

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A. O. No. 4623 of 2014 (O&M)

Date of Decision: 02.11.2018

United India Insurance Company

.....Appellant

Versus

Harjit Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vinod Chaudhri, Advocate
for the appellant.

AVNEESH JHINGAN, J.(oral)

The insurer of motor cycle bearing registration No. CH01-AB-7301 (hereinafter referred to as "the motor cycle") has filed the present appeal against the award dated 01.11.2013 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal').

2. The brief facts for adjudication of the present appeal are that a motor vehicular accident took place on 04.06.2012. Pardeep Singh was driving motor cycle and at about 8:00 p.m. when he reached dividing road of Sector 29-30, Chandigarh, his motor cycle developed a mechanical defect and went out of control, he fell down and suffered injuries which proved fatal. He was aged 27 years at the time of accident. A claim petition under Section 163-A of the Motor Vehicles act, 1988 (for short 'the Act') was filed by the mother of the deceased.

3. The Tribunal after considering the facts and appreciating the evidence held that since the deceased was a borrower of the motor cycle and the motor cycle was owned by his father, the claimant would not be entitled

for compensation under Section 163-A of the Act. It was held that the

insurance policy was a package policy and hence Rs. 1 lakh on account of Personal Accident Cover (PAC) was awarded to the claimant along with interest at the rate of 7.5% per annum.

4. Learned counsel for the appellant argued that the deceased being a borrower was not covered under the PAC.

5. The only issue for consideration in the present appeal is whether a borrower of vehicle is covered under PAC.

6. The issue that the borrower of a vehicle will also be covered under the PAC is based on argument arising from decision of the Supreme Court in *Ningamma and another Vs. United India Insurance Co. Ltd.*, 2009 (13) SCC 710.

7. Supreme Court dealt with the following issue :-

“13. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representatives?”

8. The issue was decided and it was held 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.”

It would be appropriate at this stage to quote Sections 140 and 163-A of the Act and GR-36.

“140. Liability to pay compensation in certain cases on the principle of no fault – (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty – five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163 – A.

163 – A. Special provisions as to payment of compensation on structured formula basis

– (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent

disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. – For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

GR 36. Personal Accident (PA) Cover under Motor Policy (not applicable to vehicles covered under Section E, F and G of Tariff for Commercial Vehicles)

A. Compulsory Personal Accident Cover for Owner-Driver

Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an 'effective' driving license is termed as Owner-Driver for the purposes of this section.

Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/dismounting from or traveling in the insured vehicle as a co-driver.

NB. This provision deals with Personal Accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective driving license. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving license. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory P.A. cover for the owner – driver should not be charged and the compulsory P. A. cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her.

9. In *Ningamma's case* (supra), it was held that the representatives of the deceased step into the shoes of the owner of the motor vehicle, hence could not claim compensation under Section 163-A of the Act.

10. Learned counsel for the appellant contended that the Tribunal erred in relying upon PAC for awarding a sum of ₹ 1,00,000/- to the borrower of the vehicle. His contention is that the PAC is only with regard to the owner of the insured vehicle who would be entitled to this amount in case of a fatal accident.

12. Issue that needs consideration is that once it has been held by Supreme Court that the borrower of the vehicle stepped into the shoes of the owner, can the insurance company be permitted to take a contradictory stand, to say that borrower of vehicle is not covered under PAC.

13. It is not disputed that in the present case, that extra premium

was paid for PAC for owner-driver. The term 'owner-driver' has been defined under GR-36. It states "Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an 'effective' driving license is termed as Owner-Driver for the purposes of this section. The definition clearly restricts the meaning of 'owner-driver'. It only includes owner of the insured vehicle. There is a further rider that for claiming compensation for PAC owner should be holding an 'effective' driving license.

14. Note in GR-36 states that only the registered owner in person is entitled for Personal Accident Cover if he holds an effective driving license. The said Cover is not to be granted where the vehicle is owned by a company, a partnership firm or a similar body corporate. This further clarifies that representative of the owner will not fall within the ambit of PAC.

15. The term '*owner-driver*' has been defined, hence, no word can be added or deleted from the definition to extend the benefit to claimant so that the term '*owner-driver*' can be stretched to mean owner or driver.

16. The award passed by the Tribunal is being set aside, whereby the claimants were found entitled to compensation of ₹ 1,00,000/-. It would be appropriate to invoke Section 140 of the Act. Under the said provision, the claimants would be entitled to ₹ 50,000/- for 'no fault liability' as provided.

17. The award dated 01.11.2013 is modified to the extent that the claimants would be entitled to ₹ 50,000/- instead of ₹ 1,00,000/- as awarded by the Tribunal. It is, however, clarified that the claimants would

be entitled to interest, as awarded by Tribunal, due, if any, for delay in making payment of ₹ 50,000/-.

18. The respondents if aggrieved of the said order would be at liberty to revive the appeal by moving an application.

19. The appeal is disposed of in the aforesaid terms.

02.11.2018
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No