IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 30.05.2018

FAO No.3403 of 2014 (O&M)

United India Insurance Company Ltd. ... Appellant

Versus

Rani and others ... Respondents

FAO No.3405 of 2014 (O&M)

United India Insurance Company Ltd. ... Appellant

Versus

Ranjit Kaur and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the appellant.

Mr. Sushil K. Saini, Advocate
for the claimants.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3403 of 3405 of 2014 as these have emerged out of the same accident in which Kuljit Singh, driver and Baz Singh, pillion rider of motorcycle bearing No.PB-46-F-8445 sustained injuries in an incident that occurred on 16.12.2011.

FAO No.3403 of 2014 has been filed to assail the award qua grant of compensation to the legal heirs of Baz Singh whereas FAO

No.3405 of 2014 is pertaining to compensation allowed to the legal heirs of Kuljit Singh, driver of the motorcycle.

FAO No.3403 of 2014

The Tribunal has awarded compensation of Rs.5,01,600/-, detailed in para 16 of the award.

The sole submission made by counsel for the insurance company is that as the policy in question is an act policy, risk of injury or death of a pillion rider is not covered under the policy, therefore, insurance company cannot be fastened with liability to pay compensation to the claimants.

Counsel representing the claimants has supported award of the Tribunal by relying upon judgment of this Court **National Insurance Co. Ltd. VS. Surjit Kaur and another, alongwith connected case, 2017(1) RCR (Civil) 640** wherein the controversy raised in the present appeal is squarely answered against the insurance company by relying upon the instructions issued by the Tariff Advisory Committee that were effective w.e.f 25.03.1977.

Counsel for the insurance company, in reply, has not disputed the aforesaid instructions issued by the Tariff Advisory Committee nor has raised an argument that either those instructions were not adopted by the appellant-insurance company or the same were withdrawn at any point of time in order to deny benefit of the instructions and judgment of Himachal Pradesh High Court **United India Insurance Company Ltd. VS. Prem**

Singh and others, 2001 ACJ 1445 and of Kerala High Court **Oriental Insurance Company Ltd. VS. Daniel, 2000(2) TAC 74,** to the claimants.

In this view of the matter, the insurance company cannot escape its liability to pay compensation to the claimants qua death of Baz Singh who was travelling on the pillion seat of the motorcycle driven by Kuljit Singh.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

No order as to costs.

FAO No.3405 of 2014

Kuljit Singh was the driver of ill-fated motorcycle that was owned by Harjit Singh respondent No.7. The Tribunal has awarded compensation of Rs.1 lakh on account of death of Kuljit Singh by relying upon a special contract between the insurer and the insured whereby risk of owner driver has been covered to the extent of Rs.1 lakh on payment of extra premium of Rs.50/-.

Counsel for the insurance company would argue that benefit of the special contract would be available only if injury had been sustained by the owner/insured while driving the motorcycle in question. It has further argued that a borrower of the motorcycle is not entitled to derive benefit of the special contract meant only for the owner-driver. In support of his contention, he has relied upon judgments of this Court **Reliance General**

Insurance Company Ltd. VS. Jaswinder Pal Kaur and others, FAO No.1840 of 2015, dated 22.08.2017 and Balwinder Kaur VS. Reliance General Insurance Company Ltd. and others, FAO No.1927 of 2012, dated 15.09.2017.

Counsel representing the claimants has supported grant of compensation of Rs.1 lakh as borrower of the motorcycle would step into the shoes of insured, therefore, insurance company cannot escape liability to pay compensation of Rs.1 lakh. In the alternative, it is argued that the claimants may be allowed Rs.50,000/- under No Fault Liability. For this purpose, reliance has been placed upon judgments of this Court **National Insurance Company Ltd. Vs. Harjit Singh and another, 2016(1) PLR 735** and **National Insurance Company Ltd. Vs. Bimla Devi and others, FAO No.7901 of 2014, decided on 26.03.2018.**

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

Perusal of the insurance policy makes it evident that it was liability only policy. As per the schedule of premium, a sum of Rs.50/- was paid towards compulsory PA for owner driver. Contention raised by counsel for the claimants that PA for owner driver would also cover the risk of death of a borrower from the owner is not tenable in view of the judgments of this Court cited by counsel for the insurance company. However, claimants shall be entitled to Rs.50,000/- under No Fault Liability in the light of judgments in **Harjit Singh and other's case (supra)** and **Bimla**

Devi and others case (supra).

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed. Claimants shall be entitled to compensation of Rs.50,000/- with interest at the rate allowed by the Tribunal, from the date of petition till realization.

30.05.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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