IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 1221 of 2013 (O&M)
Date of decision : 26-04-2018

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Jai Bhagwan

...........Appellant

Versus

ICICI Lombard General Insurance Company
Ltd. and others ....Respondents

FAO No. 1222 of 2013 (O&M)

*****

Jai Bhagwan

...........Appellant

Versus

ICICI Lombard General Insurance Company
Ltd. and others ....Respondents

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Before: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Rakesh Nehra, Advocate for the appellant.

Mr. Amrinder Singh Sidhu, Advocate for the Insurance Co.

Mr. Ravinder Malik, Advocate for respondents no 2 & 3.

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RITU BAHRI, J.

By way of this common judgment, two appeals bearing FAO No. 1221 of 2013 (Jai Bhagwan vs. ICICI Lombard General Insurance Co.

Ltd. and others) and FAO No. 1222 of 2013 (Jai Bhagwan vs. ICICI Lombard General Insurance Co. Ltd. and others) shall be decided as similar question of law arises for consideration in both these appeals.

Jai Bhagwan, owner of the offending vehicle has come up in the present appeals against the order of the Motor Accident Claims Tribunal,Jhajjar (hereinafter referred to as `the Tribunal'), whereby in MAC Petition No. 9 of 2012, claimants were awarded compensation to the tune of Rs.2,16,200/- on account of the death of Sudhir and in MAC Petition No.25 of 2012, claimants were awarded compensation to the tune of Rs.2,75,000/- on account of the death of Vikas in the accident.

Briefly stated, the facts of the case are that on 3.12.2011, Sudhir (since deceased) along with Rahul, Naveen, Deepak, Neeraj and Vikas (since deceased) was going from Village Jahazgarh to Village Kairu in Alto Car bearing registration No. HR-26AP-6585 to attend the marriage of the brother of a friend. The car was being driven by Neeraj (respondent no.1 in MAC petition No.9 of 2012) and Sudhir was sitting beside him and the other occupants were sitting on the rear seat in the car. When they reached near Lohani Canal, the steering system of the car suddenly failed and though the above named driver of this car tried his level best to control it, but this car slipped and dashed against the eucalyptus trees and fell into the canal. Sudhir and Vikas were shifted to General Hospital, Bhiwani for their treatment but there, the doctors declared them dead. In the background of accident, a Daily Dairy Report was also lodged at Police Station, Bhiwani in this regard at the instance of Rahul.

MAC Petition No.9 of 2012 was filed by Smt. Kitabo Devi wife of Dharam Singh and mother of Sudhir and Anjali d/o Late Dharam

Singh and minor sister of Sudhir to claim compensation on account of death of Sudhir in the abovesaid accident. MAC Petition No. 25 of 2012 was filed by Smt. Vinod Devi W/o Raj Kumar mother of Vikas and Raj Kumar s/o Ram Kishan father of Vikas to claim compensation on account of death of Vikas in the abovesaid accident.

On notice, replies were filed, Jai Bhagwan (respondent no.2 in MAC Petition No.9 of 2012 and respondent no.1 in MAC Petition No.25 of 2012) admitted in both the petitions that Sudhir and Vikas were travelling in the above said Alto car at the time of the above said accident. But, he submitted that the claimants are not entitled to claim any compensation from him because Neeraj, the driver of the aforesaid car was having a valid and effective driving licence and this car was insured with the respondent-Insurance Company. In the reply filed by the Insurance Company, it was pleaded that Neeraj was not having a valid and effective driving licence at the time of the accident in question. On merits, it denied the factum of both the deceased having travelled in the car.

Following issues were framed on 28.5.2012:-

1. *Whether accident in question took place due to use of the vehicle No. HR-26-AP-6585 as alleged in the petition? OPP.*
2. *Whether petitioners are entitled to get compensation amount on account of death of Sudhir and Vikas in the alleged accident?*
3. *Whether the driver of the vehicle in question had no valid and effective driving licence on the day of accident: OPR.*

4. Relief.

Both the parties led their evidence before the Tribunal. As per version of Exhibit P-2 copy of Daily Dairy Report No.20 dated 04.12.2011 which was lodged at Police Post, Jui Kalan, District Bhiwani, on the basis of the statement of Rahul, who had categorically stated therein that he along with Naveen, Deepak, Neeraj, Vikas and Sudhir was going to Village Kairu from Village Jahazgarh in the above said car which was being driven by Neeraj and when they reached near Lohani Canal, the steering of the car suddenly failed and it dashed against the eucalyptus trees as standing on the right hand side on the road and fell down in the water pit and turned turtle and Vikas Sudhir and Neeraj drowned there and died. Rahul appeared as PW-2 and reiterated the version of the DDR before the Tribunal. The abovesaid evidence of the claimants remained unrebutted and unchallenged and it was established that the aforesaid accident had arisen out of the use/involvement of the above said car bearing registration No. HR-26 AP-6585. Copy of the post mortem report of Sudhir was placed on record as Ex.P-1 and copy of post mortem report of Vikas was placed on record as Ex.P-3.

After hearing counsel for the parties and going through the evidence placed on the record, tribunal arrived at a finding that the above said accident had arisen out of the use/involvement of the car bearing registration No. HR-26AP-6585.

In paragraph 23 of the award, the liability of the Insurance Company to pay the compensation has been considered. As per the copy of Insurance Certificate-cum-Policy Schedule Ex.R-3, the aforesaid car had been insured as a private vehicle and besides premium for own damage (vehicle and accessories) as well as the premium for compulsory Personal Accident Cover for legal liability to the driver and the premium for the vehicle as payable under Part-B, the insured is also shown to have paid the Additional Personal Accident Cover premium for five persons to the extent of Rs.1,00,000/- per person. Thus, it was held that the Insurance Company was liable to pay Rs.1,00,000/- out of the aforesaid total amount of compensation as payable to the claimants in each of the claim petitions and the remaining respective amounts of the compensation shall be paid by the owner of the car, Jai Bhagwan (respondent no.2 in MAC Petition No.9 of 2012 and respondent no.1 in MAC Petition No.25 of 2012) . Thus, in MAC Petition No.9, claimants were held entitled to the compensation to the tune of Rs.2,16,200/- on account of death of Sudhir and in MAC Petition No.25, the claimants were held entitled to the compensation to the tune of Rs.2,75,000/- on account of the death of Vikas. It was further held that the respondent-Insurance Company was liable to pay Rs.1,00,000/-out of the aforesaid total amount of compensation as payable to the claimants in MAC Petition No.9 and the remaining amount of Rs.1,16,200/- shall be paid by respondent-owner Jai Bhagwan and similarly out of the aforesaid total amount of compensation as payable to petitioners Vinod Devi and Raj Kumar in MAC Petition No.25 of 2012, a sum of Rs.1,00,000 /- shall be payable by the Insurance Company and the remaining amount of Rs.1,75,000/- shall be payable by Jai Bhagwan.

Aggrieved with the order of the Tribunal, Jai Bhagwan filed present appeals before this Court.

After hearing counsel for the parties and going through the records of the case, this Court is of the opinion that this appeal deserves to be allowed. A perusal of the insurance policy (Ex.R-3) shows that the policy which was issued on 30.11.2010 of the offending vehicle bearing registration no.HR-26AP-6585 which had a seating capacity of five and under the Schedule of Premium under the head ***Compulsory PA Cover Premium***, Rs. 100/- had been paid and under the head ***Additional PA Cover Premium (100000 per person) For 5 person (IMT-16)*** Rs. 250/- had been paid.

A similar issue had come up for consideration before a Coordinate Bench of this Court in the case of ***Davinder Singh vs. Mandeep Singh and others 2010 (65) RCR (Civil) 512,*** where compensation was awarded by the Tribunal to the claimants absolving liability of Insurance Company. In appeal before a Co-ordinate Bench of this Court, it was held that a comprehensive package policy in a private car, covers occupants thereof and Insurance Company would be liable to compensate for death or injury to occupants of a private car. Thus, impugned finding of absolving Insurance Company of liability on ground that extra premium for occupants of a private car had not been paid, even though insurance policy was admittedly a package policy was set aside and the appeal was allowed. In this judgment, reference has been made to a meeting of CEOs of all the Insurance Companies which was convened on 26.11.2009 under the auspices of the IRDA. An amicus curiae was appointed as Observer for the meeting. The meeting was attended by the CEOs of seventeen Insurance Companies. It is noticed in the judgment that after deliberations, all the Insurance Companies admitted their liability in respect of occupants in a private car and a pillion rider on a two wheeler under the Comprehensive/Package policy. The minutes of the meeting convened by

