In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 1181 of 2010 (O&M)
Date of Decision: 15.3.2017

New India Assurance Co. Ltd. ......Appellant

Versus

Lakhbir Kaur and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Pardeep Rajput, Advocate
for respondent No. 1.

None for respondent No. 2.

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ANITA CHAUDHRY, J

This is an appeal by the insurance company disputing the onerous liability placed by the award dated 27.11.2009 passed by the Motor Accident Claims Tribunal, Amritsar.

A petition was filed under Section 163-A of the Motor Vehicle Act by the mother of Talwinder Singh who died in a road accident. Talwinder was going on his motor cycle along with Ravel Singh on the pillion. Mehar Singh along with Satnam Singh were following them on another motor cycle. When the motor cycle had reached near village Panjwar Kalan, a bus came from behind and struck against the motor cycle driven by Talwinder Singh. Talwinder Singh died on the spot while Ravel Singh received multiple injuries. The bus driver sped from the spot. It was pleaded that it was dark there and the number of the bus could not be noted.

It was pleaded that the accident occurred on account of use of the motor cycle. Respondent No. 1 is the owner of the motor cycle while respondent No. 2 is the insurance company.

The deceased was 22 years old. His income was stated to be Rs. 40,000/- per annum. The Tribunal held that the accident occurred during the course of use of the vehicle and relying upon an authority of the Madhya Pradesh High Court, it was held that if two vehicles are involved then the claimants can sue anyone of them under Section 163-A of the Motor Vehicles Act. Taking the dependency at Rs. 2,000/- and after making a cut of Rs. 1,000/-, multiplier of 17 was applied to calculate the compensation at Rs. 4,08,000/-.

The submission of the insurance company is that the deceased was borrower of the motor cycle and he stepped into the shoes of the owner and in ***Ningamma and another versus United India Insurance Co. Ltd. 2009(13) SCC 710***, it was held that the insurance company would not be liable as the borrower steps into the shoes of the owner and the legal heirs of the deceased were not entitled to maintain the application under Section 163-A of the Motor Vehicles Act and compensation is only payable to the third party involved in the accident and liability under Section 163-A cannot be on the owner of the vehicle. Reliance was placed on ***New India Assurance Company Ltd. versus Sadanand Mukhi and others 2009(2) SCC 417.***

It was urged that under a package policy, personal accident cover is compulsory for owner-driver and the reference to owner-driver has to be understood as owner who is capable of driving as has been held by the Co-ordinate Bench in ***Sushila versus Pankaj Mahajan 2013(1) PLR 715.*** It was urged that even otherwise if the calculations are seen, since the deceased was a bachelor, the deduction would have been 50% and the calculations were not properly made.

The submission on the other hand is that the judgment of ***Ningamma and another's*** case (supra) has been distinguished by the Co-ordinate Bench in ***United India Insurance Company Limited versus Balwant Kaur FAO No. 2161 of 2010 decided on 11.9.2015.***

The claim petition was filed under Section 163-A of the Motor Vehicles Act. The issue for examination is whether the deceased who himself was the driver could be treated as a third party. The term third party has not been defined under the Act. The reference in various sections is to the word *any person* and considering the scheme of chapter XI of the Motor Vehicles Act it would relate to a third party only and the duty of the insurer is to satisfy the judgment and the award against the persons insured in respect of third party risk. There is a non-obstante clause in Section 163-A which cannot over-ride the requirement of the policies under Section 147 of the Act and the insurer cannot be made liable to satisfy the judgment as per the provisions of Section 149(1) of the Act. This section states that in case of death or permanent disablement due to accident arising out of the use of the motor cycle without specifying the persons or the classes of persons, therefore for the same, we have to relate back to Section 147(1) (b) of the Act. The use of the word "*to the legal heirs or the victims*", in the Act it clearly implies that the legal heirs can only be of the victim and not any other person. The Apex Court in the case of ***National Insurance Company versus C.M.Jaya*** reported as ***2002(3) Supreme Court 278*** had held that even in a case of comprehensive policy the insurer is not required to cover the liability beyond what is stated in Section 147 of the Act. In ***Dhan Raj versus New India Assurance Company*** reported as ***2004(8) SCC 553***, it has been clearly held that the owner of a vehicle is not required to be covered under Section 147 of the Act. Therefore, the driver would step into the shoes of the owner and the question would be whether the insurance company can compensate the owner and driver. In ***Ningamma and another versus United India Insurance Co. Ltd.*** (supra), the Hon'ble Supreme Court had held that the driver would step into the shoes of the owner of the vehicle and such person was not entitled to any compensation under Section 163-A of the Motor Vehicles Act unless the insurance policy is contractual and covers such a risk. The question whether the term owner-driver used in the policy would mean owner or driver or the connotation is only for the owner who can drive. This aspect was examined at length by the Co-ordinate Bench in ***Sushila***'s case (supra). Para 13 of the said judgment reads as under:-

> *"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. The optional cover could include unnamed passenger in a private vehicle also. (The question of unlimited liability or extent of liability for a passenger in a private vehicle has come through independent directions relating to package policy but they are not discussed here as not relevant to our case)."*

In ***United India Insurance Company Limited versus Balwant Kaur and another*** (supra), the Co-ordinate Bench laid stress on the issue that matter was remanded to the High Court to consider the issue that even if it was found that the provisions of Section 163-A of the Motor Vehicles

Act were not applicable what was the compensation payable.

In *Ningamma's* case a categoric finding had been given so far as the claim made by the borrower of a motor vehicle was concerned. In the present case, the deceased was a borrower and he stepped into the shoes of the owner and was not a third party. The driver was the representative of the owner and the insurance company could not be held liable. The insurance company was liable only to re-imburse the third party and not to the owner. Therefore, the award dated 27.11.2009 is set aside.

The appeal is allowed.

(ANITA CHAUDHRY)
JUDGE

March 15, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes