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

FAO No.1688 of 2011
Date of Decision: 30.05.2018

Surinder Kaur ......**Appellant**
Vs
Rahim and others .....**Respondents**

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Vijay Lath, Advocate
for the appellant.

Mr. Surinder Sharma, Advocate
for respondent No.3.

Mr. Ashwani Talwar, Advocate with
Mr. Jagjit Singh Chatrath, Advocate
for respondent No.4/Insurance Company.

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RAJ MOHAN SINGH, J.

[1]. Initially, the claimant/appellant filed a claim petition under Section 166/163-A of the Motor Vehicles Act, claiming compensation in respect of death of her son Amritpal Singh who died in a vehicular accident. Later on, claim petition under Section 166 of the Motor Vehicles Act was withdrawn and the same was ordered to be treated under Section 163-A of the Motor Vehicles Act.

[2]. Appellant has preferred this appeal against the award dated 21.05.2009 passed by the Motor Accident Claims

Tribunal, Rupnagar (for short 'the Tribunal'), whereby the claim petition filed by the claimant/appellant was dismissed,

[3]. The accident took place on 23.07.2005 when Amritpal Singh son of the claimant/appellant was going towards Garhshaner side on motorcycle. At about 9:00 PM, when he reached near the main gate of village Dron on Garhshanker Road, a Road Roller was parked on the road by the respondent and because of lights of some other vehicles from opposite side, Amritpal Singh could not notice the Road Roller parked on the road and struck the motorcycle against the Road Roller and received injuries on his head and other parts of the body. Road Roller was parked on the road without any preventive measure like fencing and backlight. The accident took place due to negligence of respondent No.1 and the same was witnessed by one Satnam Singh. Amritpal Singh was taken to hospital, where he remained admitted for a long time and ultimately, died on 08.09.2005 in PGI, Chandigarh. Motorcycle was owned by respondent No.3 father of the deceased. Deceased was 23 years of age at the time of accident and was employed as Supervisor in Millanium Industries, Chandigarh Road, Ludhiana at a monthly salary of Rs.4500/- per month. FIR was registered in respect of accident. The claimant/appellant spent a huge amount on the treatment of his son who was unmarried and

claimant/appellant was dependent upon his income. Claimant/appellant being legal representative of the deceased, claimed compensation to the tune of Rs.20,00,000/- along with interest.

[4]. Claim petition was contested by respondent No.4/Insurance Company.

[5]. The Tribunal dismissed the claim petition on the premise that income of the deceased was shown to be Rs.40,000/- per year, therefore, claim petition under Section 163-A of the Motor Vehicles Act was not maintainable as the said beneficial legislation is meant for a specific class of citizens. It is not open for the claimant to notionally scale down the income to less than Rs.40,000/- per year to invoke the provisions of Section 163-A of the Motor Vehicles Act and to defeat the very object of the provision.

[6]. Learned counsel for the appellant argued in a different proposition and contended that the vehicle in question was comprehensively insured i.e. case of package policy, wherein personal accident cover was made and premium towards compulsory PA was paid. Deceased was son of the owner of the offending vehicle and he has stepped into the shoes of the owner by borrowing the vehicle with permission of the owner. The deceased cannot be treated as third party. Deceased being

son of the owner has to be treated as owner itself, therefore, comprehensive policy would cover the claim of the claimant/appellant. Learned counsel relied upon ***New India Assurance Company Ltd. Vs. Umesh Kumari and others, 2010(1) RCR (Civil) 669, New India Assurance Company Ltd. Vs. Karamjit and others, 2013 (2) PLR 495*** and ***Munshi Ram Vs. United India Insurance Company Limited and another, 2012(2) RCR (Civil) 174.***

[7]. On the other hand, learned counsel for respondent No.4/Insurance Company submitted that as per General Regulation No.36, personal accident cover is available only to the registered owner in person where he or she holds the effective driving licence. The term “owner-driver” will mean the registered owner who is capable of driving the vehicle and was driving the vehicle at the time of accident. Family members of the registered owner shall not be covered under this term. The insured has not paid any premium for optional personal accident cover of unnamed driver and pillion driver, therefore, claimant/appellant was not entitled for personal accident cover.

