

260.

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

FAO No.1831 of 2014 (O&M)

Date of decision: 08.01.2016

The Oriental Insurance Company Limited ... Appellant

versus

Smt. Indro @ Indro Devi and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sanjiv Pabbi, Advocate,
 for the appellant.

 Mr. Ashwani Arora, Advocate,
 for respondents 1 to 3.

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

K.Kannan, J. (Oral)

1. The appeal is by the insurer on a plea of exclusion of liability cast for death of a pillion rider in a motorcycle. A two-wheeler in which the deceased was travelling was admittedly under a package policy that covered the risk to the pillion rider as well.

2. The argument of the learned counsel for the insurer is that the vehicle in which the deceased was travelling was hit from behind by an unknown vehicle and the driver of the motorcycle had originally given a complaint which was lodged as FIR that he was

going on the left side of the road and an unknown vehicle had dashed against him that resulted in his falling from the vehicle to the *kutcha* portion of the road, while the deceased fell on the concrete portion of the road and obtained fatal injuries. At the time of trial, according to the counsel, the claimants were trying to improve the version by bringing an evidence of one Raj Kumar whose name was not found anywhere mentioned in the FIR as having followed the motorcycle in which the deceased was driving and through him the evidence was given that the motorcyclist was going at high speed and an unknown vehicle had dashed against, it as if to suggest the negligence as purely of the motorcyclist in driving the motorcycle at a high speed.

3. According to the appellant, the petition had been filed under Section 166 of the Motor Vehicles Act and, therefore, there was a compulsion for the pillion to prove to the negligence of the insured's vehicle and if statement of Raj Kumar were to be discarded as unworthy as a got up witness, the statement given by Satpal, the driver of the mother, and recorded in FIR alone would obtain credence. He would argue that the driver of the motorcycle was sought to be brought as a witness by summons on payment of diet money but he was not prepared to take the witness stand. The claimants themselves did not take the courage to bring him as a witness to explain the statement in the FIR. This, according to him,

would prove that there was no negligence on the part of the driver of the motorcycle and the insurer could have been made liable only for no fault liability under Section 140 of the Motor Vehicles Act. The counsel would place reliance of a judgment of the Supreme Court in **A. Sridhar Versus United India Insurance Company Limited-2001 (4) PLR 804** that dealt with a case of an accident due to oil spill on the road and when the court found that the accident did not occur on account of the negligence, the Supreme Court had observed that the High Court was justified in directing compensation to be paid under Section 140 only.

4. In any accident involving two vehicles, as far as a person who was passenger or a pillion rider, the accident must always be understood as resulting from composite negligence of two vehicles. An accident simply does not happen with zero negligence on one side. It is the lack of attention for a split second that must be understood as the cause for many a debacle on roads. A careful motorcyclist going on the left side getting hit from behind, if tactful could still steer to a place of safety, though such skill might be extraordinarily rare. It is not as if the deceased died out of any injury by a direct impact of an unknown vehicle on any vital part of the body and the motorcyclist himself could take no part of the blame. It was, on the other hand, that the motorcyclist was fortunate to fall on the mud portion of the road and it was the fall on the

concrete surface that caused the death of the deceased pillion rider. In such a situation, I will take surely that there was a modicum of negligence on the part of the insured motorcyclist. It will be wholly wrong to make an inference that the motorcyclist was careful in causing death of the pillion rider. Such an expression would be an oxymoron. Accident and alertness are antithetical. The existence of one rules out the other. A careful motorcyclist may never have involved even a pillion rider in the misfortune of a fatal injury. I will, therefore, decline the argument that the statement of the motorcyclist before the police attributing negligence only to the unknown driver must be taken at his face value and no part of negligence could be attributed to the motorcyclist to make possible a claim under Section 166.

5. Even without reference to evidence of guilt on the part of the motorcyclist, a package policy that covers the risk to a pillion rider is a hybrid policy of motor insurance with life insurance. It requires proof of the fact of use of a motor vehicle and a claim before the MACT as requiring negligence to be established under Section 166. The Motor Vehicles Act itself has gone through a sea-change and the policies have also undergone changes to accommodate claims in situations where no negligence at all need to be proved. While Section 140 rules out a requirement of any negligence, Section 163-A allows for a structured formula to be

applied to a limited class of persons without having to prove the negligence of yet another person that had caused the accident. A strict liability under Section 163-A is a further extension of an accommodation under the Motor Vehicles Act-a new concept of making the insurer liable even without proof of negligence. A policy such as, a personal accident cover provides for liability for death or injury to a person that is akin to life insurance or accident insurance without any need to prove negligence. A package policy covering the risk to passenger or pillion rider is an innovation propelled by judicial interventions. In the strictness of application in the manner conceived under the Act, Insurance Company Act and the Motor Vehicles Act, a comprehensive policy so called did no more than enlarging the liability to not merely to third parties but allowed for claims for own damage to the vehicle. It was the judgment in **Pushpabai Purshottam Udesb and others Versus Ranjit Ginning & Pressing Company (P) Limited and another- AIR 1977 SC 1735** that impelled the Insurance Regulatory Authority to issue circulars to comprehensively cover even persons who were not third parties. This extension of liability cannot actually be seen under the bare provisions of the terms of the policy themselves, but they have come through later instructions. (see particularly, IRDA/ CIR/ FFU/ 073/11/2009, dated 16.11.2009). The way the law of insurance has been understood, a package policy that

covers the risk of a pillion rider in a motorcycle accident will be triggered for its applicability in every situation that the incident of death or injury takes place. No further proof is necessary for making a claim for the representatives of the deceased in such a situation. I will indeed hold to the next extreme situation of there being no requirement for proof of any negligence whatever when a claim is made by a representative of a person, who was killed by the use of a motor vehicle. The two factors that are required to be established are: (i) that the death was on account of use of a motor vehicle and (ii) the vehicle in which he was travelling was insured under a package policy. The liability shall be attracted immediately in the claim before a Tribunal.

6. The appeal is dismissed with costs of ₹10,000/- against the Insurance Company.

(K.KANNAN)
JUDGE

08.01.2016
sanjeev