In the High Court of Punjab and Haryana at Chandigarh

FAO- 930 of 2014(O&M)
Date of Decision:6.4.2018

Reliance General Insurance Company Limited

---Appellant

vs.

Nirmala Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. R.K.Bashamboo, Advocate
for the appellant
Ms. Neeraj Chadel, Advocate
for the respondents.

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Rekha Mittal, J.

The present appeal directs challenge against award dated 11.10.2013 passed by the Motor Accidents Claims Tribunal, Karnal (in short "the Tribunal") whereby compensation has been awarded in regard to death of Rajinder out of use of tractor bearing No. HR-40B-3163, under Section 163-A of the Motor Vehicles Act, 1988 (in short "the Act").

The sole submission made by counsel for the appellant-insurance company is that as driver of tractor does not fall within the purview of third party, entitled to get compensation under Section 163-A of the Act, the insurance company is not liable to indemnify the insured in respect of injuries or death of driver of the vehicle in question. In support of his contention, he has relied upon judgment of this Court **FAO No. 4848 of 2010 titled "Sushila w/o late Sh. Muna Lal Ji and others vs. Sh. Pankaj Mahajan and another"**, decided on

10.12.2012 wherein it has been held, quoted thus:-

> "The third party is a person, who is not the insurer or the insured. The driver is not a third party. A driver has his own status and obtains a right to claim as third party if yet another vehicle was involved or he claims as party vis-a-vis his employer in his status as workman. To claim compensation on behalf of driver as third party for claim arising on account of user of his own vehicle with no other vehicle intervening is a misunderstanding of the law of insurance and the law of Motor Vehicles Act."

Counsel representing the claimant has supported the award whereby the insurance company has been held to be jointly and severally liable to pay compensation.

I have heard counsel for the parties, perused the paper book particularly the award.

Be that as it may, it is undisputed position of the case that Rajinder was driver of tractor Swaraj bearing No. HR-40B-3163 owned by Ishwar Dutt and Rajinder sons of Sher Singh residents of village Balrangran, Tehsil Assandh, District Karnal. There is no denial that the tractor stood insured with the Reliance General Insurance Company (appellant herein).

Claimants Nirmala Devi and others filed application for compensation by invoking Section 163-A of the Act. As per plea of the claimants, Rajinder was making fodder by using reaper alongwith tractor aforesaid. During the process, when he was cleaning net of the reaper, his foot slipped and he came underneath the tractor due to which he died.

Section 163-A of the Act is a special provision as to payment of compensation on structured formula basis. A relevant extract therefrom reads as follows:-

> "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 or the authorized 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."

This court in **Sushila and others' case (supra)** has held that the driver is not a third party. A driver obtains a right to claim as third party if another vehicle was involved or he claims as party viz-a-viz his employer in his status as workman. Counsel for the claimants has failed to cite any contrary law. In view of enunciation laid down in **Sushila and others' case (supra),** I find merit in contention of the insurance company that claimants (regal representatives of deceased Rajinder, driver of the vehicle in question) cannot claim compensation from the insurance company by invoking the provisions of Section 163-A of the Act. That being so, findings recorded by the Tribunal holding the insurance company jointly and severally liable to pay compensation are not sustainable and ordered to be set aside.

For the foregoing reasons, the appeal is allowed in the aforesaid terms.

(Rekha Mittal)
Judge

6.4.2018
paramjit

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