

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**FAO No.2461 of 2013 (O&M)
Date of Decision: October 14, 2015.**

Reliance General Insurance Company Ltd.

.....APPELLANT(s).

VERSUS

Dharmender and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Suman Jain, Advocate
for the appellant (s).

Respondents No.1 to 3 ex parte.

Service of respondent No.4 already dispensed with.

SURINDER GUPTA, J.

This appeal has been filed by Reliance General Insurance Company Limited against the award dated 31.01.2013, whereby Motor Accident Claims Tribunal, Jind (later referred to as the Tribunal) on the petition under Section 163-A of Motor Vehicles Act, 1988 (later referred to as the Act) allowed compensation of ₹1,99,500/- for the death of Shruti daughter of claimants, due to the hitting of motorcycle bearing registration No.HR-31-C-2913 on which the deceased was riding with her uncle Randhir Singh and cousin Sidharth while going to school by truck bearing registration No.HR-63A-1427 (later referred to as the offending vehicle) being driven by respondent No.3 Lakhmi (respondent No.1 in the claim

petition).

2. The facts regarding this incident is mentioned in para 24 of the petition reads as follows:-

“That on the fateful day i.e. on 2.11.2011 Randhir Singh, elder uncle (Tau) of Shruti and Sidharth started on a Motor Cycle No.HR-31C-2913 driven by Randhir Singh, from their village Taloda for going to Shahid Udham Singh Sr. Sec. School, Jamni, which is private School and run by Randhir Singh. These two kids namely Sidharth and Shruti used to study there in that School and used to go there with their Tau Randhir Singh daily. Lakhmi s/o Amar Singh i.e. respondent No.1 is first cousin of Randhir Singh and resides in the same village Taloda was well aware of the daily morning routine of Randhir Singh and these two kids for going to School from village Taloda. On 2.11.2011 at about 8.15 A.M. When the Motor Cycle driven by Randhir Singh with two Kids namely Sidharth and Shruti reached a little ahead of Fauji Petrol Pump towards Jamni Chowk on main Jind Safidon Road, respondent no.1 intentionally hit while steering his Truck No.HR-63-A-1427 against the Motor Cycle with an intention to kill all the three occupants. All the three occupants fell down on Kacha Portion of the road. With this act of respondent no.1 namely Lakhmi only Shruti died unfortunately and with the good luck and grace of God Randhir Singh & Sidharth suffered small injuries. After causing the said intentional accident (Murder) respondent no.1 Lakhmi ran away from the spot along with his Truck. Thus the accident was caused by respondent no.1 intentionally while using/misusing a Motor Vehicle i.e. the aforesaid Truck No.HR-63A-1427. Hence respondent no.1 being driver, respondent no.2

being owner and the respondent no.3 being the insurer of the said offending Truck No.HR-63A-1427, all are fully liable and responsible to pay the compensation to the petitioners jointly and severally for the death of Shruti.”

3. In the written statements filed by respondent No.1, respondent No.2 and respondent No.3 separately, the alleged incident/accident was denied.

Pleadings of the parties led to the framing of issues as follows:-

1. Whether the accident in question resulting in death of Shruti daughter of petitioner took place on account of use of truck bearing registration No.HR-63-A-1427? OPP (reframed on 22.01.2013)
2. If issue No.1 is proved, whether the petitioners are entitled to any compensation and if so to what extent and from whom? OPP
3. Whether respondent No.1 and 2 had violated any term and condition of insurance policy? OPR
4. Relief.

4. The Tribunal while recording finding on issue No.1, concluded that the accident in question took place on account of use of the offending vehicle.

5. Learned counsel for the appellant has argued that it is a case where the claimants have alleged the murder of their daughter by respondent No.1 Lakhmi, as such, provisions of the Act are not applicable to the facts and circumstances of this case. He has relied upon the observations in case of *Rita Devi (Smt.) and others Vs. New India Assurance Co. Ltd. and another* (2000)5 Supreme Court Cases 113.

6. The question which requires determination in this appeal is as to whether in view of the allegations by the claimants that the accident was deliberately caused by the driver of the offending vehicle, petition under Section 163-A is maintainable?

7. Before proceeding further, it will be relevant to have look on the facts of the case. The accident took place when Randhir Singh (PW4) was going to drop Shruti (deceased) and Sidharth to their school on his motorcycle. The offending vehicle hit the motorcycle from behind resulting in death of Shruti and minor injuries to Sidharth and Randhir Singh. Though the allegations have been levelled in the FIR that Lakhmi, driver of the offending vehicle, had deliberately hit the motorcycle of Randhir Singh due to his dispute with Randhir Singh and his family, it is apparent that the death of Shruti was caused on account of use of motor vehicle i.e. offending vehicle.

8. Section 163-A incorporates special provisions as to the payment of compensation on structured formula basis. It reads as follows:-

“163A. Special provisions as to payment of compensation on structured formula basis.—

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in

respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

9. As is clear from the perusal of the above provision, the claimants are not required to plead or establish any wrongful act or neglect or default of owner of the vehicle or of any other person. The above provisions widen the scope of application of Section 163-A of the Act. In case of *Rita Devi (Smt.) and others (supra)*, auto-rickshaw driver was murdered by the passengers who had hired the same and his dead body was recovered by the police on the next day. The auto-rickshaw was never recovered. On the claim petition under Section 163-A of the Act, the Tribunal allowed the compensation of ₹2,81,500/-. However, in appeal, the judgment/award passed by the Tribunal was set aside by Gauhati High Court (Kohima Bench). While discussing the application of Section 163-A of the Act to the facts of that case, Hon'ble Apex Court in para 9 and 10 observed as follows:-

“9. A conjoint reading of the above two sub-clauses of Section 163-A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident '*arising out of the use of the motor vehicle*' (emphasis supplied), without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for

payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words '*death due to accident arising out of the use of motor vehicle*'.

10. The question, therefore is, can a murder be an accident in any given case? There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.”

10. Hon'ble Apex Court observed that in the fact and circumstances of the case, death of driver was caused accidentally in the process of committing theft of auto-rickshaw and observed in para 18 as follows:-

“**18.** In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion

that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.”

11. Keeping in view the ratio of decision in case ***Rita Devi (Smt.) and others (supra)***, when the facts and circumstances of the present case are examined, I find no illegality or infirmity in the observations of the Tribunal that the death of Shruti was on account of use of the offending vehicle in this accident. Death was direct result of use of motor vehicle (offending vehicle). The mere fact that the claimants have alleged that it was a deliberate attempt of driver of the offending vehicle to hit the motorcycle, is no reason to reach the conclusion that the provisions of Section 163-A are not attracted to this case. The claimants have not alleged motive for 'Lakhmi', driver of the offending vehicle, to murder the minor girl. Even if, he had some enmity with father of deceased or Randhir Singh, driver of the motorcycle, it is not suffice to reach a conclusion that dominant intention was to cause murder of deceased.

12. In view of my above discussion, this appeal has no merits.

13. Dismissed.

October 14, 2015.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether to be referred to Reporters

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Yes/No