IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 8107 of 2015 (O&M)
DATE OF DECISION : 06.11.2017

Virender Singh .... APPELLANT

Versus

Cholamadalam MS General Insurance Company Limited and others
.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sandeep Singal, Advocate, for the appellant.
Mr. Rajneesh Malhotra, Advocate, for respondent No.1.

AVNEESH JHINGAN, J. (Oral)

The present appeal raises the question as to whether Jagminder Singh was a borrower or driver of Trax Cruzer bearing registration No. HR 61A-7454 (for short, `the offending vehicle').

The legal issue as dealt by the Hon'ble Apex Court in ***Ningamma and another Vs. United India Insurance Company Limited,*** 2009 ACJ 2020 as to whether the borrower would be entitled to compensation under Section 163-A of the Motor Vehicles Act, 1988 (for short, `the Act') will not arise in the present case, as the case of the appellant is that Jagminder Singh was a driver employed on the offending vehicle.

The bare facts necessary for adjudication of the present appeal are that on 20.06.2013, Jagminder Singh was driving the offending vehicle, which was owned by his real brother. The said vehicle over turned, as a result of which Jagminder Singh suffered injuries and ultimately died. DDR

No. GDN-60/22-10 dated 20.06.2013 was lodged.

A claim petition under Section 163-A of the Act was filed by the legal heirs of the deceased.

The claim petition was dismissed by the Motor Accident Claims Tribunal, Rohtak (for short, `the Tribunal') on the ground that the deceased was borrower of the vehicle and therefore, as per ***Ningamma's case*** (supra), his legal heirs are not entitled to compensation under Section 163-A of the Act.

Aggrieved of the said award, the present appeal has been filed by the legal heirs of the deceased.

I have heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellants argued that he is not in quarrel with the proposition laid down by the Hon'ble Apex Court in ***Ningamma's case*** (supra). But he is raising the issue that the deceased was actually driver of the offending vehicle and not the borrower. Hence, the claim petition has been wrongly dismissed.

Learned counsel for respondent No.1 – Insurance Company, on the other hand, argued that the claimants had not led any evidence to prove that the deceased was employed as driver by his brother.

The onus to prove that the deceased was employed as a driver was on the claimants. The claimants, in order to discharge their onus, examined PW.2 Virender Singh. Even PW.1 Ram Kumar, father of the deceased, also stepped into the witness box and supported the claim. The important point to be noted is that the claimants and the witnesses are all relatives. Rather, Virender Singh is real brother of the deceased. One can understand that he has to support the claim petition. There cannot be any bar of the brother employing his brother as a driver, but then this fact needs to be substantiated. Virender Singh failed to bring any thing on record to show that he had employed his brother as a driver. There was nothing on record to establish that Virender Singh actually needed a driver. No account books, no mode of payment of salary was produced before the Tribunal. The wife of the deceased never deposed before the Tribunal that her husband was working as a driver with his brother.

In the circumstances mentioned above, there is not even an iota of evidence on record to conclude that an employer and employee relationship existed between two brothers.

In any case, the parties have not disputed the fact that the said insured vehicle was involved in the accident. In such circumstances, under Section 140 of the Act, the claimants are entitled to `no fault liability' of ₹ 50,000/-. The same is awarded accordingly.

For the reasons recorded above, the award dated 09.10.2015 is modified to the extent that the claimants are held entitled to a sum of ₹ 50,000/- as `no fault liability' under Section 140 of the Act.

Appeal is disposed of in the aforesaid terms.

November 06, 2017 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No