IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2839 of 2011
Date of Decision.17.08.2017

Surender son of Ajit ....Appellant

Vs

Mahabir Singh and another ....Respondents

Present: Mr. M.S. Kathuria, Advocate for
Mr. Rakesh Nehra, Advocate
for the appellant.

Mr. Ashwani Talwar, Advocate
for respondent No.2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appellant-Surender has assailed the finding of the Tribunal rendered in a petition filed under Section 163-A of the Motor Vehicles Act for claiming compensation.

Mr. M.S. Kathuria for Mr. Rakesh Nehra, learned counsel appearing on behalf of the appellant submits that the appellant Surender on 01.12.2007 started his journey on motor cycle bearing registration No.HR-13C-1762 from village Baproda to Bahadurgarh. At about 4 AM when he reached at Rohad Bye Pass on Rohtak-Delhi road, his motor cycle struck against tractor trolley already lying turtle on the road loaded, with fodder, without any preventive measures or blinkers. The motor cyclist could not see the same with the light of the motor cycle, owing dense fog. Resultantly, he fell down on the road and received head injuries, fracture on the left hand and injuries all over his body.

The Tribunal on the basis of the aforementioned evidence rejected the claim petition on the premise that the aforementioned vehicle was owned by Mahabir Singh and the appellant had taken the aforementioned vehicle on hire by relying upon the ratio decidendi culled out in ***Ningamma and another Vs. United India Insurance Co. 2009(3) RCR (Civil) 435*** to hold that the hirer would step into the shoes of the owner and therefore, despite payment of premium of ₹50/- towards Personal Accident cover, would not be entitled for compensation.

He further contends that such hirer though would step into the shoes of the owner but would definitely be entitled to compensation from the insurance company on account of payment of ₹50/- as premium to cover Personal Accident, if not otherwise, at least some compensation ought to have been provided under no fault liability, therefore, the award is liable to be modified.

Mr. Ashwani Talwar, learned counsel appearing for the insurance company submits that the insurance company does not deny the receipt of premium of ₹50/- towards personal accident of the owner but still the appellant will not be entitled for any compensation. In support of his contention, relies upon the General Regulation No.36 (GR No.36), which provides for certain categories of injuries against which the injured-claimant would be entitled to compensation on receipt of aforementioned premium.

I have heard learned counsel for the parties and appraised the paper book. In order to appreciate the controversy raised, it would be apt to reproduce conditions of GR-36, which read as under:-

> "**GR.36. Personal Accident (PA) Cover under Motor Policy.**(not applicable to vehicles covered under Section E, F and G of Tariff for Commercial Vehicles)
>
> **A. Compulsory Personal Accident Cover for Owner-Driver**

Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an "effective" driving license is termed as Owner-Driver for the purposes of this section.

Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/ dismounting from or traveling in the insured vehicle as a co–driver.

NB. This provision deals with Personal Accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective 18 driving license. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving license. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory P.A. cover for the owner - driver should not be charged and the compulsory P. A. cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her.

TYPE OF VEHICLES	**CAPITAL SUM INSURED (Rs.)**	**PREMIUM (Rs.)**	**COVER**
Motorised Two Wheelers	1 lakh	50/-	i) 100% of CSI for Death, Loss of Two Limbs or sight of both eyes or one limb and sight of one eye. ii) 50% of CSI for Loss of one Limb or sight of one eye. iii)100% for Permanent Total Disablement from injuries other than named above.

TYPE OF VEHICLES	**CAPITAL SUM INSURED (Rs.)**	**PREMIUM (Rs.)**	**COVER**
Private Cars	2 lakhs	100/-	i)100% of CSI for Death, Loss of Two Limbs or sight of both eyes or one limb and sight of one eye. ii)50% of CSI for Loss of one Limb or sight of one eye. iii)100% for Permanent Total Disablement from injuries other than named above.
Commercial vehicles	2 lakhs	100/-	i) 100% of CSI for Death, Loss of Two Limbs or sight of both eyes or one limb and sight of one eye. ii) 50% of CSI for Loss of one Limb or sight of one eye. iii)100% for Permanent Total Disablement from injuries other than those named above.

The settled position on record is that the appellant has not lost any limb or eye, enabling him to get 50% of the amount agreed to be paid by the insurance company in case of such contingency. I am not in agreement with the argument of Mr. Pillania that the hirer would also be covered for the amount of ₹50/- paid by the owner for Personal Accident which the insurance company is liable to indemnify on account of any of the mis-happening. The ratio decidendi culled out in **Ningamma's case** (supra) is still holding the feet and therefore, rightly so, the claim petition has been rejected, but while doing so, the Tribunal has been ignorant of the fact that the appellant would be entitled to ₹25,000/- on account of no fault liability under Section 140 of the Motor Vehicles Act.

The award of the Tribunal is modified to the above extent only. The appellant shall be liable to an amount of ₹25,000/- under no fault liability with interest @6% from the date of filing of the claim petition till realization. The appeal stands disposed of.

(AMIT RAWAL)
JUDGE

August 17, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No