

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

**FAO No.738 of 2013 (O&M)
Decided on: 23.11.2016**

Sajida and others

....Appellants

Versus

Sabnam and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Ashish Gupta, Advocate
for the appellants.

Respondent No.1 already *ex parte*.

Mr. Rajesh K. Sharma, Advocate
for respondent No.2.

REKHA MITTAL, J.

The present appeal directs challenge against the award dated 01.12.2012 passed by the Motor Accidents Claims Tribunal, Nuh (in short 'the Tribunal') whereby application filed by the claimants under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act') for grant of compensation has been dismissed.

The facts relevant for disposal of the present appeal are that Smt. Sajida and others filed the application for compensation in regard to death of Yusuf in a motor vehicular accident that took place on 12.05.2009. It is averred that Farukh along with Yusuf was returning from Tarwas on a motorcycle Hero Honda bearing chasis No.MBLHA10EJ99E01010, engine No.HA10AE99E05860, owned by Sabnam. The motorcycle was driven by Yusuf. When they reached Tijara-Bhiwadi road, a *neel gai* suddenly came in front of their motorcycle and the riders fell down on the road due to motorcycle

having slipped and sustained injuries. Yusuf and Farukh were taken to Tijara Hospital where Yusuf was declared brought dead.

Sabnam, owner of the motorcycle filed reply and, in turn, denied the accident. It is pleaded that the actual offending vehicle ran away after causing the accident. Respondent No.2 (the insurance company) filed reply *inter alia* alleging that the claim petition is not maintainable and Yusuf was not holding a valid and effective driving licence at the time of accident.

The Tribunal framed the following issues for determination:-

1. Whether the accident in question resulting in death of Yusuf son of Attahullah took place on 12.05.2009 at about 9.30 p.m. at Tijara Bhiwadi road, near Shekhpur Village out of the use of vehicle motorcycle Heor Honda bearing Chasis No.MBLHA10EJ99E01010, Engine No.HA10AE99E05860 driven by Yusuf? OPP.
2. If issue No.1 is proved, whether the petitioners are entitled to get compensation, if so, to what amount and from whom? OPP.
3. Whether Yusuf driver of the offending vehicle was not holding a valid and effective driving licence to drive the offending vehicle at the time of accident. It is, its effect? OPR.
4. Whether respondent No.1 has violated the terms and conditions of the insurance policy, as alleged. If so to what effect? OPR.
5. Whether the petition is not maintainable as alleged? OPR.
6. Whether the petitioners have no locus standi or cause of action to file the present claim petition? OPR.
7. Whether the petitioners have not come to the Court

with clean hands or have concealed the true and material facts from the Court? OPR.

8. Relief.

The claimants examined Attahullah PW1 and Constable Sant Ram PW2. They tendered into evidence copy of insurance policy Ex.P1, copy of sale letter Ex.P2, copy of driving licence of Yusuf Ex.P3 and copy of post-mortem report Ex.P4.

Counsel for the insurance company produced insurance policy Ex.R1 and terms and conditions of the insurance policy Ex.R2.

The learned Tribunal, in view of its findings recorded in para 16 of the award, has held that the deceased shall be deemed to be owner of the motorcycle and being the owner, his legal representatives cannot be claimants as well as tort-feasors. Further held that on perusal of insurance policy Ex.R1 and its terms and conditions Ex.R2, it is revealed that owner of the vehicle was not entitled to get compensation. As a consequence, issues No.1 and 2 were determined against the claimants and issues No.5 and 6 were decided in favour of the insurance company and eventually, the petition was ordered to be dismissed.

Counsel for the claimants/appellants has not disputed that the motorcycle in question is owned by Sabnam, brother's wife (Bhabhi) of deceased Yusuf. It is also not disputed that Yusuf had borrowed the motorcycle from its owner. The question that falls for consideration is whether the claimants shall be entitled to get compensation by resorting to the provisions in the package policy that there was a P.A. cover for owner, driver and a premium of Rs.50/- in

this regard was paid by the insured/owner.

