IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.86 of 2012 (O&M)
Decided on:-January 16, 2017.

ICICI Lombard General Insurance Company Limited.

.........Appellant.

Versus

Narender Kumar.

.........Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Paras Money Goyal, Advocate
for the appellant.

Mr. Rahul Vats, Advocate
for the respondent.

HARI PAL VERMA, J.

The appellant-ICICI Lombard General Insurance Company Limited has filed present appeal against the award dated 05.08.2011 passed by learned Motor Accidents Claims Tribunal, Narnaul (for short, the Tribunal) in claim petition under Section 163-A of the Motor Vehicles Act 1988 (for short, the Act) whereby by respondent-claimant Narender Kumar was held entitled to the amount of Rs.1,36,000/- along with interest @ 12% per annum.

Briefly stated, facts of the case are that the respondent-claimant was posted in Indian Army as Lance Naik at Nasik Road. He was on leave for three days. On 13.3.2009, after spending leave, he was returning to his duty while driving his motorcycle bearing registration No.HR-34B-9481 (for short, the motorcycle) from his house at Nangal Chaudhary to Ferozepur Cantt., Punjab. At about 06.00 AM when he reached near petrol pump of Baba Ram Dev in the area of Police Station, Ding, a jeep tried to overtake him. In this process, the driver of jeep took the jeep towards him. The claimant tried to save himself, but lost control of his balance. As a result thereof, he fell down on the road along with the motorcycle and sustained multiple simple and grievous injuries on various parts of his body including mouth, forehead, right hand's wrist and knee. He was taken to General Hospital, Sirsa and thereafter, he was referred to Command Hospital, Chandimandir where he remained admitted fom 14.3.2009 to 29.4.2009, from 23.5.2009 to 23.6.2009 and then from 18.8.2009 to 9.9.2009. A DDR No.24 dated 13.3.2009 was registered at Police Station, Ding regarding the accident in question. The motorcycle was insured with the appellant-insurance company. The claimant pleaded that since the accident in question was caused due to use of the motorcycle, the appellant-insurance company was liable to pay the amount of compensation.

The appellant-insurance company filed its written statement took the preliminary objections of maintainability and cause of action. On merits, it was, inter alia, pleaded that the claim petition had been filed by the claimant just to put the insurance company under pressure and to grab the compensation illegally and without any right. The motorcycle was being plied in violation of the terms and conditions of the insurance policy and the

Act.

On the basis of pleadings of the parties, following issues were framed by the Tribunal vide order dated 15.12.2010:

1. *Whether the injured Narender Kumar sustained injuries in road side accident which took place on 13.3.2009 in the area of village Moriwala (PS Ding) due to rash and negligent driving of motorcycle No.HR-34B-9481 insured with respondent as alleged? OPP*

2. *Whether petitioner is entitled to any compensation? If yes, what amount of compensation, the petitioner is entitled to and from whom? OPP*

3. *Relief.*

Vide award dated 5.8.2011 passed by the Tribunal, the claimant was granted compensation of Rs.80,000/- on account of disability expenses, Rs.6,000/- for special diet and Rs.50,000/- for non-pecuniary expenses i.e. the total amount of Rs.1,36,000/- along with interest @ 12% per annum from the date of accident till realization of the amount.

Feeling aggrieved, the appellant-insurance company has filed the instant appeal.

Learned counsel for the appellant-insurance company has argued that the Tribunal has awarded compensation to the injured-claimant, who was owner of the insured vehicle and was also driving the vehicle at the time of accident in a claim petition filed under Section 163-A of the Act. The injured was not a third party and, therefore, was not entitled for compensation even under the Personal Accident Cover, as the injuries said to have been sustained by him are not covered under the Personal Accident

Cover as given in the terms and conditions of the insurance policy. He has referred to Section III – Personal Accident Cover for Owner-Driver as given in the terms and conditions of the insurance policy and argued that the compensation awarded by the Tribunal cannot be granted under the said provision. He has also relied upon the judgment of Hon'ble Supreme Court in ***New India Assurance Company Limited Versus Prabha Devi and others 2013 ACJ 1382*** to contend that liability of the insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third party. Therefore, in the case in hand, the insurance company was not liable to pay compensation for the injuries suffered by the insurer-owner himself.

On the other hand, learned counsel for the respondent-claimant has argued that there is no illegality in the impugned award passed by the Tribunal. As the motorcycle was insured with the appellant-insurance company, it was liable to pay compensation to the respondent-claimant.

I have heard learned counsel for the parties.

Section III – Personal Accident Cover for Owner-Driver as given in the terms and conditions of the insurance policy reads as under:

> **"SECTION III – PERSONAL ACCIDENT COVER FOR OWNER-DRIVER**
>
> *Subject otherwise to the terms exceptions conditions and limitations of this Policy, the Company undertakes to pay compensation as per the following scale for bodily injury/ death sustained by the Owner-Driver of the vehicle in direct connection with the vehicle insured or whilst mounting*

into/dismounting from or traveling in the insured vehicle as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:

Nature of injury	*Scale of compensation*
(i) Death	*100%*
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	*100%*
(iii) Loss of one limb or sight of one eye	*50%*
(iv) Permanent total disablement from injuries other than named above	*100%"*

So far as the law laid down by Hon'ble Supreme Court in ***New India Assurance Company Limited Versus Prabha Devi and others' case (supra)*** is concerned, the same is not applicable to the facts and circumstances of this case as in view of aforesaid Section III – Personal Accident Cover for owner-driver as given in the insurance policy, it has been provided that in the event of nature of injury having permanent total disablement from injuries, the claimant is entitled to 100% compensation. In the case in hand, the claimant had suffered permanent disability to the tune of 40% on account of fractures suffered on his person for which disability expenses have been awarded to him to the tune of Rs.80,000/-.

After accepting the premium of Rs.857/- on 14.1.2009 for insurance of the motorcycle, the appellant-insurance company cannot be allowed to take the plea of such technicalities. Therefore, the plea of appellant-insurance company that the injured-claimant was owner-cum-driver of the insured vehicle and was not a third party, cannot be accepted.

Therefore, there is no illegality in the impugned award dated 5.8.2011 passed by the Tribunal and affirming the same, the present appeal, being devoid of any merit, is dismissed.

(HARI PAL VERMA)
JUDGE

January 16, 2017
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No