions were issued that claimant was entitled to recover ₹1,00,000/- from appellant-Insurance Company. Appellant-Insurance Company has challenged the said Award on the same.

2. Undisputed facts relevant for the purpose of decision of the appeal are that on 07.05.2006 at about 5-6 p.m., claimant Ranjit was going on motorcycle No.HR-51X-0486 which was being driven by him. All of a sudden, a cow came in front of the motorcycle and in order to save the cow he lost his balance and fell on the road along with the motorcycle. Claimant

sustained multiple/grevious injuries on his body and his left leg got fractured. He got treatment from G.M.Modi Hospital, New Delhi. Matter was reported vide DDR No.27 on the same date at Police Station Malviya Nagar, New Delhi. He reamined under treatment for one year and had spent a sum of ₹2,00,000/- on his treatement. Claimant also took plea that he became permanently disable and now he is a burden on his family and sought suitable compensation.

3. Claim petition was contested by the owner of the vehicle who was arrayed as respondent No.1 on the ground that no such accident had taken place and no such injuries were caused to the claimant in the said road accident. However, respondent No.1, who is owner of motorcycle bearing No. HR-51-X0486 admitted that he was the owner of the vehicle but the same was taken from him by the claimant on the date of accident. At any rate he was not liable to pay the compensation as the vehicle was insured with respondent No.2 on the date of accident.

4. However, Insurance Company denied the factum of accident as well as income of the claimant and amount having been spent on the treatment of claimant. He has also taken plea that claimant was not having a valid driving licence at the relevant time. However, the vehicle was insured with appellant's company in the name of Sarjit Singh (respondent No.2) on the date of accident.

5. The Tribunal after recording evidence of the parties, returned the findings that claimant was entitled to receive a sum of ₹2,03,100/- on account of compensation but he could recover a sum of ₹1,00,000/- only out of that from appellant-Insurance company. Appellant-Insurance company has taken a specific stand that they are not liable to pay any compensation.

6. At the time of arguments Mr. Rajneesh Malhotra, Advocate learned counsel for the appellant took plea that present claim petition was filed by respondent No.1 under Section 163-A of Motor Vehicles Act. Appellant had been directed to make payment of ₹1,00,000/- as owner of the vehicle who was also covered under personal accident claim policy (Ex.RX). Claimant is none else but real brother of the owner of the vehicle. As per learned counsel for the appellant the motorcycle was being driven by the brother but he was not covered under the policy (Ex.RX) at all as the same was personal accident claim policy taken by the owner of the vehicle.

7. Mr. R.S.Hooda, Advocate learned counsel for the respondent took the plea that the Tribunal had already considered all the aspects while awarding the compensation and, therefore, appellant i.e. Insurance company cannot run away from the statutory and contractual liability against them and the appeal is liable to be dismissed.

8. Having considered the rival contentions raised by learned counsel for both the parties this Court is of the considered view that most of the facts are not disputed in any way as regards to the decision of the appeal that accident had taken place on 07.05.2006. The motorcycle was being driven by Ranjit who is not registered owner of the motorcycle No. HR-51-X0486 but the brother of the registered owner. The accident had not taken place with the involvement of any other vehicle but because a cow had came in front of motorcycle all of a sudden and in order to save the cow he lost his balance and fell on the road and sustained injuries. The motorcycle was duly insured by the owner. The only question involved is that whether the insurance company is liable to pay any compensation to claimant/respondent No.1 who is neither the registered owner nor covered

under any insurance policy.

9. Similar matter had gone before Hon'ble Supreme Court of India in case **2009(1) RCR (Civil) 817 titled as New India Assurance Company Ltd. Vs. Sadanand Mukhi and others** and law was laid down that as per Section 147 of Motor Vehicles Act, 1988, the contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. By taking an 'act policy' the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. Hon'ble Supreme Court also observed that only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of Insurance policies.

10. Identical matter had gone before Hon'ble Supreme Court in case **2009(3) RCR (Civil) 435 titled as Ningamma & Anr. Vs. United India Insurance Co. Ltd.** and law laid down that in a petition under Section 163-A of the Act, the compensation is payable to third party, involved in the accident. As such claimant in the present case is not a third party. Liability under Section 163-A is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim.

11. Undisputedly the payment on account of personal accident claim can be given to the person duly covered under the insurance policy and not to anybody else including brother of the person covered under such a policy.

12. However a Tribunal has not considered these aspects at all while dealing which such aspects and fell in error while directing the insurance company to make payment of ₹1,00,000/- to the claimant in the case.

Whereas the appellant-Insurance company is not liable to pay any compensation in the present case.

13. Resultantly the appeal stands accepted, appellant-Insurance company is not liable to pay any compensation to the claimant as per Award dated 30.07.2011.

(SHEKHER DHAWAN)
JUDGE

March 24, 2015
msd