IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2847 of 2012 (O&M)
Date of decision 29.05. 2015.

Tata Aig General Insurance Company Ltd.
...... Appellant.

versus

Savita and others
...... Respondents.

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

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Ms. Vandana Malhotra, Advocate for the appellant.
Mr. S.K.Yadav, Advocate for respondent Nos.1 to 5.

K.C.PURI, J.

Tata Aig Gen. Ins. Co. Ltd. has challenged the Award dated 16.03.2012 passed by Shri Sudhir Jiwan, Presiding Officer, Motor Accident Claims Tribunal, Fast Track Court, Narnaul vide which an amount of Rs.4,95,400/- stood awarded to the claimants in a claim petition filed under Section 163-A of the Motor Vehicle Act, 1988 on account of death of Yogesh Kumar.

2. The facts, as put forth by the claimants, are that on 21.09.2010 at about 9.30p.m., deceased Yogesh Kumar was returning from Narnaul to

his house from the tube well in village Pankra. It was rainy season and when deceased reached ahead of the cremation ground, his motorcycle got slipped in a pit filled with water. A naked electricity wire meant for tube well connection of the cremation ground was lying in the pit due to which there was electric current in the pit and when the motorcycle which got slipped touch the naked electricity wire, Yogesh Kumar died. Above stated occurrence was seen by Dayanand son of Girdhari Lal who on his motorcycle was coming behind. The occurrence was also seen by Inderaj and other persons who were coming from their field. It is alleged that Yogesh Kumar was 30 years old and was earning Rs.3300/- per month by running a poultry farm. Therefore, the claimants have prayed for compensation to the tune of Rs.10,00,000/-.

3. On notice, respondent No. 1 in his written statement pleaded that though Yogesh Kumar died in the above stated accident but the petitioners are not entitled to claim any compensation from him. The insurance company is liable to pay compensation to the claimants.

4. Respondent No.2 in its written statement has pleaded that the present petition has been filed by the petitioners in collusion with respondent No.1. It is stated that petitioners are not entitled to claim any compensation under Section 163-A of the Motor Vehicles Act, because he was borrower of the motorcycle from the real owner and being so, he has stepped into the shoes of the owner and cannot be treated as third party. Respondent No.2 is not liable to indemnify respondent No.1 on the ground that on 21.9.2010 he violated the terms and conditions of the insurance

policy. The occurrence of the above stated accident has been denied by the respondent No.2.

5. From the pleadings of the parties, following issues were framed :-

1. Whether Yogesh Kumar (deceased) died in a road side accident took place on 21.9.2010 at about 9.30pm in the area of village Patikra, PS Narnaul, due to use of vehicle No. HR-99HQTA-5105 being owned by respondent No.1 and insured with respondent No.2, as alleged ? OPP

2. Whether petitioner is entitled to get compensation, if so in what amount and from whom ? OPA

3. Relief.

6. The Tribunal, after assessing the testimony of the witnesses accepted the claim petition vide Award dated 16.03.2012, as aforesaid.

7. Feeling dissatisfied with the above said Award dated 16.03.2012, the Insurance Company has directed the present appeal.

8. I have heard learned counsel for the parties and have gone through the records of the case.

9. The only point urged during the course of arguments is regarding liability. Learned counsel for the appellant has submitted that insurance is a contract and the parties are bound by the terms of the insurance policy. It is submitted that according to the Insurance policy brought on the record as Ex.R-1, the liability to pay the amount by the Insurance Company in respect of personal accident has been mentioned in (Section II). In this case, (a) Rs.50/- were charged for compulsory personal accident cover (owner driver) ; (b) Rs.70/- were charged as Optional personal accident cover (unnamed driver) ; © Rs.70/- were charged as

optional personal accident cover (pillion Rider). However, it is submitted that extent of limit has been mentioned in the policy that in case of any accident arising in respect of Section II-I(i) in respect of any accident and in respect of Section II-I(ii) in respect of any one claim or series of claims arising out of one event is upto Rs.1,00,000/-. It is submitted that even if the deceased is taken as unnamed driver of the offending vehicle, in that case, the liability to pay compensation more than Rs.1,00,000/- cannot be fastened. The said amount has already been paid to the claimants. The liability of the insurance company cannot be fastened for more than Rs.1,00,000/- payment in case of death of owner, driver or unnamed driver.

10. Counsel for the claimants/respondents has supported the Award passed by the Tribunal. It is submitted that this Court in **New India Assurance Company Ltd. vs. Umesh Kumari and others reported in 2011(2) ACJ page 890** fastened the liability on the Insurance Company when the premium towards compulsory personal accident to owner-cum-driver was paid. In that case, the deceased was son of the owner of the offending vehicle.

11. I have given my thoughtful consideration to the rival submissions and have gone through the records of the case with their able assistance.

12. This Court is conscious of the fact that Motor Vehicles Act, 1988 is a welfare legislation and the balance always tilt in favour of the claimants. However, at the same time, this Court cannot ignore the terms of

the policy. From the bare perusal of the policy Ex. R-1, it is revealed that although premium for personal accident in respect of owner, driver, unnamed driver and pillion rider have been paid but from the perusal of further terms of the agreement, it is revealed that the liability to pay the compensation has been mentioned upto Rs.1,00,000/- in respect of death or injury of the owner, driver, unnamed driver and pillion rider is to the extent of Rs.1,00,000/-. Although it is a comprehensive policy but terms of the contract have to be abide by. The State cannot be said to be 3rd party for the purposes of accident.

13. So far as authority **New India Assurance Company Ltd. vs. Umesh Kumari and others' case (supra)** is concerned, the facts of that case are distinguishable as in that case, it is not clear whether the liability was limited to the extent of Rs.1,00,000/- in respect of personal accident. That point was not discussed in the said ruling. At the cost of repetition, this Court has to invoke the terms of policy. As per terms of the policy, the liability of the Insurance Company is to the extent of Rs.1,00,000/-. The said amount of Rs.1,00,000/- is stated to have paid through cheque to the claimants.

14. So, in view of the above discussion, the appeal stands partly accepted. The liability of the Insurance Company is held to the extent of Rs.1,00,000/- along with interest @ Rs.7½% per annum from the date of petition till realization and the liability to pay the remaining awarded amount shall be that of owner Pritam Singh. The Award passed by the Tribunal stands modified to that extent.

15. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

May 29, 2015
sv