

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.624 of 2014

Date of Decision:27.03.2018

New India Assurance Company LimitedAppellants

Vs.

Ankush Gupta and othersRespondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.R.K.Sharma, Advocate, for the appellants.

Mr.Vaneet Soni, Advocate, for respondents No.1 and 2.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the appellant/Insurance Company (for short 'the appellant'), against award dated 17.10.2013, passed by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') wherein claim petition was filed under Section 163 A of MV Act, vide which compensation to the tune of Rs.4,72,500/- was awarded to the claimants on account of death of their mother Smt.Kamna Devi Gupta in a motor vehicular accident.

Learned counsel for the appellant/Insurance Company had raised the point that in the present case, as per claimants, Smt.Kamma Gupta (deceased) had died, when she was pillion rider on the motorcycle of her son and her Dupatta rulled up in the chain of the motorcycle, as a result of which, she fell down and received head injury. He raised point that these facts, which were coming on record in the statement of PW-1 as well as in DDR, which the claimant had proved on record that she had not died on

account of any motor vehicles accident rather she had died because of her own negligence as her Dupatta rolled up in the chain of the motorcycle.

The learned Tribunal has returned to the findings with regard to issue No.1 by referring to the judgment of **Smt.Rita Devi Vs. New India Assurance Company Ltd. 2000(2) ACJ 801**, wherein it is held that use of expression “arising out of “ has a wider connotation. This implies that the accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression “arising out of the use of a motor vehicle” enlarges the field of protection made available to the victim of an accident and is in consonance with the beneficial object underlying the enactment.” However, the aspect that accident was not on account of rash and negligent driving. A reference has been made by the case of **National Insurance Company Limited Vs. Rukhshanaben Salimbhai Vora and another 2007 ACT 1235**, wherein it is held that Motor Vehicles Act, 1988, Section 163-A- Claim Application Maintainability- Arising out of the use of motor vehicle-Girl was being carried on pillion of motorcycle, a kite was being flown and the kite thread on the road slit her neck resulting in her death. Contention that accident cannot be said to have taken place on account of involvement of motor vehicle and claimants had cause of action only against the person who was flying the kite. As such, claim under Section 163 was maintainable.

Learned counsel for the appellant/Insurance Company has referred to the judgment in the case of **Oriental Insurance Company Limited Vs. Sudhakaran K.V. And others 2008(3) RCR (Civil) 251** wherein, it has been held that the pillion rider in a two wheeler was not to be treated as third party when the accident has taken place owing to rash and negligent riding

of the scooter and not on the part of the driver of another vehicle. As such, Insurance Company is not liable to pay compensation to the claimants.

Learned counsel for the respondents submits that the judgment cited by the counsel for the appellant/Insurance Company is not applicable to the facts of the present case as per terms and conditions of Insurance Policy, it cover the third party, claim petition under Section 163A has been rightly entertained. In the present case, no other vehicle involved and deceased was a third party, as such, learned Tribunal had applied the ratio of the judgment in the case of **Oriental Insurance Company Limited Vs. Sudhakaran K.V. And others 2008(3) RCR (Civil) 251**, claim petition has been rightly allowed.

In view of the above, the orders of the learned Tribunal does not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

27.03.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No