IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 26.3.2018

1. **FAO No.7901 of 2014(O&M)**

National Insurance Co. Ltd. …..Appellant

VERSUS

Bimla Devi and others .....Respondents

Present: Mr. R.C. Kapoor, Advocate for the appellant.

Mr. R.S. Mamli, Advocate for respondent Nos.1 to 4.

Mr. Virender Mandhon, Advocate for respondent No.5

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2. **FAO No.9168 of 2014(O&M)**

Bimla and others …..Appellants

VERSUS

Phool Singh and another .....Respondents

Present: Mr. R.S. Mamli, Advocate for the appellants.

Mr. R.C. Kapoor, Advocate for respondent No.2

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.7901 and 9168 of 2014 as these have emerged out of the same award dated 04.07.2014 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhari (in short 'the Tribunal') whereby compensation has been awarded on account of death of Banta Ram borrower of motorcycle No.HR-02Z-8620 owned by Phool Singh son of late Sh. Banta Ram.

The Tribunal has awarded compensation of Rs.1 lakh on the basis of P.A. Cover of owner-cum-driver up to the amount of Rs.1 lakh.

FAO No.7901 of 2014 has been filed by the insurance company to assail compensation awarded by the Tribunal whereas FAO No.9168 of 2014 has been filed by the claimants seeking enhancement of compensation.

FAO Nos.7901 and 9168 of 2014

The sole submission made by counsel for the insurance company is that as the deceased is borrower of the insured vehicle from Phool Singh, its owner and son of the deceased, he (Banta Ram) would step into the shoes of the registered owner, therefore, insurance company is not liable to indemnify Phool Singh by payment of compensation to the claimants namely Bimla and others.

Another submission made by counsel is that additional premium of Rs.50/- paid by the insured to cover the risk of injury or death of the owner-cum-driver would be available, had the driver been the registered owner of the vehicle and not to a borrower from the registered owner. For this purpose, he has referred to judgment of this Court **Reliance General Insurance Company Ltd. Vs. Jaswinder Pal Kaur and others, FAO No.1840 of 2015, decided on 22.08.2017.**

Counsel representing the claimants, on the other hand, has supported grant of compensation of Rs.1 lakh by invoking the special contract between the insured and the insurance company whereby P.A. Cover was allowed to the owner-cum-driver to the limited extent of Rs.1 lakh. For this purpose, he has referred to judgment of this Court **New India Assurance Co. Ltd. Vs. Umesh Kumari and others, 2010(1) RCR**

(Civil) 669. In the alternative, it is argued that in case death of Banta Ram is not covered under the special contract in favour of owner-cum-driver on payment of extra premium of Rs.50/-, claimants shall be entitled to Rs.50,000/- under 'No Fault Liability'. In support of his contention, he has relied upon judgment of this Court **National Insurance Company Ltd. Vs. Harjit Singh and another, 2016(1) PLR 735.**

I have heard counsel for the parties, perused the paper-book, copy of the insurance policy and the judgments cited at bar.

Perusal of the Schedule of Premium detailed in the policy issued by the insurance company would reveal that the policy is a Package Policy which cover third party claim on payment of premium of Rs.330/-, compulsory P.A. to owner-cum-driver on payment of Rs.50/- and the amount is limited to Rs.1 lakh and own damage. The total premium is Rs.864/- and net amount paid is Rs.953/- including service tax of Rs.89/-.

The first question that calls for consideration is whether Compulsory P.A. to owner-cum-driver on payment of extra premium of Rs.50/- would also cover the risk of injury or death of a borrower from the registered owner. This matter came up for hearing before this Court in **Jaswinder Pal Kaur's case** (supra) wherein on a detailed discussion of various judgments on the issue including **Umesh Kumari and others case** (supra) relied upon by counsel for the claimants, it has been held that the P.A. Cover for owner driver would not cover death of a borrower from the registered owner. In **Umesh Kumari and others case** (supra), this Court had not taken into consideration GR-36 providing for Personal Accident (P.A.) cover under the Motor Policy for owner-driver which was taken into consideration in the later judgments referred to in the cited authority. In view of enunciation laid down in **Jaswinder Pal Kaur's case** (supra), I find merit in contention of counsel for the insurance company that P.A. Cover for owner-cum-driver would not cover the risk of injury or death of a borrower from the owner. In this view of the matter, findings recorded by the Tribunal that the claimants are entitled to compensation of Rs.1 lakh in view of special contract between the insured and the insurer cannot be allowed to sustain and ordered to be set aside.

This brings the Court to plea of the claimants with regard to grant of compensation of Rs.50,000/- under 'No Fault Liability'. This Court in **Harjit Singh and another's case** (supra) has held in para 3, quoted thus:-

> "3. In a situation where the Insurance Company cannot be made liable under the terms of the policy, there is a minimum liability which the Motor Vehicles Act constitutes under Section 140 where all that has been seen is whether the vehicle that was involved in the accident had been insured with the particular Insurance Company. If it was in a case of injury resulting in permanent disability, the maximum compensation will be Rs.25,000/- and in case of death, the maximum compensation of Rs.50,000/- would require to be paid in terms of the judgment of the Supreme Court in **Eshwarappa @ Maheshwarappa and another Versus C. S. Gurushanthappa and another-2010(8) Scale 263.**"

Counsel for the insurance company has not cited any contrary judgment. That being so, claimants shall be entitled to compensation of Rs.50,000/- with interest as allowed by the Tribunal under 'No Fault Liability'.

No other point has been raised.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed. As a natural corollary, appeal filed by the claimants is ordered to be dismissed. No order as to costs.

MARCH 26, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no