IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1344 of 2016 (O&M)
Date of decision: 22.11.2017

Reliance General Insurance Company Ltd. ....**Appellant**

versus

Ram Kumar and Ors. ....**Respondents**

Coram: **Hon'ble Mr. Justice Rajbir Sehrawat**

Present: Mr. Sanjeev Kodan, Advocate for the appellant.

Mr. Parveen Sharma, Advocate for respondents No.1 and 2.

Rajbir Sehrawat, J.(Oral)

This is the appeal filed by the Insurance Company challenging the award passed by Motor Accident Claims Tribunal, Karnal, whereby an amount of Rs.2 lac was awarded to the dependants of Rohit.

Brief facts of the case are that a car bearing registration No.HR09C-6647 was owned by Suraj Prakash, respondent No.3 in the present appeal. The deceased-Rohit had, allegedly, borrowed this car. While Rohit was driving, the car met with an accident. As a result of the accident, Rohit lost his life. His legal heirs filed the claim petition before the Motor accident Claims Tribunal; under Section 163 of Motor Vehicles Act.

While leading evidence, the parties had placed on record the Insurance Policy Ex.R-3; regarding the vehicle in question. On the basis of the Insurance Policy, the Tribunal found that the vehicle was insured qua the owner and driver as well, by charging a separate premium for personal accident cover. Accordingly, the Tribunal awarded a fixed amount of Rs.2 lac to the dependants of Rohit, who was driving the vehicle at the time of accident.

While awarding the compensation, learned Tribunal was confronted with the judgement of Hon'ble the Supreme Court titled as ***Ningamma and Anr. Vs. United India Insurance Company Ltd., 2009 (3) Accident Claims Journal (Supreme Court) 2020***, wherein, it was held that in case of death of owner, while driving his own vehicle, the legal heirs are not entitled to compensation under Section 163-A of the Act. However, by relying upon the judgment rendered by this Court; as mentioned in the award; the Tribunal awarded the amount limited to the cover meant for the owner and driver, as covered under the Insurance Policy in this case. Hence, the legal heirs of the borrower driver Rohit were held entitled to be Rs.2 lac.

Challenging the award the learned counsel for the appellant has submitted that in this case the premium was charged for owner and driver only. Therefore, except the owner and a driver formally employed by the owner, nobody can be awarded any amount under the Insurance Policy in this case.

To buttress his arguments, learned counsel for the appellant relies upon the judgment of the Hon'ble Supreme Court mentioned above, which was referred by the Tribunal as well. However, a perusal of the judgment of the Hon'ble Supreme Court shows that the judgment is not of any help to the Insurance Company in the present case. In the case before the Hon'ble Supreme Court no separate premium was stated to have been paid to cover the owner. Therefore, the Ho'ble Supreme Court held that the owner was not entitled to any compensation since he was party to the contract of insurance and he cannot claim compensation for his own fault. However, in the present case, a perusal of the policy shows that the owner of the vehicle and the driver of the vehicle both are covered under the policy of insurance by charging separate premium, to the extant of personal accident and to the extant of Rs.2 lacs, as stated by the learned counsel for the appellant himself. Once, the owner and driver are covered for personal accident under the agreement of Insurance; by charging a separate premium, thereafter, there is absolutely no reason for excluding the driver from entitlement of the compensation, at least, on account of the personal accident cover. The argument of the learned counsel for the appellant that driver meant to be covered under this policy would be only the formal employee of the owner, is not sustainable in law. There is no clause in the policy saying that driver contemplated to be covered under the present policy would mean only the formally employed driver of the owner. Therefore, any person, who is driving the vehicle shall be covered under the insurance policy in the present case.

No other argument is raised.

In view of the above, the present appeal fails and the same is dismissed being devoid of any merits.

November 22, 2017 **[RAJBIR SEHRAWAT]**
Manju **JUDGE**

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No