IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 07.12.2018

FAO No.6565 of 2015 (O&M)

Cholamandlam MS General Insurance Co. Ltd. ... Appellant

Versus

Monika and others ... Respondents

FAO No.6603 of 2015 (O&M)

Cholamandlam MS General Insurance Co. Ltd. ... Appellant

Versus

Rahul @ Kala and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate
for the insurance company.

Mr. Ashish Pannu, Advocate
for the claimant.

Mr. Harkesh Manuja, Advocate
for the owner and driver.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.6565 and 6603 of 2015 as these have emerged out of the same award dated 07.04.2015 passed by the Motor Accidents Claims Tribunal, Sonepat whereby compensation has been awarded on account of injuries sustained by Monika, daughter of Rajiv and Rahul @ Kala, minor son of Rajiv, in a motor vehicular accident that took place on 31.01.2014 when both the injured were on their way to Indian School, Sonepat on motorcycle bearing No.HR-10U-1272 driven by Rahul @ Kala on which Monika was a pillion rider.

Counsel for the insurance company would inform that appeals have been preferred to assail the award primarily on two grounds. The first submission made by counsel is that injured Rahul, driver of aforesaid motorcycle was minor at the time of occurrence and he did not possess a driving licence, therefore, he is to be attributed contributory negligence and is not entitle to compensation to the extent of negligence attributable to him.

Another submission made by counsel is that the insurance company has filed an application for additional evidence in order to produce on record the verification report in regard to licence possessed by Tek Chand, driver of offending vehicle. It is argued that licence possessed by Tek Chand was found to be fake, in view of verification report (Annexure A3), therefore, insurance company is entitle to be exonerated of liability to pay compensation or may be given right of recovery against the insured after payment of compensation to the claimants.

Counsel representing the claimant(s) has refuted contention of the insurance company that the mere fact that Rahul was less than 18 years of age at the time occurrence and was not supposed to drive the vehicle would not ipso facto make it a case of contributory negligence. In support of his contention, he has relied upon judgment of Hon'ble the Supreme

Court **Meera Devi and another Vs. HRTC and ors., 2014(2) Law Herald (SC) 1043**. In addition, it is argued that there is no evidence on record to prove contributory negligence of Rahul.

The contention raised by the insurance company to attribute contributory negligence to Rahul, the injured and driver of motorcycle No.HR-10U-1272 is not meritorious when examined in the light of judgment of Hon'ble the Apex Court **Meera Devi and another's case (supra).** Counsel for the insurance company has failed to point out any materials on record to prove as a matter of fact that Rahul can be attributed contributory negligence for the occurrence. In this view of the matter, plea of the insurance company is untenable and accordingly rejected.

The argument with regard to driving licence possessed by Tek Chand having been found fake on verification, the report sought to be produced by way of additional evidence is not per se admissible in evidence, therefore, the said report cannot form the basis to hold that licence possessed by Tek Chand is fake and insurance company is entitle to press for right of recovery against the insured after payment of compensation to the claimants. In this context, reference can be made to judgment of this Court **ICICI Lombard General Insurance Company Ltd. Vs. Dev Kumar and others, FAO No.4886 of 2017, decided on 29.08.2017**.

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.

07.12.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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