

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO No.862 of 2012 (O&M)

Date of Decision: 28.07.2015

Girdhari Lal and others

.....Appellants

Versus

Suresh Kumar and others

.....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. Dheeraj Narula, Advocate,
for appellants.

Mr. V.K.Garg, Advocate,
for respondent No.3.

SHEKHER DHAWAN, J

Appellants have filed the present appeal against award dated 30.11.2011 by Motor Accident Claims Tribunal, Sirsa (hereinafter referred as 'The Tribunal') whereby 'The Tribunal' awarded compensation to the tune of ₹3,20,000/- on account of death of Smt. Pushpa Devi and liability to pay the amount of compensation was fastened upon driver and owner of the offending vehicle and Insurance Company was absolved of liability to make the payment of compensation.

2. Claimants-appellants have taken the plea that 'The Tribunal' fell in error while absolving the Insurance Company to make the payment of compensation because the present petition was filed under Section 163-A of Motor Vehicle Act and Insurance Company is having limited rights.

Defences like victim of accident was tort feaser, pillion rider, gratuitous passenger or employee of the insured are not at all available to the Insurance Company under Section 163-A of the Motor Vehicles Act. More so Section 149 of Motor Vehicle Act fastened liability upon Insurance Company to make payment of compensation. Learned counsel for appellants also took the plea that as per provisions of Section 163-A and 149(2) of the Act, it is ample clear that Insurance Company is liable to third party even where there is breach of specific condition enumerated in Section 149(2) except where the policy was void on the ground of having been obtained by non-disclosure of material facts. Even it is assumed that the driver was having no valid driving licence or owner/insured violated and contravened any terms and conditions of the insurance policy even then initial liability is of the insurance company towards the third party. But 'The Tribunal' has completely ignored this fact while absolving the Insurance Company from making payment of compensation. Rather the liability was to be fastened upon respondent No.3 i.e. Oriental Insurance Company to make payment of compensation and thereafter to recover the amount from driver and owner of the vehicle.

3. While arguing on this point learned counsel for respondent-Insurance Company took the plea that there was no driving licence placed on file and driver also did not appear in the witness box. In that eventuality owner violated the terms and conditions of policy and Insurance Company has rightly been absolved of its liability to make the payment of compensation and appeal deserves to be dismissed.

4. Having considered the rival submissions made by learned counsel for the parties, this Court is of the considered view that since the present

claim petition was filed under Section 163-A of Motor Vehicle Act and offending vehicle bearing registration No.HR-39-A-6187 was insured with respondent No.3, the liability to pay the amount of compensation to the claimant in this case was of Insurance Company and thereafter insurance company could recover the amount from the driver and owner. Such a law was laid down by Hon'ble Supreme Court in case **National Insurance Co. Ltd. Vs. Swaran Singh and others 2004(2) RCR (Civil) 114.**

5. Identical matter was before Hon'ble Supreme Court in case **Rukmani Vs. New India Assurance Co. Ltd. 1999, ACJ 171** and Hon'ble Supreme Court observed that even if the driver does not produce driving licence during the investigation proceedings despite demand, Insurance Company shall be liable to make the payment of compensation. The requirement of law is that Insurance Company is required to establish the breach by cogent evidence. More so the liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of the third party is also statutory.

6. Hon'ble Supreme Court laid down the law in case **National Insurance Co. Ltd. Vs. Swaran Singh and others (supra)** that mere absence, fake or invalid at the relevant time are not the defences available to insurer against the insured or third parties. To avoid its liability towards the insured also the insurer has to prove the insured to be guilty of negligence and failure to exercise reasonable care in matter of fulfilling the condition of policy regarding use of vehicle.

7. 'The Tribunal' has ignored these facts and proposition of law while absolving the Insurance Company for making payment of compensation.

8. Resultantly, the present appeal is accepted and award dated 30.11.2011 passed by 'The Tribunal' stands modified to the extent that respondent No.3 i.e. Oriental Insurance Company to make the payment of the awarded amount to the claimant at the first instance and thereafter respondent No.3 can recover the same from the owner and driver of the vehicle.

(SHEKHER DHAWAN)
JUDGE

July 28, 2015
msd