

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

FAO No.276-2011

Date of decision: 30.05.2019

Lakhwati and others

.... Appellants

Vs.

Harbhajan Singh and another

.... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Ms. Nisha Puri, Advocate
for the appellants.

Mr. Radhe Shyam Sharma, Advocate
for respondent No.2-Insurance Company.

ARUN KUMAR TYAGI, J.

1. The claimants-widow, minor sons and minor daughter of deceased-Dev Karan have filed present appeal seeking setting aside of award dated 05.08.2010 passed by the learned Motor Accidents Claims Tribunal, Palwal (for short 'the Tribunal') in **MACT Petition (RBT) No.368 of 2005 titled as Lakhwati and others Vs. Harbhajan Singh and another** whereby claim petition filed by the claimants under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') for award of compensation on account of his death due to injuries suffered in a motor vehicle accident arising out of the use of Tata Sumo bearing registration No.HR-61-0977 on 19.10.2005 was dismissed.

2. The above-said claim petition was filed on the averments that on 19.10.2005 Tata Sumo bearing registration No.HR-61-0977 was driven by Dev Karan at a moderate speed and due to sudden mechanical failure, the vehicle turned turtle due to which the driver Dev Karan suffered multiple grievous injuries and died. FIR No.264 dated 19.10.2005 was registered under Sections 279, 337 and 304-A of the Indian Penal Code, 1980 in Police Station Hodel regarding the accident.

3. While pleading that the deceased-Dev Karan was aged about 24 years and was earning ₹3,200/- per month from his employment as driver and claiming themselves to be dependents and legal representatives of the deceased, the claimants sought award of compensation of ₹10 lacs. with costs and interest against respondent No.1-owner and respondent No.2-insurer jointly and severally.

4. Notice of the claim petition was issued to the respondents. In his written statement respondent No.1-registered owner of the Tata Sumo in question pleaded that he had purchased the said vehicle from M/s Bansal Finlease Ltd. and when he was not in a position to run the vehicle he had returned the same to the said Finance Company who had further sold the vehicle in question to Dev Karan and thereafter he had no concern with the vehicle and denied his liability.

5. In its written statement, respondent No.2-Insurance Company took preliminary objections as to want of cause of action,

estoppel, mis-joinder and non-joinder of parties, maintainability, the deceased not having valid and effecting driving licence and breach of the terms and conditions of the insurance policy. Respondent No.2-Insurance Company also controverted the material averments made in the petition and denied its liability.

6. It is also pertinent to mention here that Smt. Anguri and Smt. Kamlesh, who were also travelling in the above-said Tata Sumo, also suffered multiple injuries in the above-said accident and filed separate claim petitions under Section 166 of the M.V. Act bearing **MACT Petition (RBT) No.369 of 2006 titled Anguri Vs. Harbhajan Singh and others** and **MACT Petition (RBT) No.370 of 2006 titled Kamlesh Vs. Harbhajan Singh and others** respectively which were contested by the respondents and tried and disposed of with the above-said claim petition filed by Lakhwati and others.

7. The Tribunal framed issues and recorded evidence produced by the parties. On consideration of the material on record and the submissions made by the learned Counsel for the parties, the Tribunal held that the accident was caused due to rash and negligent driving of Tata Sumo bearing registration No.HR-61-0977 by deceased-Dev Karan and accordingly dismissed the claim petition. In the other connected cases, the Tribunal awarded compensation of ₹22,639/- to injured-claimant Smt. Anguri and ₹2,350/- to injured-claimant Smt. Kamlesh with costs and interest at the rate of 9% per annum from the date of filing of the claim petition till realization respectively. The Tribunal directed respondent No.2 to

satisfy the award and thereafter recover the amount from the insured.

8. Feeling aggrieved, the claimants legal representatives of deceased-Dev Karan have preferred present appeal against the above said award.

9. I have heard the learned Counsel for the appellants and learned Counsel for respondent No.2 and gone through the record.

10. Learned Counsel for the appellants/claimants has argued that respondent No.1-Harbhajan Singh was the registered owner of the Tata Sumo at the time of the accident as per the Registration Certificate and got the same released on sapurdari as per copies of sapurdari order copy Ex.R-7, sapurdginama Ex.R-8 and Surety bond Ex.R-9 and respondent No.1-Harbhajan Singh and respondent No.2-Insurance Company were estopped from claiming Dev Karan driver of the Tata Sumo to be its owner. The claimants being legal representatives of Dev Karan driver of the Tata Sumo are entitled for payment of compensation for his death and the Tribunal has completely erred in law by not awarding any compensation to the appellants/claimants in a claim petition filed under no fault liability provision contained in Section 163-A of the M.V. Act for his death due to injuries suffered in accident arising out of the use of the Tata Sumo in question.

