IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3434-2010 (O&M)
Date of decision: 30 .05.2019

Nitin Khurana

…. Appellant

Vs.

Anand Verma and another

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. Surender Deswal, Advocate
for the appellant.

Mr. Subhash Goyal, Advocate
for respondent No.2-Insurance Company.

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ARUN KUMAR TYAGI, J.

1. The appellant-claimant has filed present appeal seeking setting aside of award dated 15.12.2009 passed by the learned Motor Accidents Claims Tribunal, Gurgaon (for short 'the Tribunal') passed in **MACT Case No.59 of 2008/2009 titled as Nitin Khurana Vs. Anand Verma and another** whereby claim petition filed by the appellant/claimant under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') for award of compensation on account of injuries suffered by him in accident arising out of use of motor cycle bearing registration No.HR-35L-6006 on 19.12.2007 was dismissed.

2. The appellant/claimant filed the above-said claim petition on the averments that on 19.12.2007 the appellant/claimant was

coming from Rohtak road on motor cycle bearing registration No.HR-35L-6006 borrowed from respondent No.1-owner who was his friend. When he reached Traffic Police Post Sampla, a bi-cyclist came at a very high speed in a rash and negligent manner and all of a sudden turned his bi-cycle in the middle of the road and lost control over the bi-cycle. The appellant/claimant tried his level best to save the bi-cyclist but the bi-cyclist fell down and suffered injuries and died on the spot. The appellant/claimant also sustained multiple injuries and remained admitted in Fortis Hospital from 20.12.2007 to 28.12.2007. He spent amount of ₹8,00,000/- on his medical treatment. The appellant/claimant also became permanently disabled due to the injuries suffered. The appellant/claimant accordingly sought award of compensation of ₹10 lacs with costs and interest against the respondent No.1-owner and respondent No.2-insurer jointly and severally.

3. Notice of the claim petition was issued to the respondents. Respondent No.1-owner of the motor cycle suffered himself to be proceeded against ex-parte. In its written statement, respondent No.2-Insurance Company took objection as to maintainability of the petition on the grounds that the applicant/claimant being borrower had stepped into the shoes of the owner and could not be said to be third party and that the appellant/claimant could not claim compensation for injuries suffered in accident caused by his own negligence.

4. The Tribunal framed issues and recorded evidence produced by the parties. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties, the Tribunal held that the appellant/claimant being borrower of the motor cycle and also the wrong doer himself is not entitled to claim compensation under Section 163-A of the M.V. Act and that in the absence of proof of payment of any extra premium, the appellant/claimant is not covered by personal insurance. The Tribunal accordingly dismissed the claim petition.

5. Feeling aggrieved, the appellant/claimant has preferred present appeal against the above said award.

6. I have heard the learned Counsel for the appellant and learned Counsel for respondent No.2 and gone through the record.

7. Learned Counsel for the appellant/claimant has argued that the Tribunal has completely erred in law by not awarding any compensation to the appellant/claimant in a claim petition filed under no fault liability provision contained in Section 163-A of the M.V. Act for injuries suffered in accident arising out of the use of the motor cycle in question. The appellant/claimant, being borrower of the motor cycle and having stepped into the shoes of the owner thereof, was also covered by contractual stipulation extending personal accident cover to owner-driver contained in the comprehensive insurance policy of the motor cycle. The appellant/claimant is entitled for payment of compensation by respondent No.2-Insruance Company in discharge of its contractual liability under

comprehensive insurance policy covering personal accident of the owner-driver. Therefore, the appeal may be allowed, the impugned award may be set aside and by allowing the claim petition just and adequate compensation may be awarded to the appellant/claimant. In support of his arguments learned Counsel for the appellant/claimant has placed reliance on the judgments of Hon'ble Coordinate Benches of this Court in **FAO No.3082 of 2007 (O&M) titled United India Insurance Co. Ltd. Vs. Amrinder Singh and others decided on 02.02.2018** and **FAO No.792 of 2018 (O&M) titled ICICI Lambard General Insurance Co. Ltd. Vs. Mehrana and others decided on 06.08.2018.**

