**203**

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

**FAO-3088-2011 (O&M)**
**Date of decision : 30.01.2018**

The New India Assurance Company Ltd.

... Appellant(s)

Versus

Baljit Kaur and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. V. Ramswaroop, Advocate
for the appellants.

Mr. Amit Gupta, Advocate
for respondent Nos.1 to 4.

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**AMIT RAWAL, J. (ORAL)**

The appellant-Insurance Company in appeal against the award rendered by the Tribunal, whereby the compensation of ₹ 3 Lacs along with interest @ 9% per annum has been awarded on account of death of Gurjinder Singh son of Pritam Singh in a vehicular accident occurred on 20.09.2006, involving the motorcycle bearing registration No.PB-58-D-4245, owned by Navdeep Singh/respondent No.5.

Mr. V. Ramswaroop, learned counsel appearing on behalf of the appellant-Insurance Company submits that the policy, in question, was an act, but not a package policy and no extra premium even for driver was paid. However, the deceased-Gurjinder Singh was also not the owner of the vehicle, but a friend of Navdeep Singh, owner of the motorcycle, who had taken his motorcycle for personal work at Batala, therefore, the Insurance

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2018.02.14 13:20
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Company cannot be permitted to indemnify and no liability can be fasted upon it. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in ***"Ningamma and another V/s United India Insurance Company Ltd." 2009(8) JT 262***. He further submits that since there was no policy involved, therefore, the respondent(s)/claimants are not entitled for compensation and urges this Court for setting aside the award, under challenge.

This Court while issuing notice of motion had stayed the compensation beyond ₹ 50,000/-.

Learned counsel for the respondent(s)-claimant(s) submits that the deceased-Gurjinder Singh would be a third party to the Insurance Company of the motorcycle, owned by Navdeep Singh/respondent No.5 and therefore, entitled to the compensation. There is no illegality and perversity in the award, under challenge and urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and merit in the submissions of Mr. V. Ramswaroop, for, the law with regard to the applicability of the act and package policy is no longer *res intgra* in view of the ratio decidendi culled out in the judgment cited supra. For the sake of brevity, the relevant para Nos. 18 and 22 of the judgment read thus:-

> *"18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon'ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed*

> *for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.*
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> ***22**. When we analyze the impugned judgment of the High Court in terms of aforesaid discussion, we find that the counsel for the insurance company himself contended before the High Court that the policy of insurance was an Act policy and the risk that is covered is only in respect of persons contemplated under Section 147 of the MVA. It is the finding of fact which we have also upheld in this Judgment that the deceased was authorised by the owner of the vehicle to drive the vehicle. When we examined the facts of the present case in view of the aforesaid submission made, we are of the opinion that such an issue was required to be considered by the High Court in the light of the facts and evidence adduced in the case. On consideration of the Judgment and Order passed by the High Court we find the same to be sketchy on the aforesaid issue as*

> *to whether the claim could be considered under the provisions of Section 166 of the MVA. In this connection, reference can be made to a judgment of this Court in the case of Oriental Insurance Company Ltd. vs. Rajni Devi and Others (supra), wherein, it was held that where compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof."*

It is a case of an 'act policy' where no extra premium for the driver has been paid to the risk of the owner of the vehicle. Since the deceased-Gurjinder Singh was not the owner, the liability to pay the compensation to the Lrs of Gurjinder Singh, who unfortunately died, cannot be fastened upon the Insurance Company, thus, in my view, there is a misdirection in allowing the claim petition.

For the reasons, aforementioned, the award is hereby set aside and the claim petition at the instance of the respondent(s)-claimant(s) is dismissed.

However, it is clear that in case, the Insurance Company had already deposited the compensation and withdrawn by the claimant(s), it shall be open to the Insurance Company to seek the recovery of the same in accordance with law.

However, the statutory amount of ₹25,000/- deposited by the Insurance Company before this Court at the time of filing of the appeal shall be transmitted to the Tribunal for part satisfaction of the compensation awarded by the Tribunal.

The present appeal stands allowed.

**( AMIT RAWAL)**
**JUDGE**

**30.01.2018**
Yogesh Sharma

Whether speaking/reasoned **[✓ Yes]/ No**

Whether Reportable **Yes/ [✓ No]**

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