11. Learned Counsel for the appellants/claimants has argued in the alternative that insurance policy copy Ex.RX-6 embodied contractual stipulation extending personal accident cover

to the extent of ₹2,00,000/- to owner-driver and if deceased-Dev Karan is held to be owner of the Tata Sumo, then respondent No.2-Insurance Company was liable to pay compensation for death of Dev Karan under personal accident cover extended to owner-driver. In support of his arguments learned Counsel for the appellants/claimants has placed reliance on **National Insurance Co. Ltd. Vs. Ashalata Bhowmik and others : 2018(4) RCR (Civil) 211.**

12. On the other hand, learned Counsel for respondent No.2-Insurance Company has argued that due to deceased-Dev Karan being the owner of the Tata Sumo and also the tortfeasor due to whose rash and negligent driving the accident occurred claim petition for award of compensation under Section 163-A of the M.V. Act is not maintainable. Since the claimants have not produced driving licence of deceased-Dev Karan, respondent No.2-Insurance Company is not also liable to pay any compensation to the claimant under its contractual liability in terms of the insurance policy. The claim petition has been rightly dismissed by the Tribunal.

13. 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 that 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**).

14. In the present case, respondent No.2-Insurance Company is not entitled to defend the claim on the basis of negligence of deceased-Dev Karan who was driving the Tata Sumo at the time of accident and the question which arises is whether the claim petition was on behalf of or at the behest of owner. The claimants have pleaded and PW-3 Lakhwati widow of deceased-Dev Karan has testified that respondent No.1-Harbhajan Singh is the registered owner of the Tata Sumo and Dev Karan was using the Tata Sumo during the course of his duty under the employment and control of respondent No.1. However, respondent No.1-Harbhajan Singh has pleaded transfer of ownership of the Tata Sumo by him in

favour of deceased-Dev Karan. To prove his defence respondent No.1 has examined RW-1 Rajve authorized signatory/principal Officer of M/s Bansal and Finlease Ltd. who has testified that the Tata Sumo was initially financed to respondent No.1-Harbhjan Singh but on 22.02.2015 Harbhajan Singh sold the Tata Sumo to Dev Karan and also delivered possession of the Tata Sumo to him as per transfer documents form 29 and 30 Ex.RX-3 and Ex.RX-4 executed by respondent No.1-Harbhjan Singh and the Tata Sumo was financed subsequently to Dev Karan as per loan agreement Ex.RX-2 executed by him. The evidence produced by the claimants as to deceased-Dev Karan being employee of respondent No.1-Harbhajan Singh is rebutted and falsified by cogent and reliable evidence produced by respondent No.1. Further, the fact that the Tata Sumo was also got insured by Dev Karan in his name from respondent No.2 vide Insurance policy copy Ex.RX-6 also negatives and falsifies the stand of the claimants and substantiates and vindicates the defence of respondent No.1. By the cogent and reliable oral and documentary evidence produced by the respondent No.1 deceased-Dev Karan is proved to be owner-driver of the Tata Sumo in question at the time of his death. The claim petition filed by legal representatives of deceased-Dev Karan, owner of the Tata Sumo for award of compensation against respondent No.1 due to being the registered owner as per the Registration Certificate is not maintainable under Section 163-A of the M.V. Act. Therefore, the appellants/claimants are not entitled to payment of compensation

under Section 163-A of the M.V. Act for death of deceased-Dev Karan in accident arising out of the use of the Tata Sumo and the Tribunal has rightly dismissed the claim in this regard.

15. However, in the present case the Tata Sumo was insured under comprehensive insurance policy and question which arises is as to whether respondent No.2 is liable to pay compensation to the appellants/claimants under the terms of the insurance policy.

16. Section 147(5) of the M.V. Act provides as under:-

“(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”

17. In **Ningamma’s Case (Supra)** Hon’ble Supreme Court with reference to the provisions of Section 147(5) of the M.V. Act, observed that the policy of insurance could also cover any other liability, in which event, the insurance would be liable to indemnify as per the terms of the policy.

