IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1039 of 2008
Date of Decision: December 22, 2017

Kulwinder Kaur and others

......Appellants

versus

Bhag Singh and another

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

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Present: Mr. Ashwani Arora, Advocate
for the appellants

None for the respondents

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Sudhir Mittal, J.

The case has been called twice. None is present on behalf of the respondents, even on second call. Service is complete in this case. The appeal is of the year 2008, therefore, I am proceeding to decide the same in the absence of counsel for the respondents.

2. This appeal has been filed by the widow and minor children of Rajinder Singh (deceased) against award, dated 28.01.2008, passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal'). The claim petition was dismissed by the learned Tribunal on the ground that the deceased was not covered by term "third party" nor was he covered under the personal accident cover for owner–driver.

3. On 16.01.2005, deceased-Rajinder Singh was travelling from village Ghataur to his village Bardar alongwith Bhag Singh on a motorcycle bearing registration No. PB-12-D-(T)-0588. Bhag Singh was riding pillion and the motorcycle was being driven by the deceased Rajinder Singh. Bhag Singh was the

owner of motorcycle. While travelling on the road leading from Kurali to Siswan, immediately after crossing the Dasarna Bridge, a child crossed the road on his bicycle. Deceased-Rajinder Singh applied brakes to save the child and on account of this the motorcycle skidded. Both the rider as well as Bhag Singh (owner) received serious injuries and they were taken to Civil Hospital, Kurali. On the next day i.e. 17.01.2005 deceased-Rajinder Singh was shifted to Dhawan Hospital, Ropar and the very next day he was referred to PGI, Chandigarh where he died on 20.01.2005 due to injuries sustained by him in the accident. The present appellants preferred a claim petition for compensation of ₹ 10 lacs with interest @ 12% per annum. It was averred in the claim petition that the deceased was an agriculturist and was earning ₹ 3000/- per month. The claim was admitted by respondent No. 1 – Bhag Singh (owner). In his written statement he stated that the motorcycle was insured with respondent No. 2–insurer and it was liable to indemnify him. On the other hand, respondent No. 2– insurer denied the accident. Alternatively, it was pleaded that the deceased-Rajinder Singh was not holding a valid driving licence.

4. Learned Tribunal held that the accident was proved from the evidence of Bhag Singh RW1. However, on account of the fact that the claimants could not produce the driving licence of the deceased nor did they summon a report from the concerned Licensing Authority, a finding was returned that the insured had violated the terms of the Insurance Policy Ex. R1, thus, absolving the insurer of its liability. It was also held that the policy Ex. R1 did not cover a person such as the deceased who was driver of the motorcycle at the time of the accident but was not its owner. Thus, the Tribunal held that the claim petition was not entitled to succeed.

5. Learned counsel for the appellants–claimants has submitted that the onus of proving the factum of violation of a term of the Insurance Policy was upon the insurer and the insurer should have summoned the record of the Licensing Authority to prove that the deceased was not licenced to drive motorcycle. It was

not the duty of the claimants to prove that the deceased was holder of a valid driving licence. In this regard reliance has been placed upon judgment of this Court in FAO No. 6405 of 2011 decided on 12.12.2011 titled ***"The Oriental Insurance Company Limited vs. Monika and others"*** wherein, reliance has been placed upon a judgment of Hon'ble Supreme Court in ***Narchinva vs. Kamat and another etc. vs. Alfredo Antonio Deo Martins, AIR 1985 SC 1281.*** It is further the contention of the learned counsel that the Insurance Policy Ex. R-1 was a comprehensive policy and also provided cover to the owner of the motor vehicle. The deceased was driving the motorcycle with the consent of the owner and had, thus, stepped into the shoes of the owner, therefore, the insurer was liable to compensate the legal heirs of the deceased.

6. It is settled law that the insurer has to prove in the positive that a term of the Insurance policy had been violated. In the present case no attempt was made by the insurer to seek a report from the Licensing Authority of the area concerned, where the accident took place to prove that the deceased was not holder of a valid driving licence. On the other hand, Kulwinder Kaur (PW-1) (widow of the deceased) has stated that the deceased was holder of a valid driving licence, but she was not in a position to produce the same as it was lost at the time of the accident. Under the circumstances, the finding of the Tribunal that terms of the policy had been violated is not sustainable as the insurer had failed to discharge the onus placed upon it. On their part, the claimants through Kulwinder Kaur PW-1 have deposed that the deceased was holder of a valid driving licence and being the widow, Kulwinder Kaur, had special means of knowing the said fact. The judgment in the case of ***Oriental Insurance Company Ltd. (supra)*** referred to by leaned counsel for the appellants squarely applies to this case, therefore, the finding that the insured had violated a term of the insurance policy is set aside.

7. Regarding the finding that the deceased was not covered by the term

"third party" and that the Insurance policy did not cover the owner, the said finding is also not sustainable in law. A perusal of the Insurance Policy Ex. R1 clearly shows that it is a comprehensive policy providing cover to the owner of the motor vehicle also. Under similar circumstances, this Court has held in ***FAO No. 3542 of 209, decided on 24.8.2010,*** titled as ***New India Assurance Company Ltd. vs. Parmod Kumar and another,*** that where the policy is comprehensive in nature it covers the driver of the insured as well and the term "driver" is wide enough to include a person, who is not a paid employee and has borrowed the motor vehicle, as in the present case. I respectfully agree with the ratio of the said judgment and accordingly set aside the finding of the Tribunal to the contrary.

8. In view of the above, the quantum of compensation to be paid to the claimants needs to be decided. In the claim petition, age of the deceased is mentioned as 28 years and the same age is given in the postmortem report Ex. P-1. The fact that the deceased was an agriculturist has not been denied. The pleaded income of the deceased is ₹ 3000/- per month, but there is not evidence on record to support this averment. Therefore, it would be appropriate to hold that the deceased was earning ₹ 2500/- per month (minimum wages for an unskilled labourer). Keeping these facts in view and further that the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988, the total compensation payable to the claimants is as follows:-

Annual income	₹ 2500 x 12 = ₹ 30,000/-
Annual dependency after deduction of 1/3rd for personal expenses	₹ 20,000/-
Annual dependency applying multiplier of 18 since deceased was aged 28 years	₹ 3,60,000/-
Funeral expenses	₹ 2,000/-
Loss of consortium	₹ 5,000/-
Loss of Estate	₹ 2,500/-
Total	**₹ 3,69,500/-**

9. The appeal is, accordingly, allowed. Respondent No. 2 is directed to pay the aforementioned amount alongwith interest @ 7.5 % per annum within a period of three months, from the date of receipt of a certified copy of this judgment.

December 22, 2017 **[SUDHIR MITTAL]**
reena **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No