In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:4.9.2019

FAO No. 1704 of 2011 (O&M)

National Insurance Company Limited

---Appellant

vs.

Virender Singh

---Respondent

FAO No. 1705 of 2011 (O&M)

National Insurance Company Limited

---Appellant

vs.

Virender Singh

---Respondent

FAO No. 6342 of 2011 (O&M)

Sushil Kumari

---Appellant

vs.

National Insurance Company Limited

---Respondent

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Paul S.Saini, Advocate
for the insurance company

Mr. P.R.Yadav, Advocate
for the appellant in FAO- 6342 of 2011

Mr. Surender Saini, Advocate
for the respondent in FAO Nos. 1704 and 1705 of 2011

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Rekha Mittal, J.

This order will dispose of FAO Nos. 1704, 1705 and 6342 of 2011 as these have emerged out of award dated 17.11.2010 passed by the Motor Accidents Claims Tribunal, Narnaul (in short "the Tribunal") whereby compensation has been assessed on account of death of Amar Singh and injuries sustained by Virender Singh in a motor vehicular accident that took place on the intervening night of 15/16.12.2007.

Amar Singh along with his wife Usha and son Virender Singh was going towards Narnaul while driving Maruti Car bearing No. HR 99A-Temp-2346. At about mid night of 15/16.12.2007 when Maruti Car aforesaid reached in the area of village Sarai Bahadur, one Tata Hyva Dumper came from opposite direction and on seeing the said Dumper, Amar Singh took the car on kacha portion of the road but suddenly got imbalanced and rammed into a tree. As a result, the car stood capsized and Amar Singh, Usha and Virender Singh sustained multiple injuries. Amar Singh and Usha died at the spot but Virender Singh fortunately survived.

Virender Singh filed two claim applications one for grant of compensation in respect of injuries sustained by him and the other in respect of death of his father Amar Singh under Section 163-A of the Motor Vehicles Act, 1988 (in short "the Act"). Another claim application was filed by Sushil Kumari wife of Narender Singh son of Amar Singh pressing claim for grant of compensation qua death of Amar Singh. All the three claim applications were decided by the Tribunal vide common award dated 17.11.2010 whereby claim preferred by Virender Singh in respect of his injuries and qua death of Amar Singh was allowed but application filed by Sushil Kumari was dismissed as her plea of dependency on Amar Singh was negated.

FAO Nos. 1704 and 1705 of 2011 have been filed by the National Insurance Company Limited (hereinafter referred to as "the insurance company") and third appeal (FAO No. 6342 of 2011) has been filed by Sushil Kumari.

Counsel for the insurance company would inform that appeals have been filed on the sole ground that insurance company cannot be fastened with liability to pay compensation qua death of Amar Singh and injuries sustained by Virender.

FAO Nos. 1704 and 1705 of 2011

Counsel for the appellant-insurance company would argue that Maruti Car bearing No. HR 99A-Temp-2346 involved in the occurrence was owned by Ms. Usha Devi wife of Amar Singh (since deceased). It is argued that as Amar Singh was driving the Maruti Car being husband of Usha, thus, stepped into the shoes of insured, the insurance company cannot be fastened with liability to pay compensation. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Ningamma and another vs. United India Insurance Company Limited 2009 (3) RCR (Civil) 435.** Further reference has been made to judgment of this Court **Sajida and others vs. Sabnam and another FAO No. 738 of 2013 decided on 23.11.2016.**

Counsel for the claimant-respondent, on the contrary, while refuting contention of the insurance company would argue that insurance company has rightly been fastened with liability to pay compensation. However, it has not been disputed that the aforesaid car was owned by Usha and Amar Singh was husband of said Usha and driving the car being husband of registered owner/insured.

Counsel would argue that policy in the present case is a comprehensive/package policy whereas the policy in **Ningamma and another's case (supra)** was an Act policy. In addition, it is argued that as per the policy, additional premium of Rs. 100/- was paid in respect of Compulsory P.A.cover premium. It is further argued that driver clause in the policy includes any person inclusive of insured provided that person driving holds effective driving licence at the time of accident and is not disqualified from holding or obtaining such a licence. It is argued with vehemence that in view of the fact that policy in question is a comprehensive policy and the insured paid extra premium of Rs. 100/- for P.A.Cover, insurance company cannot escape liability by relying upon the referred authorities. In support of his contention, he has relied upon judgment of this Court **ICICI Lombard General Insurance Company Limited vs. Mehrana and others FAO No. 792 of 2018 decided on 6.8.2018**. Counsel would further apprise that the insurance company filed an appeal against decision in **Mehrana and others' case (supra)** and the same was dismissed by Hon'ble the Supreme Court but question of law has been kept open. Counsel would urge that the present case stands on a better footing than the case of referred authority because in that case, P.A.Cover was only in respect of owner-driver which is not the case here.