8. On the other hand, learned Counsel for respondent No.2-Insurance Company has argued that the deceased had borrowed the motor cycle bearing registration No.HR-35L-6006 from its owner and stepped into the shoes of the owner. Therefore, the claim petition against respondent No.1-owner was not maintainable and the claimant is not entitled for payment of compensation under Section 163-A of the M.V. Act. Learned Counsel for respondent No.2 has further argued that the appellant/claimant being the borrower was not covered by compulsory personal accident cover extended to owner-driver and the Insurance Company is not liable to pay any compensation to the appellant/claimant under its contractual liability in terms of the insurance policy. In support of his arguments learned Counsel for respondent No.2-Insurance Company has relied on the judgments of Hon'ble Coordinate Benches of this Court in **Sushila**

w/o late Sh. Muna Lal Ji and others Vs. Sh. Pankaj Mahajan and another : 2013 (1) PLR 715 and **Sajida and others Vs. Sabnam and another : 2018 ACJ 1110.**

9. So far as the claim proceedings under Section 163-A of the M.V. Act are concerned it is now well settled that :

(i) a victim or his heirs are entitled to claim from the owner/insurance company compensation for death or permanent disablement suffered due to accident arising out of the use of the Motor Vehicle without having to prove wrongful act or negligence or default of any one. If it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of the Motor Vehicle, then they will be entitled for payment of compensation. (See **Rita Devi Versus New India Assurance Company Limited 2000 (3) RCR (Civil) (Supreme Court) 200);**

(ii) the insurer cannot be allowed to raise defence of negligence on the part of injured/victim in claim proceedings under Section 163-A of the M.V. Act. (See **United Insurance Co. Ltd. Vs. Sunil Kumar 2018 (1) RCR (Civil) 680**); and

(iii) the liability under Section 163-A of the M.V. Act is on the owner of the Vehicle. A person cannot be both a claimant as also a respondent liable to pay the compensation. Therefore, claim under Section 163-A of the M.V. Act can be raised by third party only and claim by or at the behest of the owner is not maintainable under this provision. (See **Oriental Insurance Company Limited Vs. Rajni Devi, 2008 ACJ 1441 (Supreme Court)** and **Ningamma and another Vs. United India Insurance Co. Ltd.: 2009(3) RCR (Civil) 435)**.

10. In the present case, respondent No.2-Insurance Company is not entitled to defend the claim on the basis of negligence of the appellant/claimant, who was driving the motor cycle at the time of accident but admittedly the appellant/claimant, had borrowed the same from respondent No.1-owner thereof. Since, the appellant/claimant had borrowed the motor cycle from respondent No.1, he stepped into the shoes of respondent No.1-owner and he could not be said to be third party. The claim petition filed by the appellant/claimant, a borrower of the motor cycle, for award of compensation against respondent No.1-owner, being at the behest of respondent No.1-owner, is not maintainable under Section 163-A of the M.V. Act and the appellant/claimant is not entitled to payment of compensation under Section 163-A of the M.V. Act for the injuries suffered in the accident.

11. So far as the question of contractual liability of respondent No.2-Insurance Company is concerned, a perusal of insurance policy shows that premium of ₹840/- had been paid for basic (own damage) cover, premium of ₹300/- had been paid for third party property damage/Act cover and premium of ₹50/- had been paid for personal accident cover to owner-driver. The question which arises is as to whether the appellant/claimant, who had borrowed the motor cycle from respondent No.1-owner and had thereby stepped into his shoes, can be treated as owner-driver covered under the personal accident clause of the above-said insurance policy.

12. Section 2(9) of the M.V. Act defines the expression "driver" to include, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle while Section 2(30) of the M.V. Act defines the expression "owner" to mean a **person in whose name a motor vehicle stands registered**, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement. (emphasis supplied)

13. The Tariff Advisory Committee, which is a statutory authority under the Insurance Act, 1938, had framed the Indian Motor Tariff Regulations governing the terms and conditions of the insurance policies. The relevant part of GR-36 of the Indian Motor Tariff Regulations, which is germane to determination of the questions involved in the present case, provides as under:-

> "**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 travelling 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 owner-driver 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 adopted by him/her.
x x x x x x x x x x”. (emphasis supplied)

14. A perusal of GR-36 of the Indian Motor Tariff Regulations shows that compulsory personal accident cover enures for the benefit only of the registered owner-driver holding effective driving licence and the expression owner-driver refers to the person who is the owner and driver himself and cannot be interpreted to mean owner or driver. Therefore, a driver of the vehicle who is not the registered owner will not be entitled to the benefit of compulsory personal accident cover. A borrower of the vehicle, treated to have stepped into the shoes of the owner so far as claim to compensation under Section 163-A of the M.V. Act is concerned, also does not fall within the ambit of contractual stipulation of insurance policy extending compulsory personal accident cover to owner-driver due to not being the registered owner himself.

