IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 4002 of 2018(O&M)
Date of Decision: 26.10.2018

Bajaj Allianz General Insurance Company

......Appellant.

Versus

Somwati and others

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Geeta Gulati, Advocate
for the appellant.

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LISA GILL, J (Oral).

This appeal has been filed by the appellant-Insurance Company against the impugned award dated 10.04.2018 passed by the learned Motor Accident Claims Tribunal (for short 'MACT'), Charkhi Dadri, District Bhiwani.

As per averments in the claim petition, DDR No. 12 dated 07.06.2016 was registered on the statement of Surender Singh @ Leela son of Ram Kumar to the effect that on 06.06.2016, his nephew-Krishan Kumar (since deceased) was going from his house to village Bijna on a motorcycle bearing registration No. HR-19-J-4796. At about 10.00.p.m., when he reached near Women College, Jhojhu Kala, a *Kikar* tree fell down on the road. Due to the darkness and another vehicle approaching from the opposite side, Krishan Kumar could not see the *Kikar* tree already fallen on the road. His motorcycle struck against the said tree and he fell on the road. Later, he succumbed to the injuries received in this accident.

Petition under Section 163-A of the Motor Vehicle Act (for short 'the Act') was filed seeking compensation on account of the death of

Krishan Kumar by respondents no.1 and 2. Claim under Section 163-A of the Motor Vehicle Act, was rejected by the learned tribunal while holding that the deceased-Krishan Kumar, who had borrowed the vehicle in question, could not be treated as a third party. However, the claimants were held entitled to compensation of ₹1 lakh on account of payment of premium of ₹50/- under the head 'PA for owner driver'.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that as per regulation no. 36 of the Tariff Advisory Committee for Transaction of Motor Insurance in India in accordance with the provisions of Part-II of the Insurance, Act, 1938, Compulsory Accident Cover would ensure the payment of compensation to the owner of the vehicle in question. A person, who had admittedly borrowed the vehicle, cannot be treated to be the owner of the vehicle. Thus the sum of ₹1 lakh has been wrongly awarded by the learned tribunal. It is thus prayed that the impugned award be set aside and the claim of respondents no.1 and 2 be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file with her able assistance.

It is not disputed that premium had been paid on account of 'PA Cover of the owner driver' as per the insurance policy. Deceased-Krishan Kumar, had admittedly borrowed the vehicle i.e. the motorcycle in question from Hawa Singh-respondent no.3. The Hon'ble Supreme Court in **Ningamma and another Vs. United India insurance Company Limited 2009(3) R.C.R (Civil) 435**, held that a borrower would indeed step into the shoes of the owner. Claim set up by the legal representatives of the deceased under Section 163-A of the Act has been dismissed by the learned tribunal. Keeping in view the fact that requisite premium for covering the risk qua the owner stood paid, limited relief to that extent was rightly afforded by the learned tribunal. This Court in **New India Assurance Company Limited Vs. Umesh Kumari and others 2010 (1) R.C.R (Civil) 669** has held that a borrower would step into the shoes of an owner and shall be entitled to commensurate relief, if the requisite premium had been paid.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 10.04.2018 passed by the learned MACT, Charkhi Dadri, District Bhiwani, which calls for interference by this Court at the instance of the appellant.

Appeal is accordingly dismissed with no order as to costs.

[LISA GILL]
Judge

26.10.2018
s.khan

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