In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:30.5.2018

FAO No. 2108 of 2014

National Insurance Company Limited

---Appellant

vs.

Surajmukhi and others

---Respondents

FAO No. 5921 of 2016

Surajmukhi and others

---Appellants

vs.

Tanzin Plazor and another

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. R.C.Kapoor, Advocate
for the insurance company
Mr. Jagjit Benipal, Advocate
for the appellants in FAO No. 5921 of 2016
for respondents No. 1, 5 and 6 in FAO-2108 of 2014
Ms. Amandeep Kaur, Advocate for
Mr. Ashwani Arora, Advocate
for respondents No. 2 to 4 in FAO- 2108 of 2014

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Rekha Mittal, J.

This order will dispose of FAO Nos. 2108 of 2014 and 5921 of 2016 as these have emerged out of the same award dated 24.1.2014 passed by the Motor Accidents Claims Tribunal, Ambala (in short "the Tribunal") whereby compensation has been awarded on account of death of Mukesh Kumar out of use of Maruti Alto Car bearing No. CH-01-AL-4380, on the fateful day of 3.7.2012.

FAO No. 2108 of 2014 has been filed by National Insurance Company Limited (hereinafter referred to as "the insurance company") whereas the other appeal has been preferred by Surajmukhi and others seeking enhancement of compensation.

FAO Nos. 2108 of 2014 and

FAO No. 5921 of 2016(O&M)

Counsel for the insurance company has assailed the award primarily on three counts. The first submission made by counsel is that occurrence in question took place when Mukesh Kumar driver of Maruti Alto car lost control over the vehicle and as a result, the vehicle crossed divider on the road and hit against a tree on the other side of the road, therefore, claimants cannot be paid compensation qua death of the tort-feasor.

The second submission made by counsel is that Maruti Alto car was owned by Tanzin Plazor, respondent No. 7 and he had given the car to M/s Allied Package and Movers, Zirakpur for transportation. At the time of occurrence, car was driven by Mukesh Kumar, an employee of the aforesaid package and movers, therefore, he was not driving the car under the instructions of registered owner. In the alternative, it is argued that Mukesh Kumar would step into the shoes of registered owner, therefore, insurance company is not liable to pay compensation.

Another submission made by counsel is that Smt. Surajmukhi and others staked claim for compensation by invoking Section 163-A of the Motor Vehicles Act, 1988 (in short "the Act") on the ground that the deceased was working as a driver with the aforesaid concern at a monthly salary of Rs. 3200/- per month. It is argued with vehemence that the insurance company examined Sonia Madan RW2 and Amit Verma RW3 investigators of the insurance company to prove that Mukesh Kumar was working with the concern of Avinash Aggarwal RW1 at a salary of Rs. 8000/- per month, therefore, the application for compensation under Section 163-A of the Act is not maintainable as income of the deceased was more than Rs. 40,000/- per annum, the cap provided for getting compensation in a summary manner under Section 163-A of the Act.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal awarding compensation to the claimants and holding the registered owner and insurer jointly and severally liable to pay compensation. However, he has not made any submission justifying grant of compensation over and above what has been allowed by the Tribunal.

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

The plea raised by the insurance company with regard to occurrence being the result of rash and negligent driving of Mukesh Kumar is not available to be raised in a claim application filed under Section 163-A of the Act. A three Judge Bench of Hon'ble the Supreme Court in **United India Insurance Company Limited vs. Sunil Kumar and another 2018(1) RCR (Civil) 680** has answered the reference/question of law "Whether in a claim proceeding under Section 163 A of the Motor Vehicles Act, 1988 (hereinafter to be referred as "the Act") it is open for the Insurer to raise the defence/plea of negligence?" by holding in paras 8 and 9 of the judgment, quoted thus:-

> "8.From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be

introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim."

The second submission made by counsel for the insurance company that the company is not liable to pay compensation is also misconceived and liable to be rejected. Perusal of the insurance policy would reveal that a premium of Rs. 25/- was paid towards legal liability (WC) to driver. There is also compulsory PA cover on payment of Rs. 100/-. The policy in question is a package policy that includes 'own damage', 'liability towards third party', 'compulsory PA cover' and 'legal liability to driver'. In the case at hand, the insured had given his vehicle to M/s Allied Package and Movers for transportation. At the relevant time, the vehicle was driven by Mukesh Kumar admittedly, working as driver with the aforesaid concern. As special premium was paid to cover legal liability qua driver, insurance company cannot escape liability to pay compensation.

This brings the Court to the question of salary paid to Mukesh Kumar. As per plea of the claimants, Mukesh Kumar was being paid salary @ Rs. 3200/- per month. The insurance company has sought to rely upon testimonies of Sonia Madan and Amit Verma, with regard to some reports prepared by them on the basis of investigation conducted on behalf of the insurance company. Amit Verma, RW3 has been examined to prove his report and statement of Surajmukhi Exs. R2 and R3.

Surajmukhi appeared in the witness box and tendered into evidence her duly sworn affidavit Ex. PW1/A and stated on oath that Mukesh Kumar was earning a sum of Rs. 3200/- per month. She was not confronted with any such statement purported to be recorded by the investigators of the insurance company. This apart, counsel for the insurance company has failed to point out any provision in law that provides sanctity and authenticity to a statement recorded by an investigator appointed by the insurance company. That being so, the insurance company cannot derive any advantage to its contention from testimony of Amit Verma to contend that salary of Mukesh Kumar was Rs. 8000/- per month. Mr. Avinash Aggarwal RW1 Proprietor of M/s Allied Package and Movers, Zirakpur appeared in the witness box and his testimony is sufficient to rebut statement of Sonia Madan another investigator RW2. Nothing fruitful and useful has been broughtforth in the lengthy cross examination to which Avinash Aggarwal was subject to, in order to establish that Mukesh Kumar was getting salary of Rs. 8000/- per month. In this view of the matter, there is no merit in contention of the insurance company that Mukesh Kumar was getting salary of more than Rs. 40,000/- per annum or Surajmukhi and others can not maintain an application for compensation under Section 163-A of the Act.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

30.5.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No