15. In **New India Assurance Company Ltd. Vs. Umesh Kumari and others 2010 (1) RCR (Civil) 669; New India Assurance Co. Limited Vs. Karamjit and others 2013 (2) PLR**

495 (Punjab and Haryana High Court); National Insurance Company Limited Vs. Bharat Singh and others 2009 (2) Law Herald 1151 (Punjab and Haryana High Court) and **Bajaj Alliance General Insurance Co. Ltd. Vs. Jasmer Singh and another : 2015(3) RCR (Civil) (Punjab and Haryana High Court) 325;** and also in **FAO No.3082 of 2007 (O&M) titled United India Insurance Co. Ltd. Vs. Amrinder Singh and others decided on 02.02.2018** and **FAO No.792 of 2018 (O&M) titled ICICI Lambard General Insurance Co. Ltd. Vs. Mehrana and others decided on 06.08.2018** (relied upon by the learned Counsel for the appellant/claimant) borrower of the vehicle from owner was treated as owner and insurance company was held liable to pay compensation payable to owner under personal accident cover extended to owner-driver.

16. However, in these cases GR-36 of the Indian Motor Tariff Regulations issued by the Tariff Committee, which regulates the grant of personal accident cover, was not noticed/followed and in my humble view with due respect the judgments in these cases do not lay down the correct law.

17. In **FAO No.1773 of 2010 titled Bajaj Allianz General Insurance Company Limited Vs. Jagdish Singh decided on 09.12.2010** Hon'ble Coordinate Bench of this Court, while relying on **Ningamma's Case (Supra),** had taken the view contrary to that taken in **Umesh Kumari's Case (Supra)** and held that the personal accident cover is only for the owner-driver named in the policy and

cannot extend to any other person and the borrower of the vehicle is not covered under the same. This view has been followed in **Cholamandlam MS General Insurance Company Ltd. Vs. Smt. Rajesh and others : 2014 (4) PLR 377; National Insurance Company Ltd. Vs. Hari Mohan and another : 2017 (1) PLR 427**and **FAO No.3137 of 2013 titled Ranjit Singh Vs. Vijay Kumar and another decided on 08.03.2018** where, while relying on GR 36 of the Indian Motor Tariff Regulations, Hon'ble Coordinate Benches of this Court have held that borrower cannot get the benefit of personal accident cover which is restricted to the registered owner-driver.

18. In view of the above referred position of law, observations in **FAO No.3082 of 2007 (O&M) titled United India Insurance Co. Ltd. Vs. Amrinder Singh and others decided on 02.02.2018** and **FAO No.792 of 2018 (O&M) titled ICICI Lambard General Insurance Co. Ltd. Vs. Mehrana and others decided on 06.08.2018** (relied upon by the learned Counsel for the appellant/claimant) are not applicable to the facts of the present case and are not of any help to the claimants.

19. It follows from the above discussion that the appellant/claimant being borrower of the motor cycle in question from respondent No.1-owner is not covered by the contractual stipulation extending personal accident cover under the insurance policy to owner-driver and therefore, he is not entitled to payment of

any compensation even in discharge of contractual liability of respondent No.2-Insurance Company under the insurance policy.

20. However, in view of the provisions of Section 140 of the M.V. Act and observations in **Eshwarappa @ Maheshwarappa and Anr. Vs. C.S. Gurushanthappa and Anr. 2010(8) SCALE 263** and **Bajaj Allianz General Insurance Company Ltd. Vs. Kanchan w/o Suresh Sethi and others : 2013 (2) PLR 563** the appellant/claimant is entitled to payment of compensation of ₹50,000/- as the statutory minimum payable under no fault liability.

21. In view of the above discussion, the appeal is dismissed with modification of the impugned award dated 15.12.2009 qua the liability of respondent No.2-Insurance Company to amount of ₹50,000/- payable under Section 140 of the M.V. Act. Respondent No.2-Insurance Company is accordingly directed to pay the amount of ₹50,000/- to the appellant/claimant with interest at the rate of 9% per annum from the date of filing of the petition till realization.

(ARUN KUMAR TYAGI)
JUDGE

30.05.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No