**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1501 of 2015 (O&M)
Date of decision: 14.11.2017

United India Insurance Company Limited
....Appellant

Versus

Satish Kumar and others
....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ram Avtar, Advocate,
for the appellant.

Ms. Ekta Thakur, Advocate,
for the respondents.

RITU BAHRI J. (Oral)

United India Insurance Company Limited-appellant has come up in appeal against the awarded dated 01.10.2014 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.2,89,500/- has been awarded in favour of claimants-respondent Nos. 1 and 2 on account of death of Suman Kumari in a motor vehicular accident which took place on 23.07.2013. Respondent No. 1 is husband, whereas respondent No.2 is daughter of deceased Suman Kumari

Brief facts of the case are that on 23.07.2013, deceased-Suman Kumari along with her son Sandeep Gahi (respondent No.3), was going to pay obeisance at Mata Naina Devi Temple on a motorcycle bearing registration No. CH-04-A-1213. The motorcycle was being driven by

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respondent No.3. At about 4.45 A.M., when they reached near Civil Hospital, Kurali, suddenly a stray cattle came before their motorcycle and struck against it, as a result of which, both of them fell down and received injuries. Deceased Suman Kumari suffered injuries on her vital organs and during treatment at PGI, Chandigarh, she succumbed to the injuries on 16.08.2013. With regard to the accident, FIR Ex.PX was registered at Police Station, Kurali. Consequently, the claimants (respondent Nos. 1 & 2 herein) filed a claim petition before the Tribunal.

Upon notice, respondent No.1 (respondent No.3 herein) filed written statement admitting the accident having been taken place. It was submitted that the offending vehicle was fully insured with respondent No.2-Insurance Company (appellant herein), therefore, the company was liable to indemnify the insured and to pay the amount of compensation.

Respondent No.2-Insurance Company (appellant) filed a separate written statement taking preliminary objections regarding maintainability of petition, cause of action etc. It was stated that the insured had violated the terms and conditions of the insurance policy. Driver of the offending vehicle was not holding a valid driving licence at the time of accident, so the answering respondent was not liable to indemnify them.

From the pleadings of the parties, following issues were framed:-

1. Whether Suman Kumari died on account of injuries sustained by her in a road accident, which took place on 23.07.2013 due to use of vehicle No. CH04-A-1213 by its driver-respondent No.1? OPP
2. Whether the claimants are entitled to any compensation, if

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so, to what extent and from whom? OPP

3. Whether respondent No.1 was not holding a valid driving licence at the time of accident, if so, its effect.
4. Relief.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question had been taken place due to use of vehicle bearing registration No. CH-04-A-1213, which was being driven by respondent No.1 (respondent No.3 herein) and thus, returned the finding on Issue No.1 in favour of the claimants-respondent Nos. 1 and 2. This finding is rightly based on the documentary evidence i.e. DDR Ex.P1, copy of postmortem report Ex.P2 and copy of FIR Ex.PX. Since, she was a household lady, her notional income was assessed at Rs.40,000/- per annum. As per postmortem report Ex.P2, the deceased was aged about 58 years at the time of death/accident. After applying the multiplier of 07, amount of compensation came to be Rs.2,80,000/-. Apart from this, Rs.5000/- were awarded to claimant No.1 (husband) towards loss of consortium, Rs.2000/- towards funeral expenses and Rs.2500/- towards loss of estate. Ultimately, the claim petition was accepted and a sum of Rs.2,89,500/- was awarded as compensation in favour of the claimants. Feeling dissatisfied with the impugned award, appellant-Insurance Company has preferred the present appeal.

Learned counsel for the appellant has argued that motorcycle bearing registration No. CH-04-A-1213 was insured with the appellant-company under the Act Only Policy/Liability only Policy, in which risk of pillion rider was not covered. Liability of the Insurance Company (appellant) has been imposed without examining that the insurance policy

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was an Act Only Policy, in which the company was not liable to pay compensation in respect of death or bodily injury to the occupants carried in the vehicle. Learned counsel has further argued that the said vehicle was insured under Section 1 (i) of Liability Only Policy. He has referred to the Judgment passed by Hon'ble the Supreme Court in ***United India Insurance Company Vs. Tilak Singh & others,*** 2006 AIR (SC) 1576. In that case, the driver had got the scooter insured with the insurance company and the insurance policy did not contain an endorsement of I.M.T. 70 pertaining to accident to unnamed hirer/driver/pillion passenger, which can be obtained by payment of additional premium.

A perusal of the impugned award shows that no issue was framed, as to whether it was an 'Act Policy' or 'Package Policy'.

Hon'ble the Supreme Court in ***Oriental Insurance Company Ltd. Vs. Surendra Nath Loomba and others,*** 2013 (1) RCR (Civil) 603 and ***National Insurance Company Ltd. Vs. Balakrishnan and another,*** 2013 (1) RCR (Civil) 763, had an occasion to examine the third party risk with respect to a person travelling in a car, who had received injuries. It has been observed that 'Act Policy' stands on a different footing from a 'Comprehensive/Package policy'. Act Policy, admittedly, did not cover a third party risk of an occupant in a car. Hon'ble the Supreme Court, while referring to the letter dated 16.11.2009 issued by IRDA regarding liability of insurance companies in respect of occupants of private car and pillion rider in a two wheeler under Standard Motor Package Policy (also called comprehensive policy), has held that the insurance company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums, which the insured shall become legally

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liable to pay in respect of an occupant carried in a vehicle, which is insured under the Standard Motor Package Policy. Hence, an 'Act Policy' stands on different footing from the 'Comprehensive/Package Policy'. Ultimately, Hon'ble the Supreme Court while deciding the appeal in ***Balakrishnan's*** case (supra), remitted the matter to the Tribunal to scrutinize the policy in a proper perspective and if necessary, by taking additional evidence to reach out a conclusion, as to whether it was a 'Comprehensive/Package Policy' or an 'Act Policy' and thereafter, fasten the liability on the insurer.

In the facts of the present case, a perusal of the impugned award shows that this aspect has not been gone into by the Tribunal.

Resultantly, the impugned award is set aside and the matter is remitted to the Tribunal to give a fresh decision after examining the insurance policy in view of the law laid down by Hon'ble the Supreme Court in ***Balakrishnan's*** case (supra). In case necessity arises, Tribunal is at liberty to give permission to the parties to lead additional evidence in respect of the insurance policy and thereafter, decide the claim petition afresh, in accordance with law.

Disposed of in the above terms.

(RITU BAHRI)
JUDGE

14.11.2017
ajp

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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