IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO-1882-2014 (O&M)

United India Insurance Co. Ltd. ....Appellant

Versus

Savita and others ....Respondents

2. FAO-1455-2014 (O&M)

Savita and another ....Appellants

Versus

Saroj and another ....Respondents

Date of Decision:- 12.09.2017

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.K. Dogra, Advocate,
for the appellant-Insurance Company 1st case and
for respondent No.2 in 2nd case.

Mr. Dheeraj Narula, Advocate
for the appellants in 2nd case and
for respondent Nos.1 and 2 in 1st case.

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<u>RITU BAHRI, J. (Oral)</u>

Both the above-said appeals are being decided of by this common judgment, having arisen out of the impugned Award dated 05.12.2013, passed by the learned Motor Accident Claims Tribunal, Sirsa.

A short question for consideration in the present appeals is that whether under a comprehensive policy, the person who riding a borrowed vehicle died in accident, the claimants have a right to claim compensation under Section 163-A of the Motor Vehicles Act or not.

The Tribunal has taken into consideration the judgment passed by a Co-ordinate Bench of this Court in case titled **New India Assurance Co. Ltd.** Vs. **Karamjit and others**, **PLR 2013(2) 495** whereby it was held that the claim of LRs of deceased driver, who borrowed vehicle, from the registered owner is negative only on the ground that the driver who borrowed the vehicle had stepped into the shoes of the owner. Once the driver who borrowed the vehicle from the owner, has become the owner of the vehicle for all practical purposes, then the Insurance Company is liable to pay the compensation payable to the owner under the personal accident coverage and in all cases where premium for personal accident of the owner-cum-driver has been paid, the LRs of the driver or the injured driver who become the owner of the vehicle for all practical purposes under Section 163-A of the Motor Vehicle Act is entitled to claim the compensation from the Insurance Company under the personal accident coverage.

In **Bajaj Allianz General Insurance Company Limited** Vs. **Jasmer Singh and another**, **2015(3) R.C.R. (Civil) 325**, this aspect again has been considered where in case of policy of insurance is two wheeler package policy and premium of L-50/- was paid by insured to cover personal accident claim for owner-driver-term. Term 'driver' explained on first page of policy meaning any person including insured provided person holding effective driving licence. When main object of policy is to cover owner-driver and meaning of expression driver in policy has been explained, limited liability to registered owner in personal accident claim in rest of term of policy cannot be given any legal sanctity. In paragraphs 21 and 22, it was observed as under: -

> *"21. It needs to be emphasized that learned counsel for the appellant-Insurance Company could not dispute liability of the Insurance Company in case the vehicle was being driven by the owner himself as premium of ₹ 50/- for the personal accident claim was paid. If that be so, why not the same principle should apply in case the victim is driving the vehicle under the authority of the owner. The deposit of premium for personal accident claim in the package/comprehensive policy in my view cannot be limited only to the owner as the words used in the policy to cover personal accident is described as 'owner driver'. Any other interpretation to these plain words would be restricting the authorized driving to the owner himself and such a consequence is manifestly illegal. Such an interpretation would in fact amount to a contract to pay premium for the life insurance which cannot be so as the premium has been paid for the policy issued under the Act.*
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> *22. In* ***Ningamma and another's case (supra)*** *the claim was made under Section 163-A of the Act. The policy of insurance was* ***"Act only Policy"*** *and not a comprehensive/package policy. The victim was travelling on Hero Honda motorcycle which he had borrowed from the real owner. Hon'ble Supreme Court held that the deceased cannot be held to be employee of the owner of the motorcycle although he was authorized to drive the said vehicle by its owner, and, therefore, he would step into the shoes of the owner of the motorbike. I am of the view that if the borrower of the vehicle steps into the shoes of owner, the terms of the policy which is comprehensive/package policy would include the personal accident claim of the person driving the vehicle provided he holds a valid licence."*

Same view has been taken by a Co-ordinate Bench of this Court in **Oriental Insurance Company Limited** Vs. **Silky and another**, **2011(6) R.C.R. (Civil) 5** where in paragraph 2, it was observed as under:-

> "2. Whether a cause of action would survive for a driver, who by her own negligent driving causes an accident and makes a claim under Section 163-A must be considered in the context of certain situations of how the liability could be seen to exist even apart from the normal tort law principle. If the driver had been a workman, liability will be on the basis that an employer shall become liable for the injuries sustained by the workman in the course of employment. A person, who is not a workman and who would make a claim under the MV Act shall not normally be entitled to a claim for compensation under Section 163-A. This aspect came about in a case before the Hon'ble Supreme Court in ***New India Assurance Company Limited Versus Sadanand Mukhi and others-(2009) 2 Supreme Court Cases 417***. In that case, the claim arose out of death of an owner who while driving a motorcycle dashed against a tree and died. While rejecting the contention that a person, who was not an insurer but the son of the insurer must be taken as a third party, the Court said whosoever becomes a victim in an accident arising out of the use of the vehicle would not come within the purview of the terms referred under Section 147. The judgment dealt with a compulsory insurance that was required to be taken under Section 147 and further observed that an Act policy does not cover a risk to such a person in a passenger car or his representative. Neither ***Ningamma*** nor ***Sadanand Mukhi*** therefore addresses specifically situation where the claim arose within the terms of the policy where the claimant pleads for enforcement of the policy that is extended to cover the risk to an owner driver as well as third party. The driver need not be a paid driver or an employee for the definition under Section 2(9) of the MV Act, reads as under:-
>
> *"driver' includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;*
>
> The liability of the Insurance Company under the terms of the policy for which additional premium had been paid is for private use of

> the vehicle and the person who is entitled to drive under the terms of the policy shall be fully covered. All that is necessary, who would qualify for the definition of the driver is a person who is not disqualified from holding or obtaining a licence and holds an effective driving licence. The situation that allows for a claim against the Insurance Company is that the policy covers the use of the vehicle for any purpose other than carriage of goods (other than samples or personal luggage), organized racing, pace making, speed testing, reliability trials, and for any purpose in connection with motor trade or for hire or reward other than the purpose of driving tuition. The limits of liability as prescribed are as per Section-II-1(1) of the policy are for death or bodily injury. A bodily injury to a driver who sustained injury in the use of the vehicle and the fact that there has been payment of premium for such a person shall render liable the Insurance Company. I have not been shown any particular provision of the terms of the policy that excludes the liability of the insurer for a claim arising out of an injury sustained by the driver to whom a special cover was provided."

In the present case, the Tribunal has rightly interpreted the insurance policy (Annexures R-3 and R-4). As per the said policy, the vehicle was insured for the period 01.04.2012 to 31.03.2013 and there was a comprehensive insurance policy in force where the premium for personal accident of owner-cum-driver had been paid and the judgment passed in case **Ningamma and another** Vs. **United India Insurance Co. Ltd.**, **2009 ACJ 2020** has been distinguished as in that case the insurance policy was not a comprehensive policy.

In view of the above-said facts, the appeal filed by the appellant-Insurance Company bearing FAO-1882-2014, is without any merit and the same is hereby dismissed.

As far as the appeal, filed by the claimants, bearing FAO-1455-2014, is concerned, the Tribunal has rightly allowed the claim after taking into consideration the fact that the insurance policy (Annexures R-3 & R-4) was a comprehensive policy covering personal accident for owner-cum-driver to the extent of ₹2 lacs.

Thus, no ground for enhancement is made out and the appeal of claimants is hereby dismissed.

(RITU BAHRI)
JUDGE

12.09.2017
naresh.k

Whether speaking/reasoned	Yes
Whether reportable	No