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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.455 of 2018 (O&M)
Date of Decision: 16.11.2018

Kamaljit Kaur and others

Appellants

Versus

Sukhdev Singh and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P.S. Punia, Advocate for the appellants.

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AVNEESH JHINGAN, J (Oral):

The present appeal has been filed against award dated 13.01.2017 passed by Motor Accident Claims Tribunal, Fatehgarh Sahib (for brevity 'the Tribunal').

A motor vehicular accident took place on 14.08.2015. Surjit Singh (deceased) was going from Amloh to his village Majra Manna Singh Wala on a motorcycle bearing registration No.PB-23M-4044 (hereinafter referred to as 'motorcycle'). When he reached near village Majri Kishne Wali, his motorcycle slipped accidently due to which he fell down and sustained multiple grievous injuries. He was taken to IVY Hospital, Khanna from where he was referred to Apollo Hospital, Ludhiana. On his way to Apollo Hospital, Ludhiana he succumbed to injuries. DDR No.9, dated 15.08.2015 was registered at Police Station Amloh.

Widow and three children of Surjit Singh filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for brevity 'the Act'). The owner of motorcycle and insurer of motorcycle i.e. IFFCO TOKIO General Insurance Co. Ltd. were arrayed as respondents No.1 and 2 in the claim petition.

The Tribunal after considering the facts and appreciating the evidence adduced on record, dismissed the claim petition on the ground that earning of deceased was more than the prescribed limit of ₹40,000/- per annum. Aggrieved of dismissal of the claim petition, the present appeal has been filed.

Learned counsel for the appellants contended that in the claim petition it was pleaded that the deceased was earning ₹3,300/- per month and hence the Tribunal erred in dismissing the claim petition. He further contended that there was Personal Accident Cover (PAC) in the insurance policy and insurance company is liable to pay ₹1,00,000/- under the PAC.

The contentions raised by learned counsel for the appellants lacks merit.

Son of the deceased appeared before the Tribunal and deposed as CW-1. He admitted that his father owned a Truck which was financed and the deceased was paying installments of ₹40,000/- per month. He further stated that he was saving around ₹4,000/- to ₹5,000/- per month and also had a monthly earning of ₹2,000 to ₹3,000/- from the Dairy Farming. The appellants were not able to dispute the deposition of son of the deceased.

The Supreme Court in case of ***Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd., Baroda, 2004 (5) SCC 385*** has held as under:-

> *"We, therefore, are of the opinion that Oriental Insurance Co. Ltd. Vs. Hansrajbhai V.Kodla and others, (2001) 5 SCC 175 has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annual shall be treated as a cap. In our opinion, the proceeding under Section 163- A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act."*

In view of decision quoted above, ₹40,000/- limit mentioned in Section 163-A of the Act is not meant for capping the earning of the deceased. The provision has been made for that strata of the Society whose earning is less than ₹40,000/- per annum. No error can be found in award of the Tribunal dismissing the claim petition filed under Section 163-A of the Act.

The second contention raised by learned counsel for the appellants that the insurance company is liable to pay ₹1,00,000/- under the PAC also deserves rejection.

Learned counsel for the appellants contended that the Tribunal erred in not awarding a sum of ₹1,00,000/- to the borrower of the vehicle under PAC. He argued that it has been held by the

Supreme Court that once the borrower of the vehicle stepped into the shoes of the owner, the insurance company cannot be permitted to take a contradictory stand, to say that borrower of vehicle is not covered under PAC.

The deceased was a borrower of motorcycle owned by respondent No.1(in the claim petition). The contention that borrower would be covered under PAC emanates on the basis of decision of the Supreme Court in ***Ningamma and another Vs. United India Insurance Co. Ltd., 2009 (13) SCC 710***. The Supreme Court dealt with the following issue:-

> ***"13. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representatives?"***

The issue was decided and it was held as under :-

> *"19. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently*

disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA."

It would be appropriate at this stage to quote Sections 140 and 163-A of the Act and GR-36.

"140. Liability to pay compensation in certain cases on the principle of no fault –

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty – five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead

and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under subsection (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163 – A.

163 – A. Special provisions as to payment of compensation on structured formuala 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 of the authorised 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.

Explanation. – For the purposes of this subsection, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

GR 36 : *Personal Accident (PA) Cover under Motor Policy (not applicable to vehicles covered under Section E, F and G of Tariff for Commercial Vehicles)*

A. Compulsory Personal Accident Cover for Owner-

Driver Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an 'effective' driving license is termed as Owner Driver for the purposes of this section.

Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/dismounting from or traveling in the insured vehicle as a co–driver.

NB : *This provision deals with Personal Accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective driving license. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the ownerdriver does not hold an effective driving license. In all such cases, where compulsory PA cover*

> *cannot be granted, the additional premium for the compulsory P.A. cover for the owner - driver should not be charged and the compulsory P. A. cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her.*

In view of decision of the Supreme Court, the contention raised by learned counsel for appellants has a fallacy. The term 'owner-driver' has been defined under GR-36. It states “Compulsory Personal Accident Cover shall be applicable under both cases i.e. Liability Only and Package policies. The owner of insured vehicle holding an 'effective' driving licence is termed as Owner-Driver for the purposes of this section. The definition clearly restricts the meaning of 'owner-driver', it only includes owner of the insured vehicle. There is a further rider that for claiming compensation for PAC, owner should be holding an 'effective' driving licence.

Note in GR-36 states that only the registered owner in person is entitled for Personal Accident Cover if he holds an effective driving licence. The said Cover is not to be granted where the vehicle is owned by a company, a partnership firm or a similar body corporate. This further clarifies that representative of the owner will not fall within the ambit of PAC.

The term 'owner-driver' has been defined, hence, no word can be added or deleted from the definition to extend the benefit to claimant so that the term 'owner-driver' can be stretched to mean owner or driver. Hence, appellants are not entitled to receive any compensation under PAC. However, it would be appropriate to invoke Section 140 of the Act. Under the said provision, the claimants would be entitled to ₹50,000/- for 'no fault liability' as provided.

The appeal is dismissed in the aforementioned terms. However, the appellants shall be entitled to an amount of Rs.50,000/- under Section 140 of the Act.

Considering the view taken as per the facts of the case, it was not deemed appropriate to issue notice to the insurer of the motorcycle. However, it is clarified that if insurer is aggrieved of this order, it would be at liberty to revive the same by filing an application.

[AVNEESH JHINGAN]
JUDGE

November 16, 2018
pankaj baweja

1. Whether speaking/ reasoned : Yes/ No

2. Whether reportable : Yes/ No