In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 2573 of 2010
Date of Decision: 01.11.2017

Memo Devi and others ......Appellants

Versus

Sheo Ram and another ....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sandeep K. Sharma, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate
for respondent No. 2.

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ANITA CHAUDHRY, J

This is the claimants appeal seeking enhancement in the award dated 8.9.2009 passed by the Motor Accident Claims Tribunal, Kurukshetra.

A claim petition was filed under Section 163-A of the Motor Vehicles Act. It was claimed that on 10.5.2008, Soran Ram (since deceased) along with his brother Sheo Ram were going to their village on a motor cycle. It was pleaded that Sheo Ram was a pillion rider whereas Soran Ram was driving the motor cycle. After travelling some distance, a car came from the opposite direction and the time was around 8.00 P.M. The lights blinded the driver and Soran Ram lost balance and dashed the motor cycle against the tree. Both the riders fell down and received multiple injuries. The matter was reported to the police by Gian Chand, another brother of the injured.

The insurance company took the plea that as per the facts pleaded it was Soran Ram who lost balance and he himself was at fault and the claim petition was not maintainable as it did not relate to death of third party and the deceased was driving the insured vehicle and being a rider he stepped into the shoes of the owner and could not be said to be third party within the meaning of the Act.

The Tribunal while relying upon ***Ningamma***'s case held that the motor cycle was borrowed by the deceased from its owner and the deceased was not an employee and held that the claim petition could not be rejected in entirety and allowed Rs. 1,00,000/- as compensation as extra premium was paid for covering the personal insurance to the owner as that fact was not disputed by the insurance company.

The submission on behalf of the appellants is that though the FIR was lodged against Sheo Ram but the facts were different and the statement was supported by Surender, another brother, who deposed that it was Soran Ram who was driving the vehicle. It was urged that it was a comprehensive policy and the accident had taken place and the question of negligence is not in issue, therefore, the claim should have been allowed. It was urged that this Court in ***New India Assurance Co. Ltd. versus Rupinder Kaur and others Vol. CLXXVI-(2014-4) The Punjab Law Reporter 623*** has taken a view that the petition under Section 163-A of the Motor Vehicles Act would cover the cases where negligence of the victim was the cause of accident and the Court relied upon ***Deepal Girishbhai Soni versus United India Insurance Co. Ltd. (2004-2) 137 PLR 271 (SC)***. It was urged that a claim can be maintained where the death is of the pillion rider and the policy is comprehensive and it can even be stretched to a case as the present and the burden of proof would be on the insurer to prove the exclusion of liability. Referring to the statement of Surender, it was urged that it was Surender who had taken the injured to the hospital and the claimants did not examine Gian Chand as he had narrated the accident as was told to him and his examination was not necessary. Reliance was placed on ***New India Assurance Co. Ltd. versus Sulashna Aggarwal and others Vol. CLXXVI-(2014-4) The Punjab Law Reporter 52, National Insurance Company Ltd. versus Balakrishnan and another 2013(1) RCR (Civil) 762, Yashpal Luthra and another versus United India Insurance Co. Ltd. and another 2011 ACJ 1415, Jarnail Singh versus National Insurance Co. Ltd. and others Vol. CLXII-2011(-2) 198, United India Insurance Co. Ltd. versus Pramila Devi and others 2010 ACJ 1402*** and ***The Oriental Insurance Company Limited versus Monika and others 2012(1) R.C.R. (Civil) 875.***

On the other hand, the submission was that the law had been settled in ***Ningamma and another versus United India Insurance Co. Ltd. 2009(3) RCR (Civil) 435*** and though in the FIR the facts were different but before the Court a different story was projected and the FIR was not lodged by Surender and as per the claimants it was Surender who took the injured to the hospital but no record was produced nor MLR of Sheo Ram was produced and there is no explanation as to why Surender made the statement after 12 days of the accident.

In the first version given by Gian Chand, brother of the deceased, it was Sheo Ram who was driving the motor cycle and Soran Ram was sitting on the pillion. Twelve days later, Surender, brother of the deceased, made a statement saying that Soran Ram was driving the vehicle and Sheo Ram was sitting on the pillion and these facts were pleaded in the claim petition. It is come on record that Surender is a Clerk with a Lawyer and he alone was examined and his version is contrary to what was narrated in the FIR. Going by the facts pleaded in the claim petition, it was Soran Ram who was driving the vehicle. He was not the owner, he was not even an employee, he was a borrower and had stepped into the shoes of the owner and was not a third party and in view of ***Ningamma***'s case (supra), the claimants were not entitled to any claim under Section 163-A of the Motor Vehicles Act. Had the third party been involved then the liability of the insurance company would have been unlimited.

I find no merit in the appeal and is dismissed.

(ANITA CHAUDHRY)
JUDGE

November 01, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No