18. A perusal of insurance policy copy Ex.RX-6 of the Tata Sumo(Spacio) shows that the insured-Dev Karan had paid premium as mentioned in the table given therein which is reproduced as under:-

(A) OWN DAMAGE		(B) LIABILITY	
Basic OD	6,686.00	Basic Liability	700.00
(a) Total	6,686.00	(a) Total	700.00
ADD.....		ADD.....	
(a) Total	0.0	PA	100.00

Less.....		Extra PA	450.00
(b) Total	0.0	Legal Liability Driver	25.00
		(a) Total	575.00
		Less.....	
		(b) Total	0.00
		Total of (B)	1,275.00
		PA Cover under	
		Section III for owner-	
		driver (CSI) :	
		Rs.200,000.00	
		Special Discount	Rs.0.00
	6,686.00		Rs.7,961.00
			Rs.812.00
			Rs.8,773.00

As mentioned in the table reproduced above the insured deceased- Dev Karan owner-driver had paid premium of ₹100/- towards personal accident cover under Section III for owner-driver (CSI) ₹2,00,000/-.

19. 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.

20. 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".

21. In **National Insurance Co. Ltd. Vs. Ashalata Bhowmik and others : 2018(4) RCR (Civil) 211** Hon'ble Supreme Court held legal representatives of deceased owner-cum-driver, who died due to injuries suffered in the accident caused by his own rash and

negligent driving of the offending vehicle, to be entitled to payment of compensation of ₹2,00,000/- under contract of insurance while rejecting their claim for compensation under the M.V. Act.

22. Facts of the present case are similar to those of **National Insurance Co. Ltd. Vs. Ashalata Bhowmik and others : 2018(4) RCR (Civil) 211** and observations therein are fully applicable to the facts of present case. In the present case, deceased-Dev Karan is proved to be owner-driver of the Tata Sumo at the time of the accident and to have died due to injuries suffered in accident caused by his own rash and negligent driving of the Tata Sumo. The appellants/claimants, being his legal representatives, are not entitled to payment of compensation under Section 163-A of the M.V. Act. However, deceased-Dev Karan being owner-driver is covered by personal accident cover under Section III for owner-driver of ₹2,00,000/-. No doubt, the claimants did not produce driving licence of deceased-Dev Karan but for claiming its exoneration from liability the onus of proving that deceased-Dev Karan did not have any valid and effective driving licence was on respondent No.2 who would have failed if no evidence was produced. Reliance in this regard may be placed on the observations in **Narchinva Vs. Kamat and another etc. Vs. Alfredo Antonia Deo Martins and others : AIR 1985 (Supreme Court) 1281** and **The Oriental Insurance Co. Ltd. Vs. Monika and others : 2012 (1) PLR (Punjab and Haryana High Court) 605** where in similar facts onus of proof was held to lie on insurance company and the same having failed to produce any

evidence to prove absence of valid and effective driving licence was held liable. In the present case, respondent No.2 failed to produce any evidence as to deceased-Dev Karan not having valid and effective driving licence at the time of the accident and issue No.3 framed in this regard was also decided against respondent No.2. In view of this finding even the grant of recovery rights to respondent No.2 by the Tribunal qua payment of compensation to Smt. Anguri and Smt. Kamlesh was wrong. In these facts and circumstances of the case, respondent No.2 is not exonerated from its liability to pay compensation to the appellants/claimants in terms of the insurance policy on the ground of deceased-Dev Karan not having valid and effective driving licence at the time of the accident and the appellants/claimants are entitled to payment of amount of ₹2,00,000/- from respondent No.2-Insurance Company in discharge of its contractual liability under Insurance Policy copy Ex.RX-6. The Tribunal erred in not awarding the compensation to the claimants under the personal accident cover extended to owner-driver by the comprehensive insurance policy copy Ex.RX-6 and the impugned award dismissing the claim petition is liable to be set aside to that extent.

23. In view of the above discussion the appeal is allowed, impugned award dismissing the claim petition is set aside and the claim petition is allowed by passing award to the effect that appellants/claimants are entitled to payment of compensation of ₹2,00,000/- in equal shares from respondent No.2-Insurance

Company with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. On realization the amount of the share of claimants No.1, 2 and 4 be paid to them in cash and amount of the share of minor claimant No.3 shall be deposited in FDR fetching maximum rate of interest in some nationalized bank till attaining of majority by him and on attaining of majority he shall be entitled to payment of the same with accrued interest without the requirement of passing of any further order in this regard by this Court or the Tribunal.

(ARUN KUMAR TYAGI)
JUDGE

30.05.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No