**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 23.07.2019

1. FAO No.1025 of 2006

United India Insurance Company Ltd.

….Appellant

Versus

Smt. Nirmala Devi and others

….Respondents

2. FAO No.1026 of 2006

The United India Insurance Company Ltd.

….Appellant

Versus

Rajender and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjiv Pabbi, Advocate,
for the appellant-Insurance Company.

Mr. Sumit Sharma, Advocate,
for the respondents.

RITU BAHRI J. (Oral)

This judgment shall dispose of two appeals i.e. FAO Nos.1025 & 1026 of 2006 as common questions of law and facts are involved therein. Moreover, both appeals have arisen out of one common award.

United India Insurance Company Ltd.-appellant has filed the present appeals against the award dated 10.10.2005 passed by the Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') whereby compensations of Rs.3,14,000/- and Rs.1,00,000/- have been awarded in favour of the claimants on account of death of Ram Chander in a motor vehicular accident which took place on 2/3.07.2003. Claimants are widow, minor children and parents of deceased Ram Chander.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 2/3.07.2003, deceased-Ram Chander son of Rajender was coming from Dadri towards his village Pehladgarh in a car bearing No. HR-16-C-9434. When he reached near village Pehladgarh, all of a sudden, a Rose (*Neel Cow)* came from left side of the road, whereupon, car of Ram Chander Struck against it and turned turtle, as a result of which, Ram Chander received fatal injuries and died on the spot. The accident was witnessed by Rajender and Sube Singh (father and cousin brother of Ram Chander), who got lodged DDR at Police Station, Sadar Bhiwani. Consequently, the claimants-appellants filed two separate claim petitions under Section 163-A of the Act before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the deceased had died in road side accident arising out of the use of car bearing No. HR-16-C-9434 on 2/3.07.2003 and thus, thus, returned the finding on Issue No.1 in favour of the claimants. Ultimately, claim both the claim petitions were allowed by a common award and claimants in claim petition No.208 of 2004 (titled as Smt. Nirmala etc. vs. United India Insurance Company Ltd.) were found entitled to a total compensation of Rs.3,14,000/- and claimants in claim petition No.207 of 2004 (titled as Rajender and another vs. The United India Insurance Company Ltd. and others) were awarded a total compensation of

Rs.1,00,000/- along with interest @ 7.5% per annum from the date of filing of the petitions till realization. Feeling dissatisfied with the impugned award, the Insurance Company-appellant has preferred the present appeals.

Learned counsel for the appellant-Insurance Company has referred to the judgment passed by Hon'ble the Supreme Court in ***Ningamma vs. United India Insurance Co. Ltd.***, 2009 (13) SCC 710 to contend that when an accident takes place by owner of a vehicle, claim petition under Section 163-A of the Motor Vehicle Act is not maintainable. In para no.13 of the said judgment, it has been observed as under:-

> "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 representative? Before dwelling further, it would be useful to discuss the relevant paras of Section 163-A and 166 of the MVA applicable in the present case.
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> > "163-A. *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 of 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.
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> > xxxx xxxx xxxx xxxx

> (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.
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> (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."
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> 166. *Application for compensation* - (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made-
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> (a) by the person who has sustained the injury; or
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> (b) by the owner of the property; or
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> (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
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> (d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:
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> Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.
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> xxxx xxxx xxxx
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> xxxx xxxx xxxx"

Hon'ble the Supreme Court has further referred to the judgment passed in ***Oriental Insurance Co. Ltd. vs. Meena Variyal,*** 2007 (2) RCR (Civil) 698. As per the aforesaid judgment, when owner of a vehicle, while driving the said vehicle, meets with an accident, he cannot be treated as third party and the insurance company is not liable to make payment of compensation to the claimants.

The ratio of aforesaid judgment is fully applicable to the facts of the present case. In this case also, Ram Chander-deceased was driving his own car when a *Neel Cow* suddenly came in front of him and his car struck against the said animal. Due to this accident, Ram Chander suffered fatal injuries and died at the spot. Thus, Ram Chander-deceased cannot be treated as a third party. In such circumstances, Insurance Company-appellant is not liable to make payment of compensation to the claimants.

In view of the above discussion, both the appeals i.e. FAO Nos. 1025 and 1026 of 2006 are allowed. These appeals were filed in the year 2006 and there is no interim stay on making payment of compensation by the insurance company. It is made clear that, in case payment of compensation has already been released in favour of the claimants, no recovery shall be made from them by the Insurance Company.

(RITU BAHRI)
JUDGE

23.07.2019
ajp