Counsel for the insurance company, in reply, would argue that P.A.Cover is always meant for the owner-driver, in view of GR 36 of the Indian Motor Tariff Regulations.

I have heard counsel for the parties, perused the paper books and records.

Indisputably, the policy issued by the insurance company in favour of Ms. Usha, owner of the vehicle, is a package/comprehensive policy and the insured paid total premium of Rs. 22,082/-. That being so, the insurance company cannot derive advantage to its contention from the judgment in **Ningamma and another's case (supra)** wherein the policy was only an Act policy.

The question for consideration is that since in the present case the policy in question is comprehensive policy and the insured had paid extra premium of Rs. 100/- towards Compulsory P.A.Cover, can the insurance company escape liability to pay compensation. The answer appears to be in the negative. This Court on a detailed consideration of judgment of Hon'ble the Supreme Court in **Ningamma and another's case (supra)**, wherein various paras from the said judgment have been reproduced in extenso and after taking into consideration the P.A.Cover for owner-driver rejected plea of the insurance company that the insurer is not liable to pay compensation with regard to death of Sajid Khan, driver of motor cycle HR-02-AE-1005 owned by his brother Rashid Ali.

I have gone through the judgment in **Mehrana and others' case (supra)** and of the view that contention raised by the insurance company can not be accepted. I would hasten to add that the present case certainly stands on a better footing viz-a-viz **Mehrana and others' case (supra)** as in the present case, premium of Rs. 100/- was paid to include P.A.Cover but there is no such clause that the P.A.Cover is meant for owner if he himself was driving the vehicle. This apart, the driver's clause in the policy includes any person provided he/she holds effective driving licence at the time of occurrence and is not disqualified from holding or obtaining such a licence. No such plea has been raised by the insurance company that Amar Singh did not have effective licence to drive the Maruti Car aforesaid. In this view of the matter, the aforesaid question is answered against the insurance company and in favour of the respondent-claimant.

Counsel for the insurance company has cited judgment in **Sajida and others' case (supra),** an appeal decided by me. However, the said judgment does not appear to be impugned in appeal. On the other hand, judgment passed by a Co-ordinate Bench in **Mehrana and others' case (supra)** was challenged before Hon'ble the Supreme Court in Petition (s) for Special Leave to Appeal (C) No(s). 5252 of 2019 by ICICI Lombard General Insurance Company Limited (appellant therein). The appeal was dismissed but the matter has been kept open on a question of law. In the given scenario, the judgment in **Mehrana and others' case (supra)** invites primacy over the view of this court in **Sajida and others' case (supra).** That being so, the appellant insurance company cannot derive any advantage to its contention from the judgment in **Sajida and others' case (supra).**

In view of what has been discussed hereinbefore, finding no merit, the appeals are dismissed.

FAO No. 6342 of 2011

Claimant Sushil Kumari is in appeal seeking grant of compensation qua death of her father-in-law, Sh.Amar Singh.

The Tribunal allowed the application filed by Virender Singh son of deceased Amar Singh and awarded compensation to the tune of Rs. 3,53,200/- with interest @ 12% per annum. The application filed by Sushil

Kumari was dismissed primarily on the ground that she cannot claim to be dependent on income of the deceased as her husband is stated to be missing from the past six months, thus, cannot be held to be civilly dead.

Counsel for the appellant has not disputed that Narender Singh could not be presumed to be dead at the time of death of Amar Singh as he was stated to be missing since 26.7.2007. The occurrence in question took place on the intervening night of 15/16.12.2007. Counsel has failed to cite any judgment that renders claim of Sushil Kumari maintainable. In this view of the matter, I do not find any reason to differ with findings of the Tribunal rejecting claim of Sushil Kumari.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

4.9.2019
paramjit

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