210 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4845 of 2010
DECIDED ON: JANUARY 30, 2017

NEELAM KAUSHIK & OTHERS

.....APPELLANTS

VERSUS

VIVEK KUMAR THROUGH LR'S AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Ekta Thakur, Advocate
for the appellants.

None for LRs of Vivek Kumar.

Mr. Suvir Deewan, Advocate
for respondent No.2-Insurance Company.

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JASPAL SINGH, J

Unsuccessful claimants have preferred the instant appeal feeling dissatisfied with the award dated April 20, 2010 passed by Motor Accident Claims Tribunal, Chandigarh (for short 'Tribunal') whereby, claim petition preferred by them under Section 163-A of Motor Vehicles Act, 1988 (for brevity 'Act') seeking compensation on account of death of Nitin Prabhakar in a vehicular accident on January 14, 2008; has been dismissed.

The factual matrix in brief as unfolded by learned counsel for the appellants is that on January 14, 2008, Nitin Prabhakar (since deceased)

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alongwith his friend was going to Sector 26, Chandigarh driving the car bearing registration no. PB-65-7342 at normal speed on his left hand side, the car developed some mechanical defects. On account of which its breaks failed consequently, the driver of the vehicle lost control over it and it hit against a tree. During the course of accident Nitin Prabhakar received multiple injuries and breathed his last at the spot. It has further been unfolded in the claim petition that the claimants are parents and unmarried sisters of the deceased, who was 22 years of age. He was a student of 3rd year Mechanical Engineering. At the time of accident he was young, hale and healthy. He was also a National player of gymnastic. Had he not died in the accident, he would earned name and fame for himself as well as for his family. On account of his death, claimants have lost hope in the life.

Upon notice of the claim petition issued by learned Tribunal, respondent No.1 did not opt to contest and ultimately he was proceeded against ex-parte vide order dated November 25, 2008. However, respondent No.2-Insurance Company resisted the claim petition and filed written statement raising preliminary objections *inter-alia* on the grounds that neither any cause of action has arisen to the claimants for filing the claim petition nor they have got any locus-standi to file the claim petition; that the car bearing registration no. PB-65-E-7342 was not insured with the respondent No.2, that petition is not maintainable; and that Claimants are estopped by their act and conduct to file the instant petition. On merits, it has been alleged by respondent No.2-Insurance Company that deceased was not third party qua respondent No.1, therefore, the claim petition is not maintainable and further that at the time of

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accident, the car was not being driven by a skilled driver holding a valid and effective driving licence. Rather, it was being driven in violation of terms and conditions of Insurance Policy. So, the Insurance Company cannot be fastened with any liability to pay compensation. It has been categorically stated by the Insurance Company that no accident as alleged by the claimants has taken place involving car no. PB-65-E-7342 and the DDR has been got registered with the police by concocting a false story. Alternatively, it has been alleged that accident, if any, is the result of negligence on the part of the deceased himself. Accordingly, the insurance company prayed the dismissal of petition.

On going through the pleadings of the parties, following issues were framed on November 25, 2008 by learned Tribunal:

1. *Whether the accident in question took place on account of rash and negligent driving of vehicle bearing No. PB-65-E-7342 by respondent No.1, if so, whether Nitin Parbhakar died due to the injuries sustained by him in the accident in question? OPP.*
2. *If issue No.1 is decided in favour of claimants whether claimants are entitled for any compensation, if so, how much and from whom?OPP.*
3. *Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident, if so, its effects? OPR-2*
4. *Relief.*

Both the parties were afforded an ample opportunity to adduce and conclude their evidence in respect of their pleadings and they led as well as documentary evidence.

Claimant Neelam Kaushik herself appeared in the witness box as PW-1 and tendered in evidence her affidavit Ex.PA alongwith copy of DDR entry Ex.P-1, copy of insurance of car as Ex.P-2, copy of Senior School

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Examination certificates of Nitin Prabhakar as Ex.P3 and P-4, copies of the receipts as Ex.P-5 to Ex.P-9 showing the Nitin Prabhakar as her son.

On the other hand, respondent No.2-Insurance Company tendered in evidence copy of Insurance Policy as Ex.R-1 and closed its evidence.

After hearing learned counsel for the parties and appraisal of evidence available on record, issue No.1 was decided in favour of the claimants holding that Nitin Prabhakar died in a vehicular accident on account of rash and negligent driving of car no. PB-65-E-7342 by respondent No.1 whereas, issue Nos.2 and 3 were decided in favour of respondent No.2 and against the claimants. Resultantly, claim petition was dismissed vide impugned award.