Counsel for the claimants has urged that the judgment of Hon'ble the Supreme Court of India "***Ningamma and another vs United India Insurance Company Limited***", 2009(3) RCR (Civil) 435 cannot be applied to deny compensation as in that case, policy obtained by the insured was an act policy and in those circumstances, Hon'ble the Supreme Court held that as borrower of the vehicle cannot be held to be a third party for the purpose of provisions of the Motor Vehicles Act, claimants (legal representatives of the deceased) are not entitled to compensation under Section 163-A of the Motor Vehicles Act. It is argued with vehemence that as in the case at hand, the owner obtained a package policy with a P.A. cover for the owner driver, borrower from the owner shall step into the shoes of owner by borrowing the vehicle with his permission, therefore, the insurance company cannot escape its liability to pay compensation. For this purpose, he has relied upon judgment of this Court "***New India Assurance Company Limited vs Umesh Kumari and others***", 2010(1) RCR (Civil) 669.

Counsel for the insurance company, on the contrary, has supported the award with the submissions that as personal accident cover on payment of separate premium was only *qua* the owner driver and not for the owner or driver, the claimants cannot derive any advantage to their contention from the judgment in ***Umesh Kumari and other's case (supra)*** wherein premium towards compulsory P.A. to owner-cum-driver was paid. In support of his contentions, he has referred to judgments of this Court "***Asha Rani and others vs Shiv Ram and another***", 2013 ACJ 1472, "***Sushila and others vs Pankaj***

Mahajan and another, 2014 ACJ 935, ***“National Insurance Company Limited vs Jagdish Kumar and another”***, FAO No.1330 of 2012 decided on 04.02.2016, ***“Cholamandlam MS General Insurance Company Limited vs Rajesh and others”***, FAO No.3764 of 2010 decided on 14.05.2014. Further reference has been made to judgment of the Delhi High Court ***“Oriental Insurance Company Limited vs Kavita Singhal and others”***, 2014 ACJ 1574.

Counsel has further submitted that as this Court in ***Umesh Kumari and other's case (supra)*** has not taken into consideration GR-36 providing for personal accident (P.A.) cover under motor policy for owner – driver which was taken into consideration in the latter judgments, the claimants cannot derive any advantage to their contentions from what has been held in ***Umesh Kumari and others's case (supra)***.

I have heard counsel for the parties, perused the paperbook and the records.

Perusal of the insurance policy Ex.R1 would make it evident that it was two-wheeler package policy whereby the insured/owner paid net premium of Rs.819/- including Rs.84/- towards service tax. There is no dispute between the parties that the insured paid a premium of Rs.50/- for compulsory P.A. cover for owner driver. In ***Sushila and other's case (supra)***, this Court in para 11 of the judgment, on a detailed consideration of the Indian Motor Tariff Regulations issued by the Tariff Committed particularly GR-36 providing for personal accident cover for owner – driver has held in para 13 that the reference to owner – driver must be understood as owner who is

capable of driving and who is driving the vehicle at the relevant time. It shall not be understood as owner – driver (owner or driver). This is evident from regulations that require that owner – driver to be duly licensed to drive the vehicle. Similarly, in *Rajesh and other's case (supra)*, this Court refused to rely upon the judgment in *Umesh Kumari and other's case (supra)* by taking into consideration GR-36 which was not considered in *Umesh Kumari and other's case (supra)*.

Counsel for the claimants has not made any submissions that GR-36 of the Indian Motor Tariff cannot be taken into consideration for the purpose of deciding if the personal accident cover for owner driver would also include within its sweep owner or driver. Taking into consideration the consistent view of this Court in the judgments relied upon by counsel for the insurance company, assigning a legal and valid reason to differ with the earlier view in *Umesh Kumari and other's case (supra)*, I find merit in the contention of the insurance company that the claimants cannot derive advantage to their contention from the judgment in *Umesh Kumari and other's case (supra)* to claim compensation even by invoking the provisions of Section 163-A of the Act.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

Nov. 23th, 2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No