IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1840 of 2015(O&M)

Date of decision: 22.8.2017

Reliance General Insurance Company Ltd. …..Appellant

VERSUS

Jaswinder Pal Kaur and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Subhash Goyal, Advocate for the appellant.

Mr. Ashok Jindal, Advocate for respondents No.1 and 2.

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REKHA MITTAL, J.

The present appeal directs challenge against award dated 21.10.2014 passed by the Motor Accidents Claims Tribunal (Fast Track Court), Bathinda (in short 'the Tribunal') whereby compensation under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act') has been awarded in favour of claimants – respondents No.1 and 2 herein on account of death of their son Amardeep Singh in a motor vehicular accident on 06.07.2013 on account of use of car No.PB-19J-8585 (hereinafter to be referred as 'vehicle in question').

Counsel for the appellant would argue that findings recorded by the Tribunal holding the insurance company liable to pay compensation to indemnify Balkar Singh insured/owner of the vehicle in question are erroneous and cannot stand the test of judicial scrutiny. To bring home his contention, it is argued that as per plea of the claimants, Amardeep Singh was instructed by Balkar Singh to drive the vehicle in question for the purpose of dropping his family members at a particular place. It is submitted that Amardeep Singh was not a paid driver of Balkar Singh, therefore, the claimants are not entitled to get compensation from the insurance company. It is further argued that the Tribunal has tried to cover the case of the claimants with regard to liability of the insurance company to pay compensation as special premium of Rs.100/- stood paid by the insured in regard to P.A. cover of owner driver. It is argued with vehemence that the said P.A. cover was available only to Sh. Balkar Singh had he been driving the vehicle and sustained an injury but the said clause in the insurance policy would neither cover a borrower of the vehicle from Balkar Singh nor a person who had been driving the car on instructions of the owner but did not happen to be a paid driver. In support of his contentions, he has heavily relied upon judgments of this Court **Asha Rani and others vs Shiv Ram and another, 2013 ACJ 1472**, **Sushila and others vs Pankaj Mahajan and another, 2014 ACJ 935**, **National Insurance Company Limited vs Jagdish Kumar and another", FAO No.1330 of 2012 decided on 04.02.2016**, **Cholamandlam MS General Insurance Company Limited vs Rajesh and others, FAO No.3764 of 2010 decided on 14.05.2014**. Further reference has been made to judgment of the Delhi High Court **Oriental Insurance Company Limited vs Kavita Singhal and others, 2014 ACJ 1574**.

Counsel has further submitted that the claimants cannot derive any advantage to their contention from the judgment of this Court in **New India Assurance Company Limited vs Umesh Kumari and others, 2010(1) RCR (Civil) 669** because in **Umesh Kumari and other's case** (supra), this Court has not taken into consideration GR- 36 providing for personal accident (P.A.) cover under motor policy for owner – driver which was taken into consideration in the latter judgments. It is further argued that in the face of aforesaid judgments passed by this Court, findings recorded by the Tribunal covering risk of death of Amardeep Singh under P.A. cover of owner driver by payment of Rs.100/- towards premium cannot be allowed to sustain and liable to be set aside.

Counsel representing the claimants, on the contrary, has not advanced any argument in support of findings recorded by the Tribunal that personal accident cover for owner driver on payment of Rs.100/- as premium would also cover the risk of Amardeep Singh who sustained injuries while driving the vehicle in question. He has also failed to make any submissions to draw a distinction between the facts involved in the referred authorities vis-à-vis facts of the case at hand in order to contend that P.A. cover for owner driver would also cover risk of death of Amardeep Singh. Under the circumstances, findings recorded by the Tribunal holding the insurance company liable to pay compensation by taking into consideration a special contract covering personal accident cover of owner driver cannot be allowed to sustain and accordingly set aside.

Counsel for the claimants has tried to derive some mileage from another clause in the insurance policy covering legal liability to paid driver, cleaner and conductor on payment of premium of Rs.50/-. For this purpose, he has referred to IMT. 29 dealing with legal liability to employees of the insured other than paid driver and/or conductor and/or cleaner. The claimants produced before the Tribunal proposal-cum-cover note for Package Policy of private car Ex.C5. Under the column Premium Details, B. Liability a premium of Rs.50/- has been paid for legal liability to paid driver, cleaner & conductor. In the document Ex.R1, Policy/Certificate No.2001532311000386 again there is reference of premium of Rs.50/- having been paid qua LLP to paid driver, cleaner & conductor (Endt. IMT-28) No. of people: 1. Counsel for the claimants has not disputed that Ex.R1 is the policy issued by the insurance company in favour of Balkar Singh, owner of the vehicle. IMT 28 deals with legal liability to paid driver and/or conductor and/or cleaner employed in connection with the operation of insured vehicle (For all Classes of vehicles.). A relevant extract therefrom reads as follows:-

> "IMT. 28. LEGAL LIABILITY TO PAID DRIVER AND/OR CONDUCTOR AND/OR CLEANER EMPLOYED IN CONNECTION WITH THE OPERATION OF INSURED VEHICLE
> (For all Classes of vehicles).
> In consideration of an additional premium of Rs.25/- notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer shall indemnify the insured against the insured's legal liability under the **Workmen's Compensation Act, 1923,** the **Fatal Accidents Act, 1855** or at **Common Law** and subsequent amendments of these Acts prior to the date of this Endorsement in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured herein and will in addition be responsible for all costs and expenses incurred with its written consent."

In the case at hand, admittedly Amardeep Singh- deceased was neither a paid driver nor conductor or cleaner employed by Balkar Singh in connection with operation of the insured vehicle. As such, claimants cannot derive any advantage to their contention from legal liability of the insurance company to pay compensation towards a paid driver, cleaner and conductor on account of the insured having paid separate premium of Rs.50/- for the purpose. That being so, the claimants cannot press into service IMT 28 to assert their claim against the insurance company.

In view of the above, the insurance company cannot be held liable to pay compensation either in view of the findings recorded by the Tribunal or on the basis of legal liability towards paid driver, conductor or cleaner. The claimants are not entitled to get compensation from the insurance company and accordingly the insurance company is exonerated of its liability to pay any compensation assessed by the Tribunal.

For the foregoing reasons, the appeal is allowed in the aforesaid terms. It is clarified that liability to pay compensation by Sh. Balkar Singh, registered owner of the vehicle would remain intact. If insurance company has already paid the compensation, it can recover from the insured and not from the claimants.

AUGUST 22, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no