In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 12.12.2016

FAO No.3755 of 2014(O&M)

United India Insurance Company

---Appellant

versus

Poonampreet Kaur and others

---Respondents

FAO No.4503 of 2014(O&M)

Poonampreet Kaur and others

---Appellants

versus

Manjit Singh and another

---Respondents

FAO No.4504 of 2014(O&M)

Poonampreet Kaur and others

---Appellants

versus

Manjit Singh and another

---Respondents

FAO No.3835 of 2014(O&M)

United India Insurance Company

---Appellant

versus

Poonampreet Kaur and others

---Respondents

FAO No.5159 of 2014(O&M)

Poonampreet Kaur and others

---Appellants

versus

Manjit Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Vinod Chaudhri, Advocate
for the appellant in FAO Nos. 3755 and 3835 of 2014
for respondent No. 2 in FAO Nos. 4503, 4504 & 5159 of 2014

Mr.Sanjeev Goyal, Advocate
for the appellants in FAO Nos.4503, 4504 & 5159 of 2014
for respondent Nos. 1 to 3 in FAO No. 3835 and 3755 of 2014

***

Rekha Mittal, J.

This order will dispose of FAO Nos. 3755, 3835, 4503, 4504 and 5159 of 2014, detailed hereinabove, as these have emerged out of the same accident that took place on 7.5.2013 in which Harjit Singh, his wife and daughter Roopanpreet Kaur died while travelling in car bearing No. PB-10-CN-8183 owned by Manjit Singh son of Joginder Singh.

The Motor Accidents Claims Tribunal, Sangrur (in short "the

Tribunal") awarded an amount of Rs. 5 lakhs with regard to death of Roopanpreet Kaur, Rs. 4,10,000/- for death of Sumandeep Kaur wife of Harjit Singh whereas the application for compensation in regard to death of Harjit Singh was order to be dismissed.

With regard to death of Sumandeep Kaur, the claimants have filed FAO No. 4503 of 2014 seeking enhancement of compensation whereas the insurance company has filed the appeal (FAO No. 3835 of 2014) to assail the award. Qua death of Roopanpreet Kaur, the insurance company has filed FAO No. 3755 of 2014 and the claimants have filed FAO No. 4504 of 2014 seeking enhancement of compensation.

FAO No. 5159 of 2014 has been filed by the claimants to challenge the award dismissing application for compensation in regard to death of Harjit Singh.

The parties shall be referred to as 'the claimants' and 'the insurance company' for facility of reference.

FAO Nos. 3755, 3835, 4503 and 4504 of 2014

Counsel for the insurance company has assailed liability of the insurance company on the premise that as the deceased were travelling in car bearing No. PB-10-CN 8183 owned by Manjit Singh and insured with the appellant insurance company only under an act policy, the insurance company is not liable to pay compensation as the deceased are to be treated as gratuitous passengers in the car in question. In support of his contention, he has placed reliance upon judgments of Hon'ble the Supreme Court of India ***National Insurance Company Limited vs. Bala Krishanan and another 2013 ACJ 199, United India Insurance Company Limited Simla vs. Tilak Singh and others (2006-2) Vol. CXLIII Punjab Law Reporter 297.***

Another submission made by the insurance company is that the application for compensation filed under Section 163-A of the Motor Vehicles Act, 1988 (in short "the Act") but the Tribunal has allowed an amount of Rs. 50,000/- each under conventional heads i.e. loss of love and affection, funeral expenses and last rites for the death of Roopanpreet Kaur and Sumanpreet Kaur. It is argued that Section 163-A of the Act provides a structured formula in view of 2nd Schedule appended thereto. As per the schedule, the claimants, at best, can be awarded an amount of Rs. 2000/- for funeral expenses qua general damages.

Per contra, counsel for the claimants has supported the award by referring to the insurance policy obtained by Manjit Singh son of Joginder Singh. It is argued that the insured paid a premium of Rs. 1,085/-

besides service tax of Rs. 134/-, therefore, the insurer had covered liability qua death or bodily injury to passengers travelling in the car who are to be treated as a third party. In addition, it is submitted that in the policy, clause dealing with 'limits of liability' provides that under Section II-I(1) death or bodily injury in respect of any one accident; as per Motor Vehicles Act. Further argued that section II-Liability to third party has been detailed in judgment of the Apex Court ***Rani Gupta and others vs. M/s United India Insurance Company Limited and others 2009(5) SCC(Cvil) 172*** that says :-

> SECTION-II-LIABILITY TO THIRD PARTY
>
> 1. XXXX XXXX XXXX
>
> (i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.
>
> (ii) xxx xxx xxx."

Counsel has further relied upon judgment of the Apex Court ***Bhagylakshmi vs. United Insurance Company Limited and another 2009 (7) SCC 148***.

I have heard counsel for the parties, perused the paper book particularly copy of the cover note and the insurance policy made available during course of hearing.

The crucial question that calls for determination is whether the policy purchased by the insured is only an act policy or the same is comprehensive/package policy. In the cover note, in column 'Insured's Declared Value' it is described as an act only. In the policy, on the cover note as well as page 3, it has been mentioned 'private car liability only policy'. Counsel for the claimants has failed to point out if the insured has paid any separate premium for covering risk of death or bodily injury to passengers in the car in question. A perusal of the policy leaves no manner of doubt that the insured had taken only an act policy and not a comprehensive/package policy.

