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

**FAO No. 2303 of 2000 (O&M)
DECIDED ON: APRIL 25, 2017**

NATIONAL INSURANCE COMPANY LTD.

.....APPELLANT

VERSUS

KRISHNA DEVI & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

Mr. Sandeep K. Sharma, Advocate
for respondents No. 1 to 5.
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JASPAL SINGH, J

Feeling dissatisfied against the award dated May 31, 2000 passed by Motor Accident Claims Tribunal, Rohtak in MACT Case No. 234 of 1998 titled Krishna Devi & others vs. Ram Kishan and another; whereby, compensation to the tune of ₹6,00,000/- has been awarded to the claimants on account of death of Ranbir Singh occurrred in a vehicular accident on November 24, 1997 involving truck bearing registration No. HR-48-A 7151 driven by Ram Kishan.

According to the claimants deceased Ranbir Singh was a transporter and licensed driver and owner of the truck, which was insured with the appellant-company vide cover note No. 933659, dated October

08, 1997 for the period from October 23, 1997 to October 22, 1998. At the relevant time, Ram Kishan was driving the truck from Billari to Delhi and deceased was sitting in the cabin of the truck as co-driver, when it met with an accident, which proved fatal to Ranbir Singh. The matter was also reported to the police and FIR No. 155 of 1997 under Sections 279, 337, 338, 304-A IPC was registered at Police Station Ahmed Nagar against Ram Kishan. It has further been averred in the claim petition that the deceased was earning ₹12,000/- per month, at the time of his unfortunate demise at the age of 35 years.

Upon notice of the claim petition, it was resisted by Ram Kishan as well as Insurance Company. However, keeping in view the evidence and arguments addressed by learned counsel for the parties, it was partly allowed vide impugned award dated May 31, 2000. Aggrieved against the impugned award, Insurance Company preferred the instant appeal.

While assailing the impugned award, it has been argued with vehemence by learned counsel for appellant/company that the same is absolutely against the settled canons of law as well as evidence available on file. The appellant/company while filing written statement has taken a preliminary objection that claim against the company is not maintainable, as deceased Ranbir Singh was not a third party. Since, he was insured and was sitting in the cabin of the offending vehicle and died in accident, claim with regard to his death is not covered under the terms and conditions of the policy. The policy covers the third party and the company cannot be made liable for the death of the insured in the accident. Findings recorded by learned Tribunal while passing the award making the appellant-company liable to pay the compensation is absolutely against the terms and conditions of the policy as well as settled proposition of law. To buttress his contention, learned counsel for the appellant has placed reliance upon the pronouncements of Hon'ble Apex Court rendered in the cases of ***New India Assurance Company v. Sat Pal Singh; 2000 (1) RCR (Civil) 274***, ***New India Assurance Company. Ltd v. Asha Rani; 2003 (1) RCR (Civil) 671*** and ***New India Assurance Company Ltd. v. Sadanand Mukhi & others; 2009 (1) RCR (Civil) 817.*** As such, the imposition of liability to pay the compensation upon the appellant/company by learned Tribunal is absolutely wrong and illegal and against the settled proposition of law. Accordingly, impugned award is liable to set aside.

On the other hand, learned counsel for respondents No.1 to 5 while controverting the plea(s) put forth by learned counsel for the appellant has submitted that there is no infirmity or illegality in the impugned award. The liability to pay the compensation has rightly been fastened upon the appellant-company. The words 'any person' appearing in Section 147 of Motor Vehicles Act, 1988 (for short 'Act') must be construed to include the owner and driver also under the Act, which is a beneficiary legislation and thus, the award passed by learned Tribunal cannot be said to be in violation of provisions of the Act or insurance policy.

This Court has weighed the rival submissions made by the parties and have minutely scanned the impugned award as well as judgments relied upon by learned counsel for the appellant/company and this Court is of the considered view that impugned award is not sustainable in the eyes of law, as the deceased Ranbir Singh cannot be treated as a third party, so as to award compensation under the provisions of Act. The Hon'ble Apex Court in the case of ***Oriental Insurance Co. Ltd v. Jhuma Saha,;*** ***2007 (1) RCR (Civil) 761*** has held as under:

> *"10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.*
>
> *11. Liability of the insurer Company is to the extent of indeminification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise."*

An identical question again came up for hearing before Hon'ble Apex Court in the case of ***United India Insurance Co. Ltd. v. Davinder Singh;*** ***2007 (4) RCR (Civil) 790;*** in which the afore-said principle was reiterated by holding:-

> *"10. It is, thus, axiomatic that whereas an insurance*

company may be held to be liable to indemnify the owner for the purpose of meeting the object and purport of the provisions of the Motor Vehicles Act, the same may not be necessary in a case where an insurance company may refuse to compensate the owner of the vehicle towards his own loss. A distinction must be borne in mind as regards the statutory liability of the insurer vis-a-vis the purport and object sought to be achieved by a beneficent legislation before a form constituted under the Motor Vehicles Act and enforcement of a contract qua contract before a Consumer Forum."

The afore-said authorities were relied upon by Hon'ble Apex Court in Sat Pal Singh's case (supra) and Asha Rani's case (supra)

In case ***Ningamma and another v. United India Insurance Company; (2009) 13 SCC 710;*** it was held by Hon'ble Apex Court that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as per the provisions thereof do no enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable thereof.' In other words, this Court clearly held that the apparently wide words 'any person' are qualified by the setting in which they occur and that 'any person' is to be understood as a third party.

In view of observations made by Hon'ble Apex Court in the afore-said authorities, it is crystal clear that the expression 'any person' occurring in Section 147 of the Act does not include the owner of the offending vehicle as a third party. As such, the grant of compensation and fastening the liability to pay the same upon the appellant-company vide impugned award, is absolutely wrong and against the settled provisions of the Act. As such, the impugned award is not sustainable in the eyes of law.

As a sequel of afore-said discussion and keeping in view the authoritative pronouncements referred to above, this Court has no hesitation in holding that appellant-company is not liable to pay the compensation. The impugned award dated May 31, 2000 passed by Motor Accident Claims Tribunal, Rohtak cannot be sustained and is set aside by way of acceptance of instant appeal.

Accordingly, instant appeal is allowed.

No order as to costs.

JASPAL SINGH
JUDGE

APRIL 25, 2017
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Whether speaking/non-speaking ***Yes/No***
Whether reportable ***Yes/No***