

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.8685 of 2015 (O&M)

Date of Decision.05.01.2016

Oriental Insurance Company LimitedAppellant

Vs.

Sashi Devi and anotherRespondents

Present: Mr. Satpal Dhamija, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The insurance company is on appeal to contend that the deceased was pillion rider in two wheeler owned by the insured and driven by him. The insured had also died. The claim petition had been filed only against the insurance company without impleading the legal representatives of the insured. I would find that there was surely a technical error in filing a case only against the insurance company and not against the legal representatives of the insured when the insured had died but I will not take this to be so serious flaw as to require intervention only at this ground and therefore, directed the counsel to argue on merits to satisfy myself whether the award against the insurer could be justified.

2. The contention is that on the day when the accident had taken place, there was fog and the insured had driven against a round tana and came to fatal injuries to himself and to the pillion rider.

According to appellant, there was only a DDA entry relating to the

accident and the police did not escalate it to lodging of a FIR. If the deceased who was driving the vehicle had himself died, there is consequently an abatement of criminal action that was possible and the mere fact that the case was not investigated further cannot be a ground to infer that there was no negligence on the part of the insured. I would take this to be a *res ipsa loquitur* situation of a person driving on a foggy day without appropriate care and driving against the round tana. I will, therefore, reject the argument that there was no negligence established.

3. Yet another argument made by the counsel is that the appropriate action would have only under Section 163-A of the Motor Vehicles Act and not under Section 166. I have found that there was a clear case of negligence on the part of the deceased in driving through fog without adequate care. There was no compulsion for a person to resort only to an action under Section 163-A of the Motor Vehicles Act, for Section 163-A is not the sole repository for claim for compensation. The claimants in appropriate cases would always have the benefit of an option for prosecuting a case either under Section 163-A of the Motor Vehicles Act or under Section 166. The claimants have proceeded under Section 166 which is perfectly tenable.

4. It is admitted case that the insured had a Package Policy that covered the risk also to the pillion rider. The award passed against the insurance company would, therefore, be required to be supported and I would find no reason for intervention. The appeal of the insurance company is dismissed.

(K. KANNAN)
JUDGE

January 05, 2016

Pankaj*