[8]. Learned counsel further submitted that the precedents cited by the appellant were not based on the interpretation of General Regulation No.36. Learned counsel relied upon ***National Insurance Company Limited Vs. Hari Mohan and***

another, 2017(3) RCR (Civil) 388, Sushila w/o late Sh. Muna Lal Ji and others Vs. Sh. Pankaj Mahajan and another, 2012(57) RCR (Civil) 252 and ***FAO No.2839 of 2011*** titled ***Surender son of Ajit Vs. Mahabir Singh and another*** decided on 17.08.2017 and submitted that the deceased had borrowed the motorcycle from his father and died in a vehicular accident. Father of the deceased was the registered owner of the motorcycle and deceased had borrowed the same from his father and was driving the same at the time of accident.

[9]. The insurance cover Ex.R1 is suggestive of the fact that compulsory PA cover was for Rs.50/- and the said payment was for owner-driver (CSI) i.e. Rs.1,00,000/-. The aforesaid endorsement would show that the insured has paid premium of Rs.50/- for personal accident cover (owner-driver). No premium was paid for optional personal accident cover (unnamed driver and pillion driver), therefore, personal accident cover was only available to the driver-owner. As per General Regulation No.36, personal accident cover is available only to the registered owner in person where he or she holds the effective driving licence. Reference to owner-driver mentioned in General Regulation No.36 must be understood as owner who is capable of driving and was in fact driving the vehicle at the time of accident. It cannot be understood as owner or driver. The aforesaid

regulation would show that owner-driver should be duly licensed to drive the vehicle. Consequently, a person who is not a registered owner of the vehicle is not covered for personal accident cover. Reference can be made to ***Sushila w/o late Sh. Muna Lal Ji and others Vs. Sh. Pankaj Mahajan and another's case (supra), FAO No.3764 of 2010*** titled ***Cholamandlam MS General Insurance Company Limited Vs. Rajesh and others*** decided on 14.05.2014, ***M/s Reliance General Insurance Company Vs. Ranjit, 2016 ACJ 1050, The Oriental Insurance Co. Ltd. Vs. Darshani Devi @ Pinki, 2014(3) PLR 226*** and ***United India Insurance Co. Ltd. Vs. Vijayrajan, 2010 ACJ 280 (DB (Kerala)***.

[10]. The cumulative effect of aforesaid discussion would be that premium of Rs.50/- towards compulsory PA cover for owner-driver would be meant only for registered owner of the vehicle in person where he or she holds the effective driving licence and is capable of driving the vehicle and was in fact driving the vehicle at the time of accident. The aforesaid premium cannot be explained to cover any optional personal accident cover of any unnamed driver or pillion rider. The view expressed in ***Surender son of Ajit Vs. Mahabir Singh and another's case (supra)*** can be relied on this proposition. The deceased cannot be treated as third party as he was borrower

of the motorcycle belonging to his father, therefore, the claimant/appellant is not entitled to compensation under Section 163-A of the Motor Vehicles Act. The claimant/appellant is only entitled to compensation for no fault liability under Section 140 of the Motor Vehicles Act. In this way, an amount of Rs.50,000/- can be awarded to the claimant/appellant under no fault liability. The decision rendered in ***ICICI Lombard General Insurance Co. Ltd. Vs. Puri @ Puri Devi and others, 2015(17) RCR (Civil) 292*** and ***Ningamma and another Vs. United India Insurance Co. Ltd., 2009(3) RCR (Civil) 435*** can be relied in the aforesaid context. Para No.19 of ***Ningamma and another's case (supra)*** reads as under:-

> *"19.We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA.*

Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA."

[11]. In view of aforesaid legal position, there cannot be any doubt that the deceased was a borrower of motorcycle and he stepped into the shoes of his father/owner, therefore, the claimant/appellant cannot claim any compensation under Section 163-A of the Motor Vehicles Act. The deceased cannot be considered as third party in view of ratio laid down in ***Ningamma and another's case (supra)***.

[12]. For the reasons recorded hereinabove, the appellant is held entitled only for a sum of Rs.50,000/- under no fault liability.

[13]. With the aforesaid modification, the present appeal stands disposed of.

May 30, 2018 **(RAJ MOHAN SINGH)**
Prince **JUDGE**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No