IRDA on 26.11.2009 are reproduced hereinasunder:

Minutes of the meeting convened by IRDA on 26.11.2009

"5. The insurers companies have sought the advice of the learned amicus, Shri Arun Mohan in the matter. The learned amicus explained that it would be prudent on the part of the Companies to take the advice of their counsel. However, he stated that the companies may express their views freely and he will record them as stated by them.

Thereafter the learned amicus noted the stand taken by the Companies on various issues as under:

(i) All the Insurance Companies agreed to comply with the circular dated 16th November, 2009 issued by IRDA restating the position relating to the liability of the Insurance Companies in respect of occupants in a private car and pillion rider on a two wheeler under the comprehensive/package policies. Insurers, however, maintained that they will take up the issues of pricing with the Regulatory Authority for future.

(ii) With respect to the pending cases before the MACT, all the Insurance Companies have agreed to withdraw the aforesaid plea wherever

taken and to issue appropriate instructions to their respective lawyers and the operating officers within 7 days.

(iii) With respect to the appeals pending before the High Courts, all the Insurance Companies have agreed to issue instructions within 7 days to their respective operating officers as well as to counsels to withdraw the contest on this ground (that of pillion rider in two-wheeler or occupant in a private car).

(iv) The number of appeals pending before the High Courts (whether filed by the claimants or the insurers) on this issue will be identified by the companies within a period of two weeks and the contest on this ground shall be withdrawn within a period of four weeks thereafter.

(v) With respect to the appeals pending before the Hon'ble Supreme Court, all the insurance companies have agreed to inform, within a period of 7 days, their respective Advocates on record about the IRDA Circulars for appropriate advice and action.

The companies have submitted that in view of the difficulty in collecting date on the number of claims pending on the issue before the MACTs, they may be given time. The learned amicus explained that collection of such date is required by the Honourable Court and efforts

> *must be made and if there are difficulties the court may be apprised of the position. The Government companies expressed lot of difficulty in finding out the statistics on this ground because they have to work out the statistics on the basis of the information extracted from each of the file and contacting each of the advocate and also by examining the defences the advocate might have taken before the courts. However,all the insurers were unanimous that they shall abide by the orders of the High Court by not contesting the cases before MACT/High Courts on this ground at all. The learned amicus curiae advised the insurers to take immediate steps and collect the statistics at a central point for further necessary communication to the Hon'ble High Court."*

In ***Davinder Singh's case (supra),*** reference was made to a judgment of the Delhi High Court in the case of ***Yashpal Luthra and another vs. United India Insurance Co. Ltd and another (MAC APP No. 176 of 2009)*** decided on 9.12.2009, where the matter was examined in detail by framing the issue as to whether under a comprehensive/package policy, the insurance company is liable to compensate for the death or injury of a pillion rider on a two wheeler or the occupants in a private car. The representatives of even the Tariff Advisory Committee (for short, `TAC') and the Insurance Regulatory and Development Authority (for short, `IRDA') were also heard. In the aforesaid judgment, it was finally opined that comprehensive/package policy of the two-wheeler as well as private car covers the occupants thereof and in view of the TAC and IRDA's directives, such a plea was not permissible to the Insurance Company Thus, it was held that the finding of the Tribunal that the Insurance Company was not liable, deserves to be set aside.

Having regard to the facts and circumstances, the present case is squarely covered by the judgment in the case of ***Davinder Singh (supra)*** as the policy (Annexure R-3) is a package policy and thus the Insurance Company cannot be restricted to make payment of compensation of Rs.1,00,000/- only to the claimants in each claim petition.

In view of all that has been discussed above, both the appeals are allowed and the award is being modified to the extent that the Insurance Company (respondent no.1 in both the appeals) will now make payment of the entire amount of compensation payable to the claimants. Remaining conditions of disbursal of amount shall remain unaltered.

26-04-2018 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned Yes

Whether reportable Yes