

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 1340 of 2014 (O&M)
Date of Decision: 31.1.2017

Bharti AXA General Insurance Company Limited

.....Appellant

Versus

Jyoti Rani and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajbir Singh, Advocate
for the appellant.

Mr. Chandandeep Singh, Advocate
for respondents No. 1 to 5.

Mr. Vaibhav Sehgal, Advocate
for respondent No. 6.

ANITA CHAUDHRY, J

The insurance company has challenged the award passed by the Motor Accident Claims Tribunal, Ludhiana vide which the claim had been allowed and compensation of Rs. 4,32,000/- was awarded.

It is necessary to refer to the facts as narrated in the claim petition:-

“On 5.10.2010, the deceased alongwith his friend Jasmeet Singh son of Shri Harvinder Singh, resident of Guru Ramdass Nagar, Peer Khaana Road, Khanna, who is also running an electrical shop at Khanna, had gone to Badail (Chandigarh) in car bearing registration No. PB-26E-0333 to purchase the electrical goods from there and after purchasing the electrical goods, they were coming back to Khanna in the abovesaid car,

which was being driven by the deceased and said Jasmeet Singh was sitting beside him. At about 09.00 P.M., when they reached near Peer Jain, P.S. Fatehgarh Sahib, then due to the high brightness of the head lights of a vehicle coming from opposite side, the deceased lost control over his vehicle and the vehicle struck against a tree. Due to this, the deceased as well as said Jasmeet Singh sustained injuries on various parts of the body. The deceased also sustained injuries on his head and he died at the spot. They both were taken to Civil Hospital, Fatehgarh Sahib, where the post-mortem on the dead body of deceased was conducted and Jasmeet Singh was referred to some other hospital. An amount of Rs.20,000/- was spent on the transportation and last rites of the deceased. Both the respondents are jointly and severally liable to pay compensation to the tune of Rs. 10,00,000/-. The claimants are also entitled for loss of consortium, loss of estate, pain and suffering.”

The legal heirs of Naresh filed a claim petition impleading the owner and the insurer of the car in which deceased was travelling. Compensation of Rs. 10,00,000/- was claimed in the petition filed under Section 163-A of the Motor Vehicles Act. The respondents took the plea that the claim petition was not maintainable and there was concealment of facts and the deceased was not third party. It was pleaded that the deceased was driving the vehicle and it was with the consent of the owner and he was not having a valid and effective licence.

On the pleadings of the parties, following issues were framed

by the Court below:-

1. *Whether Naresh Kumar died in the accident caused by the rash and negligent driving of car bearing No. PB-26E-0333 being driven by respondent No. 1 ? OPP*
2. *Whether the claimants are only legal heirs/representatives of the deceased ? OPA*
3. *Whether the claim petition is not maintainable since does not fall u/s 163-A of M.V. Act ? OPR*
4. *Whether the claim petition is bad for mis-joinder and non-joinder of parties ? OPR-2*
5. *Whether deceased Naresh Kumar as well as respondent No. 1 were not holding valid and effective driving licenses at the time of alleged accident, if so its effect ? OPR-2*
6. *Whether the offending vehicle was not having valid R.C., fitness certificate, and route permit at the time of alleged accident relevant time ? OPR-2*
7. *Whether the claimants are entitled to compensation. If so, what extent and from whom? OPA*
8. *Relief.*

The claimants in order to prove issue No. 1 had examined Jasmeet Singh PW-2 who had stated that a vehicle was coming from the opposite direction and as the headlights of the vehicle had blinded Naresh, he lost control and the vehicle struck against the tree and Naresh died on the spot. The Tribunal in para 11 of the award noted the following:-

“I have considered the rival submissions. With the evidence on file the claimants have been able to prove that Naresh

Kumar deceased died in motor vehicle accident, but not by a gross negligent driving by respondent No. 1 and deceased himself was driving the vehicle at the alleged time of accident due to high brightness of the head lights of a vehicle coming from opposite side, which was not known to the claimant and the deceased lost control over his vehicle and the vehicle struck against a tree, due to which he died at the spot in motor vehicle accident. As such this issue is decided accordingly.”

The Tribunal calculated the compensation and passed an award against the respondents. It was noticed that the deceased had died on account of the fact that he was blinded by the lights of a vehicle coming from the opposite direction.

The counsel for the appellant has urged that the claim petition was not maintainable against the owner of the vehicle and the deceased was a borrower who had stepped into the shoes of the owner and was not third party and the insured cannot be the third party and no award should have been passed and the claim petition should have been dismissed. It was urged that in '***Ningamma and another versus United India Insurance Co. Ltd. 2009 AIR (SC) 3056***', the Apex Court had held that when the owner dies while driving his own vehicle then his legal heirs are not entitled to claim compensation even under Section 163-A of the Motor Vehicle Act and likewise if a borrower of a vehicle dies in an accident, his legal heirs were not entitled to claim compensation under Section 163-A of the Motor Vehicle Act as the borrower would be considered owner of the vehicle.

The claim petition had been filed under Section 163-A of the Motor Vehicle Act but the opening lines of the award shows that the

Tribunal was treating as if it was a petition under Section 166 of the Act. It is under that impression it also held that the driver (respondent No.1) was not negligent on issue No. 1. The claimants had not alleged negligence on the part of any person. In a claim petition filed under Section 166 of the Motor Vehicle Act, the onus is upon the claimants to prove that some driver was negligent and he was responsible for the death.

A perusal of the second page of the claim petition shows that the claim petition had been filed under Section 163-A of the Motor Vehicles Act though in the heading of the award it is mentioned as if the petition had been filed under Section 166 of the Motor Vehicles Act. I am of the view that the claim petition was not maintainable against the owner and the deceased had borrowed the vehicle and had stepped into the shoes of the owner and was not third party and the legal heirs were not entitled to any compensation under Section 163-A of the Motor Vehicles Act.

The appeal is allowed and the award passed by the Tribunal dated 30.11.2013 is set aside.

(ANITA CHAUDHRY)
JUDGE

January 31, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No