Hon'ble the Apex Court in ***National Insurance Company Limited vs. Bala Krishnan and another's case (Supra)*** has dealt with this issue in detail by taking into consideration the provisions of Section 147 of the Act and various judgments on the issue referred to in paras 8 onwards including judgment of Delhi High Court in Yashpal Luthra and another vs. United India Insurance Company Limited and another 2011 ACJ 1415, wherein evidence of the competent authority "Tariff Advisory Committee (TAC) and Insurance Regulatory Development Authority (IRDA) was reproduced particularly circular dated 16.11.2009 issued by IRDA to CEOs to the insurance companies and eventually recorded its conclusion in para 21, reads thus:-

> 21. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive / Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the

> earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

This judgment also deals with the decision by the Apex Court in **Bhagyalakshmi and others' case (supra)** relied upon by counsel for the claimants. In view of enunciation of law laid down in **Bala Krishnan and anothers' case (supra)**, there is no escape from conclusion that if the policy is only an act policy, the same cannot cover a third party risk of an an occupant in a car. However, if the policy is a comprehensive/package policy, liability would be covered. Further held that in **Bhagyalakshmi and others' case (supra)**, these aspects were not noticed by the court, therefore, the matter was referred to a Larger Bench. In ***Rani Gupta and others' case (Supra)*** relied upon by counsel for the claimants, the policy was a "private Car Package Policy" as notified by the Tariff Advisory Committee with effect from 1.7.2002 the terms and conditions whereof were reproduced in para 7 of the judgment of which counsel for the claimants sought to take advantage. As in the case at hand, policy in question is only an act policy, the claimants cannot derive any advantage to their contention from the terms and conditions of a package policy noticed in ***Rani Gupta and another's case (supra).*** Counsel for the claimants has failed to cite any judgment wherein the insurance company has been fastened with liability to pay compensation even in respect of injury or death of a passenger travelling in a car insured with the insurance company under an act policy. In this view of the matter, I find merit in contention of the insurance company that learned Tribunal has wrongly and illegally fastened liability upon the insurance company to pay compensation to the claimants. As a natural consequence, the insurance company shall not be liable to pay compensation in regard to death of Sumandeep Kaur and Roopanpreet Kaur.

Even otherwise, award passed by the Tribunal allowing an amount of Rs. 50,000/- each under conventional heads cannot be allowed to sustain being in clear violation of the structured formula laid down in the 2nd schedule appended to Section 163-A of the Act. The claimants, at best, could be awarded an amount of Rs. 2000/- for loss of love and affection.

For the foregoing reasons, the appeals filed by the insurance company are allowed in the aforesaid terms.

FAO No. 5159 of 2014

The learned Tribunal dismissed the claim petition in regard to death of Harjit Singh by relying upon judgment of Hon'ble the Apex Court ***Ningamma and another vs. United India Insurance Company Limited, 2009(3) RCR(Civil) 435.***

Counsel for the claimants has submitted that the insured paid separate premium of Rs. 100/- for obtaining PA cover for owner. It is argued that even if Harjit Singh had borrowed the vehicle from insured Manjit Singh, Harjit Singh would step into the shoes of Manjit Singh, therefore, the insurer cannot escape its liability to pay compensation qua death of Harjit Singh. In the alternative, it is argued that Harjit Singh can be treated as a third party, therefore, the insurance company is liable to pay compensation in regard to death of Harjit Singh.

Counsel for the insurance company has supported the findings of the Tribunal with the submission that PA cover was only in respect of the owner i.e. Manjit Singh and a borrower from Manjit Singh cannot take advantage of the special contract between the owner and the insurer. In addition, it is argued that as the policy in question is an act policy, any person travelling in the car cannot take resort to the act policy for claiming compensation in regard to injury or death of a gratuitous passenger.

I have heard counsel for the parties, perused the paper book and the policy in question.

The controversy with regard to borrower of a vehicle being entitled to take advantage of PA cover on the analogy that he steps into the shoes of insured to claim compensation is squarely covered by judgment of this court **Sajida and others vs. Sabnam and another FAO No. 738 of 2013** decided on 23.11.2016, against the claimants. With regard to contention that the deceased is to be treated as a third party for extending benefit of act policy, the same is untenable in view of discussion made hereinbefore while deciding the appeals in respect of death of Sumandeep Kaur and Roopanpreet Kaur. This apart, as per plea of the claimants, Harjit Singh was driver of the car and he lost control over car as a result of which the car fell into the canal. The very fact that the deceased left control over the car is sufficient to infer that the deceased was either rash or negligent in his driving or did not take due care and caution. As the deceased himself was a tort-feasor, the claimants cannot assert their claim for grant of compensation in view of the principle that a wrong doer cannot take advantage of his own wrong. In this context reference can be made to Judgment of Hon'ble the Supreme Court ***National Insurance Company vs. Sinitha 2012 (1) RCR(Civil) 205.***

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

12.12.2016
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No