Feeling dissatisfied with the impugned award, claimants preferred the instant appeal. In response to notice of motion, respondent No.2 appeared and resisted the instant appeal.

While assailing the findings record by learned Tribunal, especially, on issues No.2 and 3 and the consequent dismissal of claim petition vide impugned award, it has been argued with vehemence by learned counsel for the appellants that mis-appreciation of evidence as well as legal proposition applicable to the facts and circumstances of the case in hand has resulted into miscarriage of justice. It stands fully established on record that Nitin Prabhakar has lost his life in a vehicular accident involving car no. PB-65-E-7342 being driven by respondent No.1 but learned Tribunal has committed a grave error while rendering finding on issues No.2 and 3. In order to prove issue No.2 with regard to the entitlement of claimants for compensation, it has been submitted by the learned counsel for the appellants that it is proved on record that

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deceased was a student of 3rd year of Mechanical Engineering; besides, being a National player of gymnastic and Yoga. In fact, the vehicle which was being driven by the deceased was insured with respondent No.2 and respondent No.2 insurer had issued a package policy in favour of its owner i.e. respondent No.1. As per policy Ex.R1, which has been placed on record by respondent NO.2 an additional premium was paid for Personal Assurance (PA) for owner-driver. Moreover, there is a specific clause in the policy which relates to personal accident cover for owner-driver but despite the specific clause in the policy, learned Tribunal has erred in deciding issue No.2 against the claimants by observing that if owner himself sustained injuries or dies in an accident, he cannot be treated as 3rd party and no compensation can be claimed by his LRs. But in the case in hand, insurance policy is a package policy which covers the risk of owner-driver as well as passengers. Hence, this issue ought to have been decided in favour of the claimants by learned Tribunal.

While concluding his arguments it has been submitted by learned counsel for the appellants that in view of the various factors unfolded above, findings recorded by learned Tribunal on issue No.2 deserves to be reversed and to be decided in favour of appellants. Consequently, claimants are entitled to compensation by treating the income of the deceased to the tune of ₹40,000/- per month; besides, compensation under the other heads.

On the other hand, Mr. Suveer Dewan, Advocate while controverting the submissions made by learned counsel for the appellant has submitted that the learned Tribunal has minutely considered the pros and cons of the matter involved and has given a well reasoned award which does not call

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for any interference by this Court. The deceased can not in any way be termed to be a third party, in view of the various clauses of the insurance policy Ex.R1.

After bestowing due consideration to the various submissions made by learned counsel for the appellants and scrutinizing the impugned award, this Court does not find any legal or factual force therein.

The sole question which requires determination in the case in hand is whether the borrower of the vehicle can be termed to be a 3rd party for the purpose of provisions of the Act and the answer to this question is in the negative. In case ***Ningamma and another vs. United India Insurance Company Ltd; 2009 (3) RCR (Civil) 435*** the similar question is came up for hearing before Hon'ble Apex Court, in which, the policy obtained by the insured was an act policy and in those circumstances, it was held that the borrower of the vehicle cannot be held to be a third party for the purpose of provisions of Act and as such, claimants (legal representatives of the deceased) are not entitled to compensation under Section 163-A of the Act thereof. Moreover, in the case in hand, the personal accident cover on payment of separate premium was only qua owner-driver and not for the owner or driver. As is evident from the insurance policy Ex.R-1, a sum of 100 was paid as compulsory personal assurance (PA) cover for owner-driver.

In the case of ***Sushila and others vs. Pankaj Mahajan and another; 2014 ACJ 935*** this Court after a detailed consideration of the Indian Motor Tariff Regulations issued by Tariff Committeed particularly GR-36 providing for personal accident cover for owner-driver has held that the reference to owner-driver must be understood as owner who is capable of

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driving and who is driving the vehicle at the relevant time. It shall not be understood as owner-driver (owner or driver). This fact is clear from regulations that require that owner-driver to be duly licensed to drive the vehicle. Thus, the claimants are not entitled to any compensation under Section 163-A of the Act.

In the light of above discussion, this Court is of the considered view that there is no infirmity, illegality or perversity in the impugned award. The findings recorded by learned Tribunal on issue No.2 and the consequent dismissal of claim petition is absolutely in consonance with the evidence available on file and settled canons of law, Thus, this Court does not find any merit in the instant appeal. As such it stands dismissed.

No order as to cost.

JANUARY 30, 2017 **(JASPAL SINGH)**
sham **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*

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