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

FAO No.5377 of 2010
Date of Decision.04.08.2017

Smt. Neelam Rani and another .....Appellants

Vs

Ramesh Kumar and another .....Respondents

Present: Mr. D.K. Dogra, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No.2-insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appellants are the legal representatives of the deceased Amit @ Mitu, who unfortunately died in road accident on 30/31.03.2008 at about 3 AM but according to the version in the claim petition, the deceased along with Happy son of Raj Kumar, Gora @ Deepak son of Om Parkash, Vicky @ Deepak son of Sham Sunder and Sonu Kumar son of Raj Kumar Aggarwal, resident of Ratia, Tehsil Ratia, District Fatehabad had left in Maruti Zen Car bearing registration No.HR-59-5259 which was driven by Amit @ Mitu son of Hans Raj Garg, resident of Ratia, District Fatehabad. The aforementioned vehicle was owned by Ramesh Kumar son of Sh. Mangat Ram. The case set up before the Tribunal was that Amit Kumar had borrowed the car from Ramesh Kumar and when they reached near village Borawal, a stray animal came in front of the aforementioned Maruti Car, resulting into application of sudden brakes, in this process, the car turned turtle and Amit @ Mitu, Happy and Vicky @ Deepak received injuries

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which proved fatal. The claim petition has been filed under Section 163-A of the Motor Vehicles Act and the stand of the insurance company before the Tribunal was that it had not indemnified the owner and therefore, the owner cannot seek indemnification, particularly, in this case Amit had borrowed the car and being borrower stepped into shoes of the owner. The Tribunal on the basis of the aforementioned evidence dismissed the claim petition.

Mr. D.K. Dogra, learned counsel appearing on behalf of the appellants submits that the ratio decidendi culled out by Hon'ble Supreme Court in ***Nigamma and another Vs. United India Insurance Company Ltd. 2009 (13) SCC 710*** relied upon by the Tribunal would not apply as it was a case of Act Policy whereas the instant case of a Package Policy, for, the premium of ₹670/- towards third party, ₹100/- towards personal accident and ₹25/- towards driver, total ₹795/- had been paid by the owner and received by the insurance company. Over and above the comprehensive scheme, a total amount of ₹6470/- including the aforementioned amount had been paid. Though the terms and conditions on record pertain to commercial Package Policy but the vehicle insured was a private one. However, this aspect has totally been ignored, thus, there is non-appreciation/mis-direction of the document Ex.R1.

As regards the income of the deceased, he was the owner of the sweet shop and earning ₹3300/- per month and therefore, his income per annum was under the cap of ₹40,000/- per year. He was 25 years old, therefore, multiplier of 17 is to be applied besides other conventional heads.

Per contra, Mr. Subhash Goyal, learned counsel appearing on behalf of the insurance company relied upon the judgment *ibid* to contend

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that the borrower as per the provisions of Section 147 of the Motor Vehicles Act would step into the shoes of the owner. The insurance policy has been issued to the person, who is authorized insurer and an insurer cannot be a third party to claim compensation on account of his own death, despite the fact that in ***Ningamma's case (supra)***, the policy was an Act Policy as noticed in paragraph 22, thus, urges this Court for maintaining the award challenged in the appeal.

I have heard learned counsel for the parties and appraised the paper book. No doubt in the judgment referred to above, in case of Act Policy, the owner cannot claim the compensation, much less, the borrower, in view of the finding rendered in paragraph 17, 18, 19 and 21. The Hon'ble Supreme Court had an occasion to look into the facts of the matter and found that it was an Act Policy. However, as noticed above, Ex.R1 is not an Act Policy but Comprehensive/Package Policy where an extra premium of ₹100/- and ₹25/- towards personal accident and driver, over and above the other amount as indicated above has been paid. The terms and conditions are also pertaining to commercial vehicle and not private car, thus, in my view, the insurance company has not been able to bring the case within the parameters laid down in the judgment cited above. In such circumstances, the finding of the Tribunal on issue No.1 is not sustainable and hereby set aside as there is misconstrual of Ex.R1, resulting into perversity.

For the purpose of assessing the compensation in the petition filed under Section 163-A, I will apply the formula prescribed in the Second Schedule. I will take the income of the deceased as ₹3300/- per month, apply a deduction of 1/3rd towards personal expenses and adopt a multiplier of 17. Besides this I will add ₹4500/- towards general damages i.e. ₹2000/-

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for funeral expenses and ₹2500/- for loss of estate. In total the amount of compensation payable shall be ₹4,53,300/-.

However, in view of the Conditions of GR-36, which reads as under, the appellant-claimant shall be entitled to a Capital Sum Assured of ₹2 lacs on payment of premium of ₹100/- in case of package policy.

> ***"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.*

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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.
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.

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This amount of ₹2 lacs shall also attract interest @6% from the date of filing of the claim petition till its realization. The insurance company-respondent No.2 shall be liable to pay the compensation.

The award passed by the Tribunal is set aside and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

